

# UNION STATION REGIONAL INTERMODAL TRANSPORTATION CENTER

Request for Services for  
**OWNER'S PROJECT MANAGER**

*Issued by the*  
**Springfield Redevelopment Authority**  
**August 4, 2010**  
**Bid No. 08-20100001**



*Submittal Deadline:*

**2 p.m. (EDT) Thursday, September 9, 2010**

**Springfield Redevelopment Authority**  
**c/o Office of Planning and Economic Development**  
**70 Tapley Street**  
**Springfield, Massachusetts 01104**

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**Appendix A. Required Forms/Certifications**

- Form 1 Acknowledgement of Receipt of Request for OPM Services Form
- Form 2 Pre-Proposal Attendance Form
- Form 3 Certification of Eligibility to Bid or Propose
- Form 4 Acknowledgement of Required Federal Contract Clauses
- Form 5 Certification of Non-Collusion
- Form 6 Certification of Restrictions on Lobbying
- Form 7 Tax Certification Affidavit
- Form 8 Certification of Insurance Requirements
- Form 9 Proof of Current DBE Certification, if applicable
- Form 10 Addenda Acknowledgement Form

**Appendix B. Standard Form of Contract for Project Management Services**

**Appendix C. Federal Clauses**

**Appendix D. Copy of Legal Notice**

**Request for Services (RFS) for  
OWNER'S PROJECT MANAGER (OPM)  
Union Station Regional Intermodal Transportation Center**

**Project:** Union Station Regional Intermodal Transportation Center

**Website:** [www.SpringfieldRedevelopmentAuthority.com](http://www.SpringfieldRedevelopmentAuthority.com)

**Location:** Frank B. Murray and Main streets, Springfield, MA 01103

**Estimated Construction Cost:** \$52 million

**Estimated Total Project Cost:** \$67 million

**Project Components:** Renovation of a 120,250-square-foot terminal building  
Demolition of a 93,000-square-foot baggage building  
Construction of a 139,000-square-foot bus terminal with two levels of parking above.

**Proposed Time Line:**

Pre-Designer Selection Phase	3 months
Design Phase	15 months
Construction and Occupancy Phase	24 months

**Fee Proposal:** To be negotiated. No fee proposal to be submitted.

**1. NOTICE OF REQUEST FOR SERVICES**

In accordance with Chapter 149, Section 44A½, and Chapter 193 of the Acts of 2004, the Public Construction Reform Law, under Massachusetts General Laws, the Springfield Redevelopment Authority (SRA) intends to retain the services of an Owner's Project Manager (OPM) to represent the interests of the SRA in the design and construction of the Union Station Regional Intermodal Transportation Center, located on Frank B. Murray Street in downtown Springfield, Mass.

## **2. ACKNOWLEDGEMENT OF RECEIPT OF REQUEST FOR OPM SERVICES**

The form of Acknowledgement of Receipt of the Request for OPM Services is attached as Form 1 in Appendix A and must be completed and returned to the SRA as directed.

Addenda will be forwarded only to firms that complete and return this Acknowledgement of Receipt of RFS.

## **3. PRE-PROPOSAL CONFERENCE AND SITE VISIT**

A non-mandatory pre-proposal conference and site visit will be held at 11 a.m. (EDT) on Thursday, August 19, 2010, at Union Station, 55 Frank B. Murray Street, Springfield Mass. Please confirm attendance at this conference by submitting the form included as Attachment B at least 48 hours prior to the above date. NO TELEPHONE CALLS WILL BE ACCEPTED.

## **4. QUESTIONS**

Questions regarding this RFS must be received in writing no later than 5 p.m. (EDT), August 20, 2010. Proposers may fax or e-mail their questions to the attention of Christopher Moskal, Project Manager. The facsimile number is (413) 787-6524; e-mail is: cmoskal@springfieldcityhall.com. A response will be prepared and forwarded via e-mail in the form of an addendum to the RFS within five (5) business days to all parties who have completed and returned the ACKNOWLEDGEMENT OF RECEIPT OF REQUEST FOR OPM SERVICES provided as Form 1 in Appendix A.

## **5. AGENCY OVERVIEW**

The Springfield Redevelopment Authority (SRA) is a corporate and political body, established by the City of Springfield and the Commonwealth of Massachusetts on June 24, 1960. It operates pursuant to Massachusetts General Laws, Chapter 121B. The broad development powers afforded to the SRA by Section 46 of Chapter 121B include the power to buy and sell property; to acquire property through eminent domain; and to own, construct, finance and maintain an intermodal transportation terminal within an urban renewal project area.

Made up of five members -- four appointed by the mayor, and one by the director of the Massachusetts Department of Housing and Community Development (DHCD), the Springfield Redevelopment Authority is staffed by the City of Springfield, with the city's chief development officer serving as administrator of the SRA. The administrator is supported by staff from the city's Office of Planning and Economic Development and Community Development and Law departments. Since its creation 50 years ago, the SRA has been involved in more than 35 urban renewal projects throughout the City of Springfield, including the largest one, the Court Square Urban Renewal Project, where Union Station is located.

The SRA owns Union Station, including the former terminal and adjacent baggage building and the site of the former Hotel Charles, which together make up the project site. The SRA acquired Union Station and the Hotel Charles in 1989 and 1990, respectively, as a result of the implementation of Amendment #5 to the Court Square Urban Renewal Plan. At that time, the amendment contemplated the renovation of the deteriorated Hotel Charles as housing, with ground-floor commercial uses, and the rehabilitation of the largely vacant Union Station for commercial reuse. Redevelopment efforts were initiated but never fully accomplished. In 1996, the Hotel Charles building was condemned after a fire and subsequently was demolished.

In June 2001, Amendment #7 to the Court Square Urban Renewal Plan was approved, specifically to support redevelopment of Union Station and development of the vacant former Hotel Charles parcel into a regional intermodal transportation center.

## **6. PROJECT OVERVIEW**

Springfield's Union Station played a central role in the life of western Massachusetts' Pioneer Valley for half a century, and was especially busy during World War II. By the mid-1950s, however, transportation, settlement and economic patterns had begun to change radically as the nation moved from urban to suburban life, and transportation shifted from railroads to interstate highways. By the late 1970s, Union Station had closed and it has remained vacant since that time.

As noted, Union Station consists of two vacant buildings on Frank B. Murray Street: a three-story terminal building and a two-story baggage building. Constructed in 1926, both buildings are on the National Register of Historic Places. The terminal building comprises 120,250 square feet and sits on a 50,000-square-foot parcel, with access to Frank B. Murray Street and elevated track-side access. The baggage building comprises 93,000 square feet on a 53,000-square-foot parcel and is connected to the terminal building. These two properties, along with an abutting

34,000-square-foot parcel on the corner of Frank B. Murray and Main streets -- the former Hotel Charles parcel, have been owned by the Springfield Redevelopment Authority since 1989.

Plans to redevelop Union Station as a regional intermodal transportation facility have been on the drawing board since 1997, and significant federal and state dollars have been earmarked to advance this project. A master planning process was started by the Pioneer Valley Transit Authority (PVTA) in 1998 and a final master plan was completed in 2001. The plan envisioned a new Union Station as a regional transportation hub, housing Amtrak functions, regional and local bus facilities, travel agents, ticketing outlets, car rental and package express operations, and shuttle service to and from Bradley International Airport. In 2000, the PVTA issued a Request for Proposals and selected a joint development partner for the project. This earlier plan called for approximately 200,000 square feet of renovated space -- including 65,000 square feet of retail space and 60,000 square feet of office space in the terminal and baggage buildings -- and 250,000 square feet of new development on the adjacent parcel.

Implementation of the initial Union Station master plan proved economically infeasible due to unrealistic market and project operating expectations, unresolved commitments intended to facilitate a track-side location for bus berthing, and uncertainties about the financial viability of the proposed mix of office and retail space.

In June 2007, the PVTA and SRA jointly issued a Request for Qualifications, seeking services for the preparation of a new redevelopment plan, and chose HDR Inc., an award-winning consulting firm, from a field of seven respondents. The firm's work included: assessing the current and projected market; calculating existing and projected rail and transit ridership; determining a favorable mix of economically viable facility uses, outlining a conceptual framework that can identify and resolve all outstanding legal and logistical issues; and then formulating a revised and updated redevelopment plan encompassing an aggressive implementation program and timetable.

The resulting Redevelopment Plan for Union Station was completed by HDR Inc. in October 2008 and is available at [www.SpringfieldRedevelopmentAuthority.com](http://www.SpringfieldRedevelopmentAuthority.com)

Under the plan, Union Station's redevelopment into a regional intermodal transportation center will make it the region's main such transportation center and the key regional interchange for high-speed, intercity and regional rail, regional and local bus service, and taxi service. The existing run-down rail terminal would become a modern public facility. Plans call for restoring the 120,250-square-foot main terminal building, and using the adjacent site of the former baggage-handling building and Hotel Charles on Main Street for construction of a 23-bay bus terminal with a 400-space public parking garage located on the upper levels. Office space

would be provided for the PVTA and the Pioneer Valley Planning Commission (PVPC). A day-care center would serve employees throughout the downtown area. Finally, the ADA-accessible facility would include space for private development in the form of transit-related retail and more office uses in the future.

By restoring and preserving Union Station's architectural and historic character, the plan would achieve redevelopment that will catalyze revitalization of the surrounding neighborhood and downtown Springfield.

Prior efforts to redevelop Union Station were unsuccessful for a variety of reasons, but the common denominator was that the plans were not based on market realities. The 2008 HDR Redevelopment Plan took a grounded approach based on those realities -- as well as on well-defined objectives, available funding and economic viability, and recommends a framework for success that respects these factors and meets related criteria.

The 2008 plan was the result of an intensive year-long planning effort undertaken by the City, the SRA and the PVTA, working with HDR. Together, this team has produced a plan that resolves a number of the thorny issues that had plagued previous efforts. The HDR plan forms the basis for this RFS, although it is envisioned that the project scope may be fine-tuned and possibly modified as part of the engagement.

## **7. PROJECT SCOPE**

The Union Station Redevelopment Plan prepared by HDR Inc. that will serve as the basis for this project will include:

- Restoration and reactivation of the terminal building with approximately 33,000 square feet for PVTA, Amtrak, commuter rail and intercity bus operating facilities; 58,000 square feet of transit-related retail and office space, including day care, PVTA administrative offices and a transportation conference center; and 30,000 square feet of commercial "Opportunity Space" for future economic development.
- Removal of the baggage building and construction of a 139,000-square-foot bus terminal with 23 bays.
- Construction of a 400-space, two-level parking garage connected to the terminal building to accommodate transit and public parking above the new bus terminal.
- Reopening of a passenger tunnel providing a safe, walkable connection from the terminal building to the rail platforms, as well as to Lyman Street.

- ADA upgrading of rail platforms for Amtrak and future intercity and high-speed rail service.

The Union Station project has been classified by the Federal Transit Administration (FTA) as a "major capital investment" and the FTA will be assigning a Project Management Oversight Contractor (PMOC) to monitor it. The FTA also has required preparation of a Project Management Plan (PMP), the purpose of which is to clearly define the roles, responsibilities, procedures and processes that will result in the major project being managed so that it is completed:

- On time
- Within budget
- With the highest degree of quality
- In a safe manner for the individuals working on the project and for the traveling public, and
- In a manner in which public trust, support, and confidence in the project will be maintained.

The Springfield Redevelopment Authority has submitted an initial PMP to the FTA in accordance with requirements set forth in 49 CFR 633.25 and FTA Project and Construction Management Guidelines. The initial PMP summarizes the project scope, budget, schedule, and financing, both capital and operating. The PMP defines the objectives of the project, the methods and resources proposed for meeting those objectives, the overall management strategy including project control, and the responsibilities, authority, and measures of performance for all parties involved. Updated and maintained by the SRA, the PMP will serve as a guide for implementing the project and will document assumptions and decisions regarding communication, management processes, and overall project execution. The Union Station PMP is a living document and will be expanded and updated as necessary as implementation of the Union Station project progresses. The initial PMP will be provided to the selected OPM, who will be expected to provide ongoing input into the PMP document.

## **8. PROJECT BUDGET**

The total project cost was estimated by HDR at approximately \$65.2 million (in 2010 dollars). A major portion of this cost (\$61.2 million) is for the transit-related facilities and the parking structure. The remainder (\$4 million) is for tenant fit-out of the "Opportunity Space" (non-transit retail and office rental space). An estimated \$61 million of funding is projected to be derived from the following sources: federal (FTA) and state public grant funds focused on

transportation facilities; projected commuter rail funding; state transportation bond funding; and an off-street parking grant. The balance of approximately \$4 million, needed to complete the build-out of the Opportunity Space, could be financed by a loan or obtained through some other funding source, and also may be undertaken at a later date by end-users.

The HDR costs are in 2010 dollars, as noted, and as project planning advances, project capital and operating budgets will be refined and updated to ensure that capital improvements and ongoing operations are feasible, fundable and sustainable. The SRA has developed an updated capital budget, which reflects 2012 dollars and totals \$67.1 million, of which \$51.8 million is estimated construction costs, inclusive of the opportunity space build-out.

## **9. LIMITATION ON FUNDING**

The contract for Owner's Project Manager services (contract) resulting from this RFS will be subject to the availability of funds from SRA's funding sources. This contract is contingent upon receipt of funds from the FTA, Massachusetts Department of Transportation (MassDOT), the Executive Office of Administration and Finance (ANF) and/or other sources. In the event that funding from these sources is eliminated or decreased, or any other funding issues arise, the SRA reserves the right to terminate the contract or modify it accordingly.

## **10. SCOPE OF SERVICES**

Services of the OPM will commence upon the execution of a contract for Owner's Project Manager services (Contract) with the SRA in substantially the same format as the form of agreement provided in Appendix B. These services may be phased and will continue through the construction phase until issuance of the final Certificate of Occupancy and completion of the project close-out phase.

The term OPM contained herein has been used to describe all of the services that might be provided by the OPM or the Clerk of Works.

### **A. General**

1. The SRA is dedicated to the timely and cost-effective construction of quality projects. The OPM will review and update schedules and cost estimates provided by the designer and/or contractor as needed to adequately ensure that design, timing, and construction

costs are within the schedules and budgets specified by the SRA.

2. The OPM is to represent the SRA's interests, as further defined by the SRA, during the design, construction and close-out phases of the project. The OPM will be responsible to the SRA to act as its principal agent and will be independent of the designer and construction contractor. The OPM will facilitate teamwork among all the involved parties and will be proactive in identifying, addressing and minimizing potential obstacles in providing recommendations to the SRA for corrective action. The OPM will be designated as the authorized representative of the SRA to administer both consultant and construction contracts as specified in this request and/or as negotiated.
3. As indicated, the FTA has required a Project Management Plan (PMP) for this project. The PMP will be developed, maintained and updated throughout the project to serve as a guide for implementing it and to document assumptions and decisions regarding communication, management processes, execution and overall project control. An initial PMP has been prepared by the SRA and is expected to be evaluated, updated and refined at appropriate stages throughout the project. The OPM will be expected to provide updates and assist in the ongoing evolution of the PMP.
4. At this time, the SRA has not yet selected the construction delivery method for this project. Standard public building projects are conducted pursuant to Massachusetts General Laws, Chapter 149. Alternatively, the SRA is considering Construction Manager (CM) at Risk under Chapter 149A as an alternative for the construction delivery method. The decision as to which method to use will be made by the SRA during the pre-design phase, and may be influenced by budget, schedule, and the experience and qualifications of the respondents to this RFS. The OPM services will support either method of construction delivery.

The contract will establish a relationship of trust and confidence between the OPM and the SRA, will require the OPM's best efforts and will establish the standard of care for the OPM services. The contract will be substantially as set forth in Appendix B. It is not intended that the services of the Owner's Project Manager, Designer and/or Contactor be competitive or duplicative, but rather they should be complementary.

## **B. Project Management Procedures and Controls**

1. The OPM will prepare a communications and document control procedure for the duration of the project. This procedure will detail the responsibilities and lines of communication among all participants (SRA, OPM, designer, contractor, subcontractors

and other consultants, vendors or suppliers) and will establish the procedure for correspondence, document control, designer and contractor submittal logs, change-order reporting logs and other tracking logs, as needed.

2. The OPM will prepare agendas for and attend SRA meetings, and other meetings relating to the project as necessary, with the designer, engineers, contractor, other sub-consultants, city agencies and any state or federal representatives. The OPM will take minutes of all of the above-referenced meetings and promptly distribute those minutes to the SRA.
3. The OPM will review all applications for payments, and all requisitions and invoices relating to the project as submitted by the designer, contractor, equipment vendors and all other prime contractors and suppliers and will make recommendations to the SRA relative to amounts due.
4. At the start of the design process, the OPM will provide the SRA with an updated project baseline budget in a form acceptable to the SRA. The project budget should be reviewed by the OPM in conjunction with the designer. The OPM will maintain and update the project budget throughout the term of this contract. The OPM will assess the actual progress of the project relative to the baseline budget and will report any variances to the SRA. The OPM will prepare revisions to the project budget, as needed, and submit them to the SRA for approval.
5. The OPM will assist the SRA and the designer in the selection and acquisition of furniture fixtures and equipment (FF&E) that will be installed during (or after) the final stages of construction.
6. The OPM will prepare a detailed baseline project schedule, including design, permitting and construction activities, which will serve as the project control against which all project progress will be measured. The OPM will maintain and update the project schedule throughout the term of this contract. The OPM will assess the actual progress of the project relative to the baseline project schedule and report any variances to the SRA.
7. The OPM will prepare detailed independent cost estimates at each design phase (schematic, design development and construction documents). The OPM will compare its cost estimate to that prepared by the designer (and CM at Risk if applicable), and will identify and notify the SRA of any variances.

8. In the event that the cost estimated by the designer exceeds the construction cost in the project budget at any of the design phases, the OPM will consult with the designer and/or the CM at Risk and recommend to the SRA appropriate revisions to the Scope of Work.
9. The contractor will be responsible for preparing and updating its construction schedule on a monthly basis. The OPM will meet with the contractor and designer to review and update the construction schedule, develop monthly progress information to support the contractor's payment estimate, and monitor the contractor's performance for compliance with the contract.
10. The OPM will submit a written monthly progress report to the SRA summarizing recent progress on the project and activity during the preceding calendar month, highlighting milestones achieved, and raising issues to be addressed. The report will be submitted in a format acceptable to the SRA and will describe work performed by all project participants (OPM, designer, contractor) during the reporting period, and work planned for the next reporting period. The report also will address matters of adherence to the project schedule as well as individual completion percentages for design and construction, costs to date (updated project budget and actual expenses incurred), change orders and potential change orders, cash-flow projections, contractor's safety performance, designer's QA/QC, contractor's environmental compliance, community issues, designer and contractor DBE activities, any issues that could result in additional time and/or additional costs, and any anticipated problems/concerns together with recommended solutions.
11. The OPM will review change orders and claims, coordinate its review with the designer, and make specific document and processing recommendations to the SRA, consistent with the General Laws and the construction contract documents, that will minimize change-order and claims processing costs and time.
12. The OPM will provide oral reports to the SRA on a regular basis as necessary or as required by the SRA. Topics of oral reports will include, but not be limited to, project coordination, progress, budget updates, any issues of non-compliance with SRA/contractor agreements or other contract documents, and schedule status updates. The OPM will be responsible for ensuring that all federal- and state-required reports are submitted on a timely basis, i.e., certified payrolls, certificates of inspection, certificates of compliance, etc.

13. The OPM will provide updated project budget reports to the SRA on a monthly basis. The revised cash-flow report should be developed by the OPM in conjunction with the SRA, the designer and the general contractor. The report should be prepared upon completion and approval of each month's payment requisitions and should reflect the original budget amount and any variances. Specifically, issues that affect the budget will be highlighted and researched immediately.
14. The OPM will keep the SRA and other public officials informed at all times during the project of all aspects of the project, at an appropriate level of detail to allow decision makers to understand their responsibilities and options.
15. In consultation with the designer, the OPM will develop a quality-control program to be followed during construction.
16. The OPM will work with the SRA to develop an inventory of required FF&E, and create a timeline and monitoring system so that all necessary items will be procured, installed and operational by opening day of the new facility. The OPM will develop a replacement and renewal budget for the SRA.
17. The OPM will assist the SRA in procuring any construction-related services, consultants or materials required for the project.
18. The OPM will maintain complete project files of any and all paperwork, both important and routine.
19. The OPM will provide appropriate updates on the project for the SRA's public information Web site.
20. The OPM will be available for any future litigation on an hourly basis separate from the initial fee, if required.

### **C. Pre-Design Phase Services**

1. The OPM will review available background information including past feasibility studies, surveys, utility data, traffic studies, zoning regulations, budgets, grant documentation, MEPA and NEPA documents and other project documentation provided by the SRA.
2. The OPM will review the proposed design and construction budgets in coordination with the desired project goals to assure a correspondence between the dollars available and

the expected level of effort. The OPM also will prepare and update the project financing plan for coordination with project funding agencies.

3. The OPM will review project delivery methods and recommend the most advantageous. Options for fast-track construction, including CM at Risk and design/build, will be evaluated, as applicable under M.G.L. Chapter 149.
4. The OPM will advise and consult on the selection of the project designer.
5. The OPM will provide guidance on any early building or site-related issues, especially before the design and engineering team are chosen and active.
6. The OPM will assist in running the pre-proposal meeting; this will include preparing minutes for distribution.
7. The OPM will assist in preparing criteria for designer selection and other materials to facilitate evaluation of designer proposals.
8. The OPM will coordinate the designer kick-off meeting, including participation by other stakeholders, and will provide the designer with documents that define the project scope, budget, schedule and funding objectives.
9. The OPM will secure approvals from the state Inspector General's office for the CM-at-Risk project delivery method, should this alternative be chosen.
10. The OPM will work with the SRA on the selection process for other sub-consultants that are not part of procurement for designer services, including, but not limited to, geotechnical, permitting and environmental consultants. The OPM's role will include assistance in preparing requests for qualifications and/or proposals, reviews, interviews and evaluations.
11. The OPM will advise and consult on project designer contract negotiations and contract development.
12. The OPM will coordinate any early-stage cost checks or estimations that are necessary.

#### **D. Design Phase Services**

1. The OPM will assist with programming development activities during the design process.

2. The OPM will monitor the overall project construction budget, and work with the SRA to control costs.
3. The OPM will make recommendations to the SRA concerning potential increases or decreases to the budget. This will include evaluating alternatives as necessary.
4. The OPM will assist in the identification of project permitting requirements and in the implementation of site evaluation and testing including, but not limited to, site surveys, environmental evaluations and certifications, hazardous-materials evaluations and remediation, subsurface testing and destructive testing as necessary for project demolition work.
5. The OPM will review the designer's work for quality, efficiency, and cost-effectiveness; will provide design review comments and technical assistance to the SRA and will maintain and distribute minutes of related meetings.
6. The OPM will review, make comments on, and recommend approval of all design submissions and invoices of the project designer.
7. The OPM will evaluate value engineering proposals during the design and engineering stages.
8. The OPM will assist the designer and the SRA in the evaluation of potential and/or necessary construction phasing plans to be included in the contract documents.
9. In consultation with the designer, the OPM will participate in the bidding process to ensure compliance with bidding requirements and encourage bidder participation.
10. If the SRA decides to construct the project using a CM-at-Risk (CM) delivery method, the OPM will assist the SRA in selecting a CM; evaluating cost estimates provided by the CM and designer; overseeing the CM at Risk's involvement in the design process and the prequalification of subcontractors; evaluating the Guaranteed Maximum Price (GMP) prepared by the CM; and auditing the CM's job costs to ensure compliance with the contract.
11. Under Chapter 149, the OPM will coordinate activities including prequalification of contractors, development of a contractor bid list, review of contractor bids and final selection. Also, the OPM will work with the designer to manage the subcontractor bid

review and procurement process and will review plans and specifications to ensure that the work is clearly described and broken down in accordance with the requirements of Chapter 149, sections 44A through 44M.

12. The OPM will review and comment on the contract documents, including the Construction Contract Form, and will make recommendations whenever design or other details adversely affect constructability cost or schedules.
13. The OPM will assist the designer and SRA in determining any add/deduct alternates for the project bid documents, and the order of any such alternates. The OPM will review the estimated pricing of alternates with the designer.

#### **E. Construction Phase Services**

1. The OPM will confirm that all required permits are secured.
2. The OPM will provide and supervise clerk-of-the-works services during the active construction phase to ensure that all required duties are being performed in a competent and timely manner. The clerk of the works is expected to:
  - a. Perform on-site observation of the progress and quality of the contractor's work to determine in general if the work is being performed in conformance with the contract documents.
  - b. Monitor contractor's schedules on an ongoing basis and alert the OPM and the designer to conditions that may lead to delays in the completion of the work.
  - c. Participate in weekly construction and progress meetings with the designer and the contractors to discuss such matters as procedures, progress, construction problems and scheduling.
  - d. Observe tests required by the contract documents and report to the designer on the procedures and test results. Verify testing invoices to be paid by the SRA.
  - e. Maintain records at the construction site in an orderly manner. The records will include correspondence, contract documents, change orders, change directives, reports of site meetings, shop drawings, products data, color samples and requests for payment.

- f. Maintain a logbook of daily activities at the site, including weather conditions, nature and location of work being performed, verbal interpretations given to the contractor and specific observations, and record any occurrence that might result in a claim for a change in contract compensation or time.
  - g. Notify the designer if a portion of the work requiring shop drawings or product data samples is commenced before such submittals have been approved by the designer.
  - h. Observe the contractor's record copy of the contract documents at intervals appropriate to the stage of construction and notify the designer of any apparent failure by the contractor to maintain up-to-date records.
  - i. Review applications for payment and provide the designer with recommendations for disposition.
  - j. Assist the designer in conducting inspections to determine the dates of substantial completion of various phases and the date of their final completion.
3. The OPM will provide oversight and coordination, as necessary, of the construction submittal process to ensure compliance with project requirements.
  4. The OPM will provide oversight of the Requests for Information (RFI) process and take action to resolve issues when possible.
  5. The OPM will review change-order requests in conjunction with the designer and make recommendations to the SRA regarding the validity and necessity of these expenses. The OPM will ensure that the designer is maintaining appropriate tracking and control of the change-order process.
  6. The OPM will review the contractor's schedule on a regular basis for accuracy and compliance with promised milestones, and will advise the contractor, designer and SRA regarding any concerns about the progress of construction.
  7. The OPM will work with City of Springfield Inspectors to facilitate their visits and review of the construction site.
  8. The OPM will monitor the designer's involvement and performance on construction-related issues.

9. Working with the designer, the OPM will review payment requisitions from the contractor for accuracy and make recommendations as to payment.
10. The OPM will review and approve invoices from the designer and report on their accuracy to the SRA to ensure prompt review and processing of applications for payment.
11. The OPM will monitor quality of construction at all times, using pre-established quality-control procedures.
12. The OPM will ensure that appropriate “as-built” drawings are being created and maintained, and that the contractor is properly recording and retaining all required manuals, samples, cut sheets, etc., related to the quality and nature of the construction in progress on the job site. The OPM will produce a property maintenance program for equipment and building maintenance.
13. The OPM will, in general, facilitate communication and problem-solving among all team members, and will promote a collaborative rather than adversarial relationship among all parties.
14. The OPM will maintain a complete project file, including, but not limited to, correspondence, daily and monthly reports, payment records, schedules, and files on particular issues as they arise.

#### **F. Closeout Services**

1. The OPM will assist the designer, the CM and the SRA in the preparation of final project punch lists, and facilitate their timely completion.
2. In consultation with the designer, the OPM will advise the SRA on the timing of the approval of the contractor’s notice of final completion.
3. The OPM will assist in the planning and implementation of all moving activities.
4. The OPM will review all warranty documents, as-built plans and manuals to ensure compliance with the design requirements.

5. The OPM will ensure that all building commissioning and turnover is completed properly and all applicable SRA and city officials (building inspector, Department of Public Works engineering personnel) are fully informed about the ongoing operation and repair of building systems and equipment.
6. The OPM will make sure that the SRA receives a complete list of all subcontractors and suppliers and the applicable warranties and certificates of warranty for both groups.
7. The OPM will prepare an ongoing maintenance guide for all equipment within the facility

#### **G. Other Services**

The SRA reserves the right to authorize the OPM to perform any related additional or extended services arising out of or pertaining to the Scope of Work as deemed necessary to accomplish the general purposes and intent of this request. No such additional services will be undertaken by the OPM until the SRA has provided written authorization and established the additional fee.

### **11. SUBMISSION REQUIREMENTS**

- A. General Requirements.** One (1) *unbound* original, eight (8) bound copies of the proposal and a CD with a pdf version clearly labeled “SRA’s Project Management Services for the Union Station Regional Intermodal Transportation Center” must be furnished to the SRA at the following address:

Office of Planning and Economic Development  
70 Tapley Street  
Springfield, MA 01104  
ATTN: Christopher Moskal, Project Manager

**Proposals must be received no later than 2 p.m. (EDT), Thursday, September 9, 2010**

The SRA assumes no responsibility or liability for late delivery or receipt of responses. All responses received after the stated submittal date and time will be judged to be unacceptable and will be returned unopened to the sender.

Responses to this RFS must correspond exactly to the format and required content listed in the table below. The OPM firm or individual (hereinafter referred to as "Respondent") is required to clearly tab proposals in order to increase the fairness and efficiency of the review process. Responses that do not meet the required format may be rejected outright, or may be subject to a lower rating when evaluated. Please also note the suggested lengths of each section – excessively large proposals with unnecessary extra content are discouraged. The proposal should be printed on 8½' x 11" paper, bound on the long side, and in compliance with the format provided below.

**B. Contents of Proposal.**

<b>PROPOSAL SUBMISSION REQUIREMENTS</b>		
<b>Project Manager Services - Union Station Regional Intermodal Transportation Center</b>		
<b>Tab</b>	<b>Section</b>	<b>Topics/information To Be Included</b>
A	<p><i>Cover letter with name, title, address, e-mail address and telephone number of the contact person who can respond to requests for additional information.</i></p> <p>One to two pages</p>	<ul style="list-style-type: none"> <li>▪ Include overview of the firm or individual</li> <li>▪ Cite competitive advantages over other OPMs.</li> <li>▪ Cite experience with -- and opinion of -- CM-at-Risk delivery method if applicable.</li> <li>▪ Appoint a key point person for this respondent and give his/her contact information.</li> <li>▪ Cover letter must certify that the respondent meets the Minimum Requirements in Section 12 to be eligible for selection.</li> </ul>
B	<p>Previous Project Experience</p> <p>One to two page overview</p> <p><i>Chart or list should be as brief as possible to cover the material requested.</i></p> <p><i>A few pictures are fine, and you may highlight one or two projects with extra text, but do not include large quantities of boilerplate material on these projects.</i></p>	<ul style="list-style-type: none"> <li>▪ Begin this section with an overview of your recent project history, and include mention of your on-time and on-budget record.</li> <li>▪ Describe any experience on major capital transit projects funded through the Federal Transit Administration.</li> <li>▪ The firm must demonstrate significant experience, knowledge and abilities with respect to projects of similar size, scope and complexity as the Union Station Regional Intermodal Transportation Project.</li> <li>▪ The firm must have successfully managed construction projects in this size range, including public projects under Chapter 149 rules.</li> <li>▪ Describe your experience with the use of CM at Risk as a project construction delivery method.</li> </ul>

		<ul style="list-style-type: none"> <li>▪ Describe any experience your firm or team has with historic restoration, public-private development projects, transportation facilities, TOD projects, rail , sustainable building methods, LEED certification, life-cycle cost analysis, or cost estimating and value engineering.</li> <li>▪ Make a chart of all projects completed in the past 10 years that are comparable in scale, complexity and significance as the Union Station project.</li> <li>▪ Information provided in the chart about each project should include: <ul style="list-style-type: none"> <li>– Name and location</li> <li>– Client</li> <li>– Respondents’ role and responsibilities in this project</li> <li>– Building use</li> <li>– Completion date</li> <li>– Dollar value of total project (approx.)</li> <li>– Dollar value of construction (approx.)</li> <li>– New construction or renovation or both</li> <li>– Size in GSF (indicate size of renovation vs. new)</li> <li>– Chapter 149, 149A, or other construction method</li> <li>– Amount of fee paid to firm</li> <li>– Number and value of change orders</li> <li>– Safety record</li> <li>– Number and outcome of any legal actions</li> <li>– Other comments or description as relevant</li> </ul> </li> <li>▪ If a respondent has been or currently is involved in litigation on a project, provide a narrative description of the litigation and identify all parties involved.</li> </ul>
C	References and Reputation	<ul style="list-style-type: none"> <li>▪ Provide at least three project references (include project name, contact name, contact information) in conjunction with project experience section above.</li> <li>▪ Provide other references if they are relevant.</li> <li>▪ Please note any awards or other recognition awarded to respondent that are relevant to OPM work.</li> </ul>
D	Project Approach  Limit to two to four pages.  <i>Do not restate the scope of work contained in the RFS.</i>	<ul style="list-style-type: none"> <li>▪ Describe your firm’s unique approach to project management, and why yours is different from other OPM firms.</li> <li>▪ Describe how your firm and/or team will work with the designer and contractor to ensure a successful project, without unnecessary or costly duplication of effort.</li> <li>▪ Discuss your methods of communicating with the client throughout a project.</li> <li>▪ Provide three examples of the depth of your firm’s experience, and how it helped a client to achieve a goal or avoid a large</li> </ul>

		<p>problem.</p> <ul style="list-style-type: none"> <li>▪ Describe any tools used to increase efficiency and effectiveness.</li> <li>▪</li> </ul>
E	<p>Proposed Staffing</p> <p>No more than two pages per person</p> <p><i>Include Organizational Chart and Resumes of Key Personnel</i></p>	<ul style="list-style-type: none"> <li>▪ Provide names, experience, and qualifications, including professional credentials, such as Massachusetts registration as a designer, professional engineer, or construction supervisor, and procurement certifications for all staff who would be assigned to the project</li> <li>▪ Describe proposed project organization, including an organizational chart stating project roles, levels of involvement and responsibility and detailing the proposed percentages of time for all staff who would be assigned to the project.</li> <li>▪ Identify any services to be provided by sub-consultants.</li> <li>▪ Identify any firms with DBE/WBE/MBE certification.</li> </ul> <p><i>Note - The designated Project Manager and other key personnel identified in the response to this RFS shall not be changed during the engagement of the project without the written permission of the SRA.</i></p>
F	<p>Firm Stability and Capacity</p> <p>One to two pages</p>	<ul style="list-style-type: none"> <li>▪ Describe the firm’s history and ownership.</li> <li>▪ Divulge any past financial problems that were made public, such as bankruptcy filings.</li> <li>▪ Describe respondent’s work load at this time and ability to undertake and commit to this project.</li> <li>▪ List general liability insurance, professional liability insurance, workers compensation, and automobile insurance coverages.</li> </ul>
G	<p>Required Forms</p> <p><i>Forms are provided in Appendix A to this RFS.</i></p> <p><i><u>SRA-supplied forms are the only acceptable forms.</u> If you alter or use forms other than those provided by SRA, the proposal may be deemed non-responsive.</i></p>	<ul style="list-style-type: none"> <li>▪ Acknowledgement of Receipt of Request for OPM Services Form</li> <li>▪ Pre-Proposal Attendance Form</li> <li>▪ Certification of Eligibility to Bid or Propose</li> <li>▪ Acknowledgement of Required Federal Contract Clauses</li> <li>▪ Certification of Non-Collusion</li> <li>▪ Certification of Restrictions on Lobbying</li> <li>▪ Tax Certification Affidavit</li> <li>▪ Certification of Insurance Requirements</li> <li>▪ Proof of current DBE Certification, if applicable</li> <li>▪ Addenda Acknowledgement Form</li> </ul>
H	<p>Acknowledgements</p>	<ul style="list-style-type: none"> <li>▪ Include an acknowledgement in the cover letter that the respondent has read the Request for Services. Respondent will note any exceptions to the RFS in its cover letter.</li> <li>▪ Include an acknowledgement that the respondent has read the</li> </ul>

		<p>Standard Form Contract. Note any exceptions in cover letter.</p> <ul style="list-style-type: none"> <li>▪ Include the signature of an individual authorized to negotiate and execute the Contract for Project Management Services, provided in Appendix B, on behalf of the respondent.</li> </ul>
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The SRA reserves the right to determine, in its sole opinion, if an omission demonstrates a significant deficiency on the part of a respondent.

## 12. QUALIFICATIONS FOR THE OWNER'S PROJECT MANAGER

### A. Minimum Requirements:

In order to be eligible for selection, each respondent must certify in its cover letter that it meets the following minimum requirements. Any response that fails to include such certification that these criteria have been met will be rejected without further consideration. Any respondents or individuals considered for the OPM role must meet at least the minimum state-mandated qualifications listed below. Responses submitted without meeting these requirements will be deemed “not responsive” and will not be considered. The requirements are:

- 1) Current license and registration by the Commonwealth of Massachusetts as a designer or professional engineer, with a minimum of five (5) years experience in the construction and supervision of buildings, or
- 2) If not licensed as a designer or engineer by the Commonwealth of Massachusetts, then seven (7) years supervisory experience in the construction of buildings of similar size and scope of complexity.

### B. Comparative Evaluation Criteria:

In addition to the minimum requirements set forth above, all respondents must demonstrate that they have significant experience, knowledge and abilities with respect to public construction projects of similar size, scope and complexity as the Union Station Regional Intermodal Transportation Center.

Respondents who have met the minimum stated qualifications will be evaluated and ranked by a Review Committee designated by the SRA Governing Board. The evaluations will be based on the criteria contained in the chart below.

**COMPARATIVE EVALUATION CRITERIA****Project Manager Services - Union Station Regional Intermodal Transportation Center****Tab A - General Quality of the Response**

- Compliance with RFS requirements established by the SRA.
- Completeness of response and familiarity with project goals and objectives.
- Certifications required in Tab H.

**Tab B – Previous Project Experience**

- Experience with projects of comparable scale, complexity and significance.
- Experience with public projects of similar scope.
- Construction value of completed projects.
- Demonstrated technical expertise required to successfully complete the Scope of Work.
- Experience in managing project cost, safety, risk, and quality.
- Knowledge of Massachusetts construction procurement laws, regulations, policies and procedures, as amended by the 2004 Construction Reform laws, including CM at-Risk Delivery Method
- Experience with historic restoration, public-private development projects, sustainable building methods, LEED certification, life-cycle cost analysis, or cost estimating and value engineering.
- FTA experience, including transportation facilities, TOD projects, and funding requirements.
- Experience working with rail, Amtrak and freight carriers.

**Tab C - References and Reputation**

- A track record of successful past performance on similar projects, demonstrating an acceptable level of creativity, innovation, resourcefulness and positive outcome.

**Tab D - Project Approach**

- Appropriateness of general approach to performing scope of services, resources to be applied, and degree of creativity and innovation contained in the response.
- Tools proposed to increase efficiency and effectiveness.
- Innovative recommendations designed to promote creativity, costs savings, efficiency, etc.
- Allocation of responsibilities among the team members.

**Tab E – Proposed Staffing**

- Quality of key personnel and subcontractors.
- Appropriateness of team including size, number of firms, and prior experience of team members working together (if applicable).
- Education/professional registration(s).

<ul style="list-style-type: none"> <li>▪ Complexity of completed projects.</li> </ul>
<ul style="list-style-type: none"> <li>▪ Experience with Massachusetts public building construction.</li> </ul>
<ul style="list-style-type: none"> <li>▪ DBE/WBE/MBE participation.</li> </ul>
<b>Tab F - Firm Stability and Capacity</b>
<ul style="list-style-type: none"> <li>▪ Strength of firm's history and ownership.</li> </ul>
<ul style="list-style-type: none"> <li>▪ Current work load.</li> </ul>
<ul style="list-style-type: none"> <li>▪ Past or pending litigation.</li> </ul>
<b>Tab G – Forms</b>
<ul style="list-style-type: none"> <li>▪ Satisfactory completion of all forms.</li> </ul>
<b>Tab H – Certifications</b>
<ul style="list-style-type: none"> <li>▪ Satisfactory evidence of required certifications.</li> </ul>

In addition to reviewing the materials submitted within the response, the Review Committee will contact project references or may ask for additional information or clarification of any responses. The committee reserves the right to consider any other relevant criteria that it may deem appropriate, within its sole discretion, and may or may not seek additional information from respondents.

The evaluations done by the committee for each proposal will be combined with the results of reference checks to determine an overall ranking for each respondent. These rankings will be used to determine the top-ranking firms to be interviewed.

### **13. SELECTION PROCESS AND SCHEDULE**

Respondents will be evaluated based upon the evaluation criteria contained in this RFS. Each response will be reviewed for completeness prior to evaluation. The SRA reserves the right, but shall have no obligation, to eliminate from further consideration any response deemed to be substantially or materially non-responsive to this RFS.

Consistent with applicable law, confidentiality will be maintained during the evaluation process.

A Review Committee will review all qualified responses, contact project references and select at least three finalists, who will be required to appear for an interview. Following interviews of

these finalists and the collection of information necessary to render a decision, the Review Committee will rank the finalists in order of qualifications and transmit the list of ranked finalists to the SRA Governing Board.

The Review Committee process is summarized below:

- The OPM RFS responses will be evaluated by the SRA Review Committee, which will be appointed by the governing board of the SRA.
- The Review Committee will rank the responses based on the evaluation criteria identified in the RFS and will short-list a minimum of three respondents.
- The interviews will take place at a time and location determined by the Review Committee. A tentative schedule is provided in the RFS. All key personnel must attend the interview.
- The Review Committee will evaluate each qualified response using the comparative evaluation criteria in Section 12.
- The evaluations done by the committee members for each proposal will be combined with the results of reference checks to determine an overall ranking for each respondent. These rankings will be used to determine the final ranking of the respondents and to identify the top-ranking firms to be interviewed.
- The SRA will commence fee negotiations with the top-ranked selection. All submittals, certifications and requirements of this RFS will be considered documentation elements for this negotiation. The SRA may re-advertise if fewer than three responses are received or fee negotiations fail.
- The top-ranked selection may be asked to participate in a presentation to the FTA and/or MassDOT and/or to submit additional documentation, as required by the SRA, at no additional cost to the SRA.

If the SRA is unable to negotiate a satisfactory fee with the top-ranked firm within 30 days, negotiations will be terminated with that firm and undertaken with the remaining firms in the order in which they were ranked by the committee until an agreement is reached.

Respondents are advised that the SRA Governing Board is solely responsible for the award of a contract. Any respondent who communicates with individual members of the board or with the press or engages the services of any individual or firm for the purposes of influencing the outcome of the proposal process will be disqualified from further consideration.

The following is a tentative schedule for the selection process, subject to change at the SRA's discretion.

<b>TENTATIVE SCHEDULE</b>	
<b>Project Manager Services – Union Station Regional Intermodal Transportation Center</b>	
<b><u>Date</u></b>	<b><u>Action</u></b>
August 4, 2010	Advertise RFS in Central Register of the Commonwealth of Massachusetts, the Springfield Republican; and post on the City Clerk’s Bulletin Board.
August 18, 2010	Advertise RFS in the Springfield Republican and post on the City Clerk’s Bulletin Board
August 19, 2010      11 a.m. (EDT)	Non-Mandatory pre-proposal conference and site visit
August 20, 2010      5 p.m. (EDT)	Deadline for submission of questions from respondents
September 9, 2010      2 p.m. (EDT)	<b>RESPONSES DUE BY 2 p.m. (EDT)</b>
September 20, 2010	Short-list respondents
Week of September 27, 2010	Interview short-listed respondents
October 4, 2010	Review Committee recommendation to SRA
October 7, 2010	SRA vote on Review Committee recommendation
October 13, 2010	Negotiate with selected respondent
October 15, 2010	Execute contract

This RFS, any addenda issued by the SRA, and the selected respondent’s response will become part of the executed contract. The key personnel that the respondent identifies in its response must be contractually committed for the project. No substitution or replacement of key personnel or change in the sub-consultants identified in the response will take place without the prior written approval of the SRA.

The selected consultant will be required to enter into a contract with the SRA in substantially the same form as the Standard Form of Contract provided in Appendix B to this RFS. Prior to execution of the Contract for Project Management Services with the SRA, the selected respondent will be required to submit to the SRA a certificate of insurance that meets the requirements set forth in the contract.

Prior to execution of the Contract for Project Management Services, the fee for services will be negotiated between the SRA and the selected respondent to the satisfaction of the SRA, within its sole discretion. The selected respondent will be required to provide pricing information for all phases specified in the SRA Scope of Work at the time of fee negotiation.

#### **14. PAYMENT SCHEDULE AND FEE EXPLANATION**

The SRA will negotiate the final proposed fee schedule with the top-ranked finalist. As construction cost is but one of several factors, a final construction figure in excess of the initial construction estimate will not, in and of itself, constitute a justification for increasing the SRA's OPM fee.

#### **15. FEDERAL GRANT REQUIREMENTS**

The following clauses of the Federal Transit Administration apply to this contract (located in Appendix C):

- A. Certification Regarding Debarment, Suspension, and Other Responsibilities
- B. Certification Regarding Lobbying
- C. State and Local Government
- D. Termination (a, b, c, d, e)
- E. Patent Rights in Data
- F. Disadvantaged Business
- G. Civil Rights
- I. Clean Air
- J. Clean Water
- K. Energy Conservation
- M. Privacy Act
- N. Access to Records and Reports (1, 5, 6)
- Q. Breaches and Dispute Resolution
- R. Seismic Safety
- T. Federal Changes
- U. Recycled Products
- V. No Government Obligation to Third Parties
- W. Program Fraud
- X. Incorporation of FTA Terms
- DD Fly America Requirements

By submission of a response to this RFS, the selected respondent agrees to comply with all applicable federal, state and local laws, rules and regulations, all as amended, in the performance of its contract with the SRA. The selected respondent acknowledges and agrees that the contract by and between the SRA and the selected respondent shall include without limitation certain contract provisions required by federal law and/or by Massachusetts General Laws Chapter 7, 30, 121B, 149 or 149A, all as amended. Such contract shall be construed under, governed by, and enforced in accordance with Massachusetts law without regard to conflict of law or choice of law principles.

## 16. OTHER PROVISIONS

- A. **Public Record.** All responses and information submitted in response to this RFS are subject to the Massachusetts Public Records Law, M.G.L. c. 66, § 10 and c. 4, § 7(26). Any statements in submitted responses that are inconsistent with the provisions of these statutes will be disregarded.
  
- B. **Waiver/Cure of Minor Informalities, Errors and Omissions.** The SRA reserves the right to waive or permit cure of minor informalities, errors or omissions prior to the selection of a respondent, and to conduct discussions with any qualified respondents and to take any other measures with respect to this RFS in any manner necessary to serve the best interests of the SRA and its beneficiaries.
  
- C. **Communications with the SRA.** The SRA's Procurement Officer for this RFS is:

Name: Christopher Moskal  
Address: Office of Planning and Economic Development  
70 Tapley Street  
Springfield, MA 01104  
Telephone: (413) 787-6020  
Facsimile: (413) 787-6524  
E-mail: cmoskal@springfieldcityhall.com

Respondents that intend to submit a response are prohibited from contacting any of the SRA's staff other than the Procurement Officer. An exception to this rule applies to respondents that currently do business with the SRA, but any contact made by them with staff members other than the Procurement Officer must be limited to that

business, and must not relate to this RFS. In addition, such respondents will not discuss this RFS with any of the SRA's consultants, legal counsel or other advisors.

***FAILURE TO OBSERVE THIS RULE MAY BE GROUNDS FOR DISQUALIFICATION.***

- D. **Costs.** The SRA will not be liable for any costs incurred by any respondent in preparing a response to this RFS or prior to entering into a contract with the SRA.
- E. **Withdrawal of Proposal.** Proposals may be withdrawn by written request received by the Authority at any time prior to the deadline for proposals. No withdrawals or resubmissions will be allowed after the deadline.
- F. **Rejection of Responses, Modification of RFS.** The SRA reserves the right to reject any and all responses if it determines, within its own discretion, that it is in its best interests to do so. This RFS does not commit the SRA to select any respondent, award any contract, pay any costs in preparing a response, or procure a contract for any services. The SRA also reserves the right to cancel or modify this RFS in part or in its entirety, or to change the RFS guidelines. A respondent may not alter the RFS or its components.
- G. **Subcontracting and Joint Ventures.** Respondent's intention to subcontract or enter into a partnership or joint venture with other firm(s), individuals or entities must be clearly described in the response.
- H. **Contract Eligibility.** Any name appearing on the U.S. Comptroller General's list of ineligible contractors will be considered an ineligible respondent.
- I. **Validity of Response.** Submitted responses must be valid in all respects for a minimum period of ninety (90) days after the submission deadline.
- J. **Notification of Contract Award.** The SRA is in the process of securing federal and state funds to undertake the work requested by this RFS. Therefore, written notification of contract award to the successful respondent and issuance of a notice to proceed are contingent upon receipt of these funds.
- K. **Amendments to the Contract.** The SRA reserves the right to negotiate mutually acceptable amendments to the contract arising from the RFS, in particular with respect to the addition of services consistent with services solicited by the RFS. The right to negotiate mutually acceptable amendments applies for the term of this contract and any extensions.

- L. **Disadvantaged Business Enterprises.** It is the goal of the SRA that certified Disadvantaged Business Enterprises (DBE) participate in a minimum of 2-percent of the total dollar value of all SRA goods and services procurements. Disadvantaged Business Enterprises, at both the prime contractor and sub-contractor levels, are encouraged to respond to this solicitation notice. The proposer should include the schedule of any DBE participation. Any firm that represents itself as a DBE will be required to provide a valid certification from the Commonwealth of Massachusetts, State Office of Minority and Women's Business Assistance, or it will not be allowed to so represent itself. The forms contained in Appendix A will be used to meet the requirements of this section.

When using a DBE, the prime contractor must pay DBE subcontractors for satisfactory performance of their contracts no later than 15 days from the receipt of payment made to the prime by the SRA. Prompt return of retainage payments will be made from the prime contractor to the subcontractor within 15 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment between parties may take place only for good cause, with the SRA's prior written approval. If the prime contractor determines the work to be unsatisfactory, it must notify the SRA immediately, in writing, and state the reasons. Prime contractors and subcontractors will be required to use approved alternative dispute resolution mechanisms to resolve payment disputes. The prime contractor will not be reimbursed for work performed by subcontractors until the prime ensures that subcontractors have been promptly paid for the work performed. Failure to comply with this requirement will be construed to be a breach of contract and subject to contract termination.

In addition, respondents seeking MBE or WBE consideration in the evaluation process must be certified by the Massachusetts State Office of Minority and Women Business Assistance (SOMWBA), as an MBE or WBE prior to proposal submission date and must certify such in Tab E of the proposal. If selected, the firm is required to provide a valid MBE or WBE certification from the SOMWBA.

**SPRINGFIELD REDEVELOPMENT AUTHORITY**  
**ACKNOWLEDGEMENT OF RECEIPT OF REQUEST FOR OPM SERVICES**  
**Form #1**

NAME OF FIRM: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

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

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

E-MAIL: \_\_\_\_\_

PLEASE RETURN TO: Christopher Moskal

VIA Facsimile To: 413-787-6524

or E-MAIL To: cmoskal @springfieldcityhall.com

**NOTE**

**Addenda will be forwarded only to firms that complete and return this Acknowledgement of  
Receipt of RFS Form**

**SPRINGFIELD REDEVELOPMENT AUTHORITY**  
**CONFIRMATION OF ATTENDANCE AT PRE-PROPOSAL CONFERENCE**  
**Form #2**

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

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

Telephone #: \_\_\_\_\_

Fax #: \_\_\_\_\_

The above-named firm **will be attending** the Pre-Proposal Conference scheduled for Thursday, August 19, 2010, at 11 a.m. at 55 Frank B. Murray St., Springfield MA.

If attending, list the person(s) who will represent the firm:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Return within 48 hours of conference by mail/fax/e-mail to the address below:**

***Springfield Redevelopment Authority***  
**Attn: Christopher Moskal**  
**70 Tapley Street**  
**Springfield, MA 01104**  
**Fax: (413) 787-6524**  
**[cmoskal@springfieldcityhall.com](mailto:cmoskal@springfieldcityhall.com)**

**SPRINGFIELD REDEVELOPMENT AUTHORITY**  
**CERTIFICATION OF ELIGIBILITY TO BID OR PROPOSE**  
**Form #3**

\_\_\_\_\_ hereby certifies that it is not included on the  
(Name of Proposer)

U.S. Comptroller General's Debarred Bidders List.

Signature of Authorized Official: \_\_\_\_\_

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

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

The Proposer further certifies to the best of its knowledge and belief that it and its principals:

- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency.
- B. Have not within a three-(3-) year period preceding the date of this Proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making a false statement, or receiving stolen property.
- C. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of, any of the offenses enumerated in Paragraph B of this certification.
- D. Have not within a three- (3-) year period preceding the date of this Proposal had any public transactions (federal, state or local) terminated for cause or default.

Where the proposer is unable to certify any of the statements in this certification, such proposer shall attach an explanation to this proposal. (Check One)

I DO CERTIFY

I DO NOT CERTIFY

SIGNATURE: \_\_\_\_\_

PRINT NAME and TITLE:

\_\_\_\_\_

DATE: \_\_\_\_\_

**SPRINGFIELD REDEVELOPMENT AUTHORITY**  
**ACKNOWLEDGMENT OF FEDERAL CLAUSES RECEIPT**  
**Form #4**

I, \_\_\_\_\_, hereby acknowledge that  
(First and Last Name)

the Contract contemplated in this Request for Services is funded, in part, by the U.S Department of Transportation, Federal Transit Administration, and that, as such, said Contract shall incorporate certain federally required contract provisions as indicated in Appendix 1 to the Request for Services entitled "Federally Required Contract Clauses."

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**SPRINGFIELD REDEVELOPMENT AUTHORITY**  
**NON-COLLUSION CERTIFICATION**  
**Form #5**

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF HAMPDEN.

I, \_\_\_\_\_ of the City of \_\_\_\_\_ in the  
County of \_\_\_\_\_ and the State of \_\_\_\_\_, of full age, being  
duly sworn according to law on my oath depose and say that:

I am \_\_\_\_\_ of the firm of  
\_\_\_\_\_, the offerer making the proposal for the above-  
named project, and that I executed the said proposal with full authority to do so; that said offerer has  
not, directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken  
any action in restraint of free, competitive bidding in connection with the above-named project; and  
that all statements contained in said proposal and in this affidavit are true and correct, and made with  
full knowledge that the Commonwealth of Massachusetts relies upon the truth of the statements  
contained in said proposal and in the statements contained in this affidavit in awarding the contract for  
the said project.

I further warrant that no person or selling agency has been employed or retained to solicit or  
secure such contract upon an agreement or understanding for a commission, percentage, brokerage or  
contingent fee, except bona fide employees or bona fide established commercial or selling agencies  
maintained by

\_\_\_\_\_  
(Name of Company)

\_\_\_\_\_  
Signature

(Also type or print name under signature.)

Subscribed and sworn to before me this

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

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

My commission expires \_\_\_\_\_.

**SPRINGFIELD REDEVELOPMENT AUTHORITY**  
**CERTIFICATION REGARDING LOBBYING (APPENDIX A, 49 CFR PART 20)**  
**Certification for Contracts, Grants, Loans and Cooperative Agreements**  
(To be submitted with each bid or offer exceeding \$100,000)  
**Form #6**

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 any cooperative agreement, and the extension, 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., 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

**SPRINGFIELD REDEVELOPMENT AUTHORITY**  
**TAX CERTIFICATION AFFIDAVIT**  
**Form 7**

Individual Social Security Number \_\_\_\_\_

State Identification Number \_\_\_\_\_

Federal Identification Number \_\_\_\_\_

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

P.O. Box (if any): \_\_\_\_\_ Street Address Only: \_\_\_\_\_

City/State/ZIP Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

List address (es) of all other property owned by company in Springfield: \_\_\_\_\_

Please Identify if the bidder/proposer is a:

Corporation \_\_\_\_\_

Individual \_\_\_\_\_ Name of Individual: \_\_\_\_\_

Partnership \_\_\_\_\_ Names of all Partners: \_\_\_\_\_

Limited Liability Company \_\_\_\_\_ Names of all Managers: \_\_\_\_\_

Limited Liability Partnership \_\_\_\_\_ Names of Partners: \_\_\_\_\_

Limited Partnership \_\_\_\_\_ Names of all General Partners: \_\_\_\_\_

**You must complete the following certifications and have the signature(s) notarized on the lines below. For any certification that does not apply to you, write N/A in the blanks provided.**

**FEDERAL TAX CERTIFICATION**

I, \_\_\_\_\_ certify under the pains and penalties of perjury that \_\_\_\_\_, to my best knowledge and  
(Authorized Agent) (Bidder/Proposer)  
belief, has/have complied with all **United States federal taxes** required by law.

\_\_\_\_\_  
Bidder/Proposer/Contracting Entity

\_\_\_\_\_  
Authorized Person's Signature

\_\_\_\_\_  
Date

**CITY OF SPRINGFIELD TAX CERTIFICATION**

I, \_\_\_\_\_ certify under the pains and penalties of perjury that \_\_\_\_\_, to my best knowledge and  
(Authorized Agent) (Bidder/Proposer)  
belief, has/have complied with all **City of Springfield taxes** required by law.

\_\_\_\_\_  
Bidder/Proposer/Contracting Entity

\_\_\_\_\_  
Authorized Person's Signature

\_\_\_\_\_  
Date

**COMMONWEALTH OF MASSACHUSETTS TAX CERTIFICATION**

Pursuant to M.G.L. c. 62C §49A, I, \_\_\_\_\_ certify under the pains and penalties of perjury that \_\_\_\_\_,  
(Authorized Agent) (Bidder/Proposer)  
to my best knowledge and belief, has/have complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

\_\_\_\_\_  
Bidder/Proposer/Contracting Entity

\_\_\_\_\_  
Authorized Person's Signature

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

**NOTARY PUBLIC**

STATE OF \_\_\_\_\_, 2010

County of \_\_\_\_\_, ss

Then personally appeared before me [name] \_\_\_\_\_, [title] \_\_\_\_\_ of [company name] \_\_\_\_\_ being duly sworn, and made oath that he/she has read the foregoing document, and knows the contents thereof; and that the facts stated therein are true of his/her own knowledge, and stated the foregoing to be his/her free act and deed and the free act and deed of [company name] \_\_\_\_\_.

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

My commission expires: \_\_\_\_\_

**YOU MUST FILL THIS FORM OUT COMPLETELY AND SIGNATURE MUST BE NOTARIZED AND YOU MUST FILE THIS FORM WITH YOUR BID/CONTRACT. TAX AFFIDAVITS THAT ARE NOT SIGNED AND NOTARIZED WILL BE REJECTED.**

**SPRINGFIELD REDEVELOPMENT AUTHORITY**  
**CERTIFICATION OF INSURANCE REQUIREMENTS**  
**Form #8**

The undersigned certifies that upon receiving a letter of "Intent To Award Contract" from the Springfield Redevelopment Authority the selected Respondent shall furnish certification of insurance that meets the requirements set forth in the contract for OPM services, provided in this RFS, to the Springfield Redevelopment Authority within 10 business days from the date of such letter.

**NOTE: Failure to provide the required insurance documents within this time frame may result in the selected Respondent being deemed non-responsive.**

SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

FIRM: \_\_\_\_\_

DATE: \_\_\_\_\_

**SPRINGFIELD REDEVELOPMENT AUTHORITY**  
**DISADVANTAGED BUSINESS ENTERPRISE (DBE) AFFIDAVIT**

(This affidavit to be completed by either the DBE prime contractor or the DBE sub-contractor)

**Form 9**

STATE OF \_\_\_\_\_

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

COUNTY OF \_\_\_\_\_ S.S.

The undersigned being duly sworn, deposes and says that he/she is the

\_\_\_\_\_  
(Sole owner; partner; president; treasurer; or other duly authorized official of the corporation)

of \_\_\_\_\_  
(Name of DBE)

and certifies that since the date of its certification by SOMWBA:

\_\_\_\_\_ (Insert Date)

That this certification has not been revoked nor has it expired nor has there been any change in the minority status of:

\_\_\_\_\_  
(Name of DBE)

\_\_\_\_\_  
(Signature and Title of Person Making Affidavit)

Sworn to before me this date: \_\_\_\_\_

\_\_\_\_\_  
(Notary Public)

\_\_\_\_\_  
My Commission Expires

**SPRINGFIELD REDEVELOPMENT AUTHORITY**  
**ADDENDA RECEIPT PAGE**  
**FORM #10**

The undersigned acknowledges receipt of the following amendments to the Documents.

(Provide number and date of each):

Addendum No.	_____	Date	_____
Addendum No.	_____	Date	_____
Addendum No.	_____	Date	_____
Addendum No.	_____	Date	_____
Addendum No.	_____	Date	_____
Addendum No.	_____	Date	_____
Addendum No.	_____	Date	_____

Failure to acknowledge receipt of all addenda may cause the proposal to be considered non-responsive to the RFS, which could result in rejection of the proposal.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**SPRINGFIELD REDEVELOPMENT AUTHORITY**  
**FORM OF CONTRACT FOR PROJECT MANAGEMENT SERVICES**

This Contract is made this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ between  
the Springfield Redevelopment Authority, 70 Tapley Street, Springfield, Massachusetts, 01104 (the "Owner") and  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(the "Owner's Project Manager" or "OPM") to provide the Project Management services required to complete the redevelopment and reconstruction of Springfield's Union Station into a regional intermodal transportation center.

**ARTICLE 1: DEFINITIONS**

**APPROVAL** – a written communication from the Owner approving either the work of the current Phase, as identified on Attachment A, "Compensation," or authorizing the Owner's Project Manager to proceed to the next Phase or approving the scope and compensation for either Extra Services or Reimbursable Expenses.

**ARCHITECT/ENGINEER** – herein also referred to as the DESIGNER -- the person or firm with whom the Owner has contracted to perform the professional designer services for this Project.

**BASIC SERVICES** – All services required to be performed by the Owner's Project Manager under this Contract except those for which provision for additional compensation explicitly provided for under Article 9.

**COMMISSIONING CONSULTANT** – a person or firm engaged by the Owner or Owner's Project Manager to provide building commissioning services, including advisory services during design and construction.

**CONTRACT** – this Contract, inclusive of all Attachments, between the Owner and the Owner's Project Manager; all written amendments to this Contract; and all Approvals issued pursuant to this Contract.

**CONTRACTOR or GENERAL CONTRACTOR** – the person or firm with whom the Owner has contracted to perform the construction for this Project.

**EXTRA SERVICES** – services requested by the Owner to be performed by the Owner's Project Manager but which are additional (or "extra") to the services performed as Basic Services.

**FEE FOR BASIC SERVICES** – the fee to be paid to the Owner's Project Manager for satisfactorily performing, in the Owner's sole discretion, the Basic Services required under this Contract, exclusive of the compensation to which the Owner's Project Manager is entitled pursuant to Articles 9 and 10.

**LAWS** – Applicable statues, acts, rules, regulations, requirements, orders, directions, ordinances, judgments, decrees, and injunctions of or by the United States of America, the Commonwealth of Massachusetts; and any political subdivisions of either of them; and any agency, department, commission, board, bureau, or instrumentality of any of them.

**OWNER** – the entity identified as such on page one of this Contract, or its authorized representative, that is the owner of the property that is the site of the Project and is responsible for administering this Contract.

**OWNER’S PROJECT MANAGER** – the individual, corporation, partnership, sole proprietorship, joint stock company, joint venture or other entity identified as such on page one of this Contract performing the professional Project Management Services under this Contract.

**PERMITS** - Governmental, quasi-governmental and other necessary permits and approvals, including the filing of notices or information with governmental or quasi-governmental entities and authorities, that are necessary for the implementation of the Project at the site. The term "Permits" shall include permits and approvals from utility companies and also include permissions, approvals and consents by private parties necessary for the design and construction of the Project, such as an approval by a landlord or other holder of an interest in the Project site.

**PHASE** – a distinct portion of the work of this Contract and its associated duration, as identified on Attachment A. An Approval to proceed for each Phase is required from the Owner.

**PRINCIPALS** – the owners and/or officers of the Owner’s Project Manager who are actively involved in the management of the Project.

**PROJECT** – all work that pertains to the study, planning, design, construction, reconstruction, installation, demolition, maintenance or repair, of the Project identified on page 1 of this Contract.

**SUBCONTRACTOR** – a person or entity having a direct contractual relationship with the Contractor, who has the contract to perform the construction of the Project, except as otherwise specifically provided or required herein or by Law. Subcontractor when used also means “Trade Contractor” except when otherwise specified.

**SUBCONSULTANT** – any individual, company, firm, or business having a direct contractual relationship with the Owner’s Project Manager, who provides services on the Project.

**TRADE CONTRACTOR** – Subcontractors having a direct contractual relationship with the Contractor, to perform one or more sub-bid classes of work listed in M.G.L. c.149 §44F and all other sub-bid classes of work selected by the public agency for the Project, provided the sub-bid work meets or exceed the threshold sum identified in M.G.L. 149 §44F(1).

**URBAN RENEWAL PLAN** – The latest version of the plan adopted in accordance with General Laws Chapter 121B authorizing the Owner to undertake the Project.

**ARTICLE 2: RELATIONSHIP OF THE PARTIES**

- 2.1 The Owner’s Project Manager shall act as an independent contractor of the Owner in providing the services required under this Contract.
- 2.2 The Owner’s Project Manager warrants and represents to the Owner that it has fully, completely and truthfully represented the qualifications and skills of the Owner’s Project Manager, its Subconsultants, agents, servants and employees in the proposal submitted by the Owner’s Project Manager, the Contract documents and in all communications with the Owner relative to this Contract and the services to be performed hereunder by the Owner’s Project Manager, its Subconsultants, agents, servants and employees.

- 2.3 The Owner's Project Manager accepts the relationship of trust and confidence established by this Contract. The Project Manager shall use best efforts to perform its service in an expeditious and economical manner, in furtherance of the interests of the Owner and in accordance with the standard of care set forth in this section. The Owner's Project Manager shall perform its services under this Contract with no less than that degree of skill and care ordinarily exercised by similarly situated members of the Owner's Project Manager's profession on projects of similar size, scope and complexity as is involved on the Project and experience as required by the Commonwealth of Massachusetts. The Owner's Project Manager's services shall be rendered in accordance with this Contract.
- 2.4 Nothing in this Contract shall be construed as an assumption by the Owner's Project Manager of the responsibilities or duties of the Contractor or the Designer. The Owner's Project Manager shall review, in accordance with the standard of care set forth in Section 2.3, above, information furnished by the Owner, Architect and Contractor and shall provide the Owner with prompt written notice if the Owner's Project Manager becomes aware of any error, omission or inconsistency in such information. The Owner's Project Manager's services shall be rendered compatibly and in coordination with the services provided by the Designer. It is not intended that the services of the Owner's Project Manager and Designer be competitive or duplicative, but rather complementary.

**ARTICLE 3: RESPONSIBILITIES OF THE OWNER**

- 3.1 The Owner shall provide the necessary general direction and broad management coordination required to execute the Project.
- 3.2. The Owner shall designate an individual or individuals who shall have the authority to act on behalf of the Owner under this Contract and who shall be responsible for day-to-day communication between the Owner and the Owner's Project Manager.
- 3.3 Upon satisfactory completion of services performed, the Owner shall make payments to the Owner's Project Manager as provided in Articles 7, 8, 9 and 10.
- 3.4 The Owner shall without unreasonable delay either i) render to the Owner's Project Manager any Approval required by this Contract, or ii) notify the Owner's Project Manager in writing why such Approval is being withheld. The Owner shall not unreasonably withhold any Approval, acceptance, or consent required under this Contract.
- 3.5 To the extent such data is available, the Owner shall furnish to the Owner's Project Manager any and all information regarding the site. This data may include existing surveys of the Project site, building plans, borings, test pits, structural, mechanical, chemical or other test data, test for air and water pollution and for hazardous materials, photographs and utility information.

**ARTICLE 4: RESPONSIBILITIES OF THE OWNER'S PROJECT MANAGER**

- 4.1 The Owner's Project Manager shall provide the Basic Services set forth in Attachment B including all usual and customary project management services. The Owner's Project Manager shall monitor procurement procedures, design, construction and other related activities and facilitate, coordinate and manage the Project with respect to timely performance in accordance with the Project schedule and monitor the quality of services and workmanship and shall recommend courses of action to the Owner when respective contractual requirements are not being fulfilled. Services shall continue through commissioning, substantial use and

occupancy by the Owner, and Project closeout. As part of Basic Services, the Owner's Project Manager shall provide information as requested during final auditing as conducted by public funding sources.

- 4.2 The Owner's Project Manager shall perform the services required under this Contract in conformance with all applicable Laws.
- 4.3 The Owner's Project Manager shall report to the Owner any act or inaction in connection with the Project which the Owner's Project Manager believes creates a substantial health or safety risk.
- 4.4 The Owner's Project Manager shall comply with terms and conditions of all project agreements executed between the Owner and the Federal Transit Administration, the Commonwealth of Massachusetts and any other public funding sources.
- 4.5 The Owner's Project Manager acknowledges the importance that the Owner attributes to the abilities and qualifications of the key members of the Owner's Project Manager's team, including Subconsultants, and the continuity of key members participation in the services to be provided under this Contract. This Contract has been entered into on the representation of the Owner's Project Manager that the individuals, consultants, assignments and responsibilities will be maintained throughout the duration of this engagement. No substitution or replacement of individuals or change in the Subconsultants, listed in Attachment C, shall take place without the prior written approval of the Owner, except when necessitated by causes beyond the Owner's Project Manager's control. If the Owner's Project Manager proposes to replace one of the key members of the Owner's Project Manager's team, the Owner's Project Manager shall propose a person or consultant with qualifications at least equal to the person or firm the Owner's Project Manager proposes to replace. The Owner shall have the right to approve any substitution or replacement or change in status for the persons or Subconsultants listed in Attachment C and such approval shall not be unreasonably withheld. At the request of the Owner, the Owner's Project Manager shall consult with the Owner to resolve any situation in which the Owner determines that a member of the Owner's Project Manager's team is failing to perform services in an acceptable manner to the Owner. The Owner shall have the right to direct the removal of any such person or consultant. No act or omission of the Owner made or permitted under this Section shall relieve the Owner's Project Manager of its responsibility for the performance of the services specified in this Contract.
- 4.6 The Owner's Project Manager shall employ at all times professional and support personnel with requisite expertise and adequate numbers to assure the complete, timely and high quality performance of the obligations of the Owner's Project Manager.
- 4.7 The Owner's Project Manager shall be and shall remain liable to the Owner for all damages and legal costs incurred by the Owner as a result of the failure of the Owner's Project Manager to perform in conformance with the terms and conditions of this Contract.
- 4.8 The Owner's Project Manager and its Subconsultants and subcontractors shall maintain the confidentiality of Project records, including, but not limited to, all prints, plans, policies, procedures, studies, specifications and drawings, which relate to internal layout and structural elements, electrical and mechanical systems, security measures, emergency preparedness, threat or vulnerability assessments, and any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation or other infrastructure located within the Commonwealth, the disclosure of which, in the reasonable judgment of the Owner, is likely to jeopardize the safety of persons or property. This section shall not restrict the Owner's Project Manager from giving notices required by law or complying with an order to provide information or data when such order

is issued by a court, administrative agency or other authority with proper jurisdiction, or if it is reasonably necessary for the OPM to defend itself from any suit or claim.

- 4.9 Owner's Project Manager shall comply with M.G.L. c. 66A if the OPM becomes a "holder" of "personal data" as defined therein. The Contractor shall comply with the provisions of Executive Order 504 and shall execute the Executive Order 504 Contractor Certification Form attached hereto as Exhibit I.

**ARTICLE 5: SUBCONSULTANTS**

- 5.1 The Owner's Project Manager may employ Subconsultants, subject to the prior written approval of the Owner and subject to Paragraph 10.3 in order to perform services under this Contract. The employment of Subconsultants shall not in any way relieve the Owner's Project Manager from its responsibilities under this Contract. Nor shall the Owner's approval of a Subconsultant in any way relieve the Owner's Project Manager from its responsibilities under this Contract. The Owner's Project Manager shall be responsible for their work and the coordination and supervision thereof. Consultants shall be registered in Massachusetts in their respective disciplines if registration is required by the applicable Laws. If the Owner directly employs an independent cost estimator, Owner's Project Manager, and/or other consultant(s), the Owner's Project Manager and its Consultants shall work directly with the Owner's consultant(s) to ensure that optimum cost, scheduling, and ease of construction objectives are met.
- 5.2 Upon request, the Owner's Project Manager shall provide the Owner copies of its agreements with Subconsultants, including amendments thereto, and shall consult with the Owner with respect to the inclusion therein of appropriate terms and conditions to assure timely, efficient and competent performance of the Subconsultants.
- 5.3 No substitution of Subconsultants and no use of additional Subconsultants shall be made without prior written approval of the Owner, which approval shall not be unreasonably withheld.
- 5.4 No Subconsultant to the Owner's Project Manager shall have recourse against the Owner for payment of monies alleged to be owed to the Subconsultant by the Owner's Project Manager, and the Owner's Project Manager shall include in all contracts with its Subconsultants language so providing.
- 5.5 The Owner's Project Manager shall, within 14 calendar days after receiving payment from the Owner, either make payment to each Subconsultant whose work was included in the work for which such payment was received or notify the Owner in writing of the reason why such payment is not being made within such time period.

**ARTICLE 6: TERM AND TIMELY PERFORMANCE**

- 6.1 The Owner's Project Manager acknowledges that expeditious completion of the Owner's Project Manager's services and the Project is of the utmost importance to the Owner. The term of this Agreement shall commence on the date stipulated in an Approval to proceed from the Owner. The Owner's Project Manager shall complete the services required under this Contract in a prompt and continuous manner in accordance with the approved schedule. The Owner's Project Manager shall perform its services in a timely manner and shall not delay the work of the Designer or the Contractor. The Owner's Project Manager shall monitor the performance of the Designer and the Contractor in accordance with schedules of performance that are established under their contracts with the Owner. The Owner's Project Manager shall immediately advise the Owner, as well as the

Designer or the Contractor, in writing, anytime the Owner's Project Manager determines that either the Designer or the Contractor's performance is jeopardizing the Project Schedule or the Project Budget.

- 6.2 Time is of the essence in the performance of the Owner's Project Manager's obligations under this Agreement and under any amendment. The Owner's Project Manager agrees that no other work in its organization will be permitted to interfere with its timely performance of the work required under this Agreement or any amendment.
- 6.3 As soon as practicable after the date of this Agreement, the Owner's Project Manager shall submit for the Owner's approval a schedule for the performance of the Owner's Project Manager services. The schedule initially shall include anticipated dates for the commencement and completion of all significant tasks. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except when mutually agreed for reasonable cause, be exceeded by the Owner's Project Manager or Owner.

#### **ARTICLE 7: COMPENSATION**

- 7.1 For the satisfactory performance of all services required pursuant to this Contract, excluding those services specified under Articles 9 and 10, the Owner's Project Manager shall be compensated by the Owner in an amount up to the Not-to-Exceed Fee for Basic Services, identified on Attachment A. The Owner's Project Manager shall submit invoices on a monthly basis in accordance with the Payment Schedule included as Attachment A. The Owner shall make payments to the Owner's Project Manager within 30 days of the Owner's approval of the invoice, which approval shall not be unreasonably withheld or delayed.
- 7.2 The Fee for Basic Services shall include, but not necessarily be limited to, all labor, overhead, profit, insurance, legal services, transportation, communication expenses, reasonable printing and copying necessary for completion of the Project. The fee for Basic Services also shall include (a) the rebidding and resolicitation of general bids if due to the fault of the Owner's Project Manager, and (b) assisting the Owner as provided by section 8.1.4.2 in litigation or resolution of claims or other administrative proceedings associated with a bid protest arising out of the Designer contract or the construction contract and for assistance beyond the requirements of 8.1.4.2 if such litigation or claims are due to the fault of the Owner's Project Manager.
- 7.3 The Owner's Project Manager shall be paid the remainder of the Fee for Basic Services, less previous payments, upon acceptance by the Owner of the Certificate of Final Completion and submission of evaluations.

#### **ARTICLE 8: BASIC SERVICES**

The Owner's Project Manager shall perform the following Basic Services set forth in Attachment B.

#### **ARTICLE 9: EXTRA SERVICES**

##### **9.1 General**

- 9.1.1 Extra Services are those services requested by the Owner to be performed by the Owner's Project Manager but which are additional (or "extra") to the services performed as Basic Services. Such services are not included in the Fee for Basic Services and shall be invoiced and paid for separately. Extra services shall not be deemed authorized until a written Approval is received from the Owner.

- 9.1.2 The proposed cost, scope and schedule of all Extra Services shall be presented to and approved by the Owner in writing prior to the performance of any Extra Services.
- 9.1.3 Cost proposals for Extra Services shall be computed in accordance with the Hourly Rate Schedule established in Attachment A.
- 9.2 Unless specifically prohibited elsewhere and with the prior written Approval of the Owner, the Owner's Project Manager shall perform any of the following services as Extra Services:
  - 9.2.1 Assisting in the appeals process of permitting boards or commissions;
  - 9.2.2 Rebidding of the general bid unless such rebidding is made necessary by the fault of the Owner's Project Manager, in which events such rebidding shall be deemed part of Basic Services;
  - 9.2.3 Furnishing services in connection with a bid protest filed in court or with the Office of the Attorney General, provided such activities did not arise due to the fault of the Owner's Project Manager;
  - 9.2.4 Furnishing services in excess of Basic Services made necessary by the termination of the General Contractor;
  - 9.2.5 Providing consultation with respect to replacement of work damaged by fire or other casualty during construction;
  - 9.2.6 Assisting the Owner in litigation, claims resolution or non-binding mediation arising out of the Designer contract or the construction contract, provided such litigation or claims did not arise due to the fault of the Owner's Project Manager; and
  - 9.2.7 Providing other services requested by the Owner that are not included as Basic Services pursuant to this Contract.
- 9.3 Invoices for Extra Services shall be accompanied by a complete breakdown listing the name, payroll title, date, number of hours by day, hourly rate and extended amount, per specified task of Extra Services performed. Hourly rates shall be in accordance with the Hourly Rate Schedule in Attachment A.

**ARTICLE 10: REIMBURSABLE EXPENSES**

- 10.1 For coordination and responsibility for the work described in the following paragraphs 10.1.1 and 10.1.2, the Owner's Project Manager shall be reimbursed its actual costs, supported by invoices or receipts. The following are reimbursable expenses:
- 10.1.1 Certain out of pocket expenses paid by the Owner's Project Manager such as filing fees, and permit fees that are normally paid by the Owner; travel to fabrication or manufacturing locations to identify completed, identified, and stored materials or equipment specifically for the Project; field office furnishings.
  - 10.1.2 Any other specially authorized reimbursement deemed essential by the Owner, in the Owner's sole discretion, in writing.

- 10.2 Non-Reimbursable Items: The Owner shall not reimburse the Owner's Project Manager or its Subconsultants for travel expenses, sustenance, telephone, facsimiles, electronic mails, postage and delivery expenses, unless specifically required elsewhere in this Contract. Overhead including clerical/support staff of the Owner's Project Manager and its Subconsultants shall not be compensated.
- 10.3 The Owner's Project Manager shall not be entitled to compensation under this Article for the services of Subconsultants hired to perform Basic Services under this Contract. If a Subconsultant hired to perform Basic Services performs Extra Services approved by the Owner, compensation for such Extra Services shall be made under Article 9.

**ARTICLE 11: RELEASE AND DISCHARGE**

- 11.1 The acceptance by the Owner's Project Manager of the last payment under the provisions of Article 7 or Article 12 in the event of termination of the Contract, shall in each instance, operate as and be a release to the Owner and their employees and agents, from all claims of the Owner's Project Manager and its Subconsultants for payment for services performed and/or furnished, except for those written claims submitted by the Owner's Project Manager to the Owner with, or prior to, the last invoice.

**ARTICLE 12: ASSIGNMENT, SUSPENSION, TERMINATION**

12.1 Assignment:

- 12.1.1 The Owner's Project Manager shall not assign or transfer any part of its services or obligations under this Contract (other than as specified in Article 5), without the prior written approval of the Owner. Likewise, any successor to the Owner's Project Manager must first be approved by the Owner before performing any services under this Contract. Such written consent shall not in any way relieve the Owner's Project Manager or its assignee from its responsibilities under this Contract.

12.2 Suspension

- 12.2.1 The Owner may, at any time, upon seven (7) days written notice to the Owner's Project Manager, suspend this Contract. If the Owner provides such written notice, the Owner's Project Manager shall be compensated for work satisfactorily performed in accordance with the Contract terms prior to the effective date of such suspension for which invoices have been properly submitted.

12.3 Termination

- 12.3.1 By written notice to the Owner's Project Manager, the Owner may terminate this Contract at any time with or without cause. If such termination shall occur through no fault of the Owner's Project Manager, all compensation and reimbursement due to the Owner's Project Manager in accordance with the Contract terms, for work satisfactorily performed up to the date of termination, be paid to the Owner's Project Manager, provided no payment shall be made for work not yet performed or for anticipated profit on unperformed work.
- 12.3.2 By written notice to the Owner, the Owner's Project Manager may terminate this Contract:

- (a) if the Owner, within thirty (30) days following written notice from the Owner's Project Manager of any material default by the Owner under the Contract, shall have failed to cure such default; or
- (b) if, after the Owner's Project Manager has performed all services required during any phase prior to construction, at least six (6) months have elapsed without receipt by the Owner's Project Manager of Approval to proceed with the next Phase of the Project, provided the delay was not the fault of the Owner's Project Manager. This provision shall not apply to an Owner's Project Manager who has received a notice of suspension pursuant to Article 12.2.
- (c) Upon a proper termination by the Owner's Project Manager, the Owner's Project Manager shall be compensated as provided in 12.3.1 above.

**ARTICLE 13: NOTICES**

- 13.1 Any notice required to be given by the Owner to the Owner's Project Manager, or by the Owner's Project Manager to the Owner, shall be deemed to have been so given, whether or not received, if mailed by certified or registered mail to the Owner's Project Manager or the Owner at the addresses indicated on page

**ARTICLE 14: INDEMNIFICATION OF OWNER**

- 14.1 With respect to professional services rendered by Owner's Project Manager, to the fullest extent permitted by law, Owner's Project Manager shall defend, indemnify and hold harmless the Owner, and its officers and employees from and against all claims, damages, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney's fees and costs of investigation and litigation, whatsoever which may be incurred by the Owner to the extent caused by the willful misconduct or negligent acts or omissions of or the breach of any of the provisions of this Contract by the Owner's Project Manager, a person employed by the Owner's Project Manager, or any of its Subconsultants.
- 14.2 With respect to non-professional services rendered by Owner's Project Manager, to the fullest extent permitted by law, Owner's Project Manager shall defend, indemnify and hold harmless the Owner, and their officers and employees from and against all claims, damages, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney's fees and costs of investigation and litigation, whatsoever which may be incurred by the Owner arising out of or resulting from acts or omissions of the Owner's Project Manager, any sub-consultants, sub-contractors, or any person for whose conduct the Owner's Project Manager is legally responsible.
- 14.3 The indemnification obligation in this Article shall be in addition to, and not a limitation of, any other rights and remedies available to the Owner under this Contract or at law.

**ARTICLE 15: INSURANCE**

- 15.1 The Owner's Project Manager shall obtain and maintain at its sole expense all insurance required by Law and as may be required by the Owner under the terms of this Contract. The insurance required hereunder shall be provided at the sole expense of the Owner's Project Manager or its Subconsultant, as the case may be, and shall be in full force and effect for the full term of this Contract between the Owner and the Owner's Project Manager or for such longer period as otherwise required under this Contract.

- 15.2 All policies shall be issued by companies lawfully authorized to write that type of insurance under the laws of the Commonwealth of Massachusetts with a financial strength rating of “A” or better as assigned by A.M. Best Company, or an equivalent rating assigned by a similar rating agency acceptable to the Owner.
- 15.3 The Owner’s Project Manager and its Subconsultants, shall submit to the Owner original certificates of insurance evidencing the coverage required hereunder, together with evidence that all premiums for such insurance have been fully paid simultaneously with the execution of this Contract. Certificates shall show each type of insurance, insurance company, policy number, amount of insurance, deductibles/self-insured retentions, and policy effective and expiration dates. The Owner’s Project Manager shall submit updated certificates to the Owner prior to the expiration of any of the policies referenced in the certificates so that the Owner shall at all times possess certificates indicating current coverage. Failure by the Owner’s Project Manager to obtain and maintain the insurance required by this Section, to obtain all policy renewals, or to provide the respective insurance certificates as required shall constitute a material breach of the Contract and shall be just cause for termination of the services of the Owner’s Project Manager under this Contract.
- 15.4 Termination, cancellation, or material modification of any insurance required by this Contract, whether by the insurer or the insured, shall not be valid unless written notice thereof is given to the Owner at least thirty days prior to the effective date thereof, which shall be expressed in said notice.
- 15.5 The Owner’s Project Manager shall require by contractual obligation, and shall ensure that any Subconsultant hired in connection with the services to be provided under this Contract shall obtain and maintain all insurance required by Law and as may be required by the Owner under the terms of this Contract.
- 15.6 The Owner’s Project Manager or its Subconsultant, as the case may be, is responsible for the payment of any and all deductibles under all of the insurance required by this Contract. The Owner shall be responsible for the payment of deductibles, self-insured retentions or any portion thereof.
- 15.7 Workers’ Compensation, Commercial General Liability, Automobile Liability, and Valuable Papers. The Owner’s Project Manager shall purchase and maintain at its own expense during the life of this Contract, or such other time period as provided herein, the following types and amounts of insurance, at a minimum:
- 15.7.1 Workers’ Compensation Insurance in accordance with General Laws Chapter 152. The policy shall be endorsed to waive the insurer’s rights of subrogation against the Owner.
- 15.7.2 Commercial General Liability Insurance (including Premises/Operations; Products/ Completed Operations; Contractual; Independent Contractors; Broad Form Property Damage; and Personal Injury) with a minimum limit of \$1,000,000 per occurrence, \$2,000,000 aggregate. The Owner’s Project Manager shall maintain such insurance in full force and effect for a minimum period of one year after final payment and shall continue to provide evidence of such coverage to the Owner. The Owner shall be added as an additional insured on this policy. The policy shall be endorsed to waive the insurer’s rights of subrogation against the Owner.
- 15.7.3 Comprehensive Automobile Liability Insurance (including owned, non-owned and hired vehicles) at limits of not less than:
- a. \$1,000,000 Each Person for Bodily Injury;
  - b. \$1,000,000 Each Accident for Bodily Injury; and
  - c. \$1,000,000 Each Accident for Property Damage.

15.7.4 Valuable Papers insurance in an amount sufficient to assure the restoration of any plans, drawings, computations, field notes, or other similar data relating to the work covered by this Contract or by the Agreement between the Owner and the Designer in the event of loss or destruction while in the custody of the Owner's Project Manager until the final fee payment is made or all data is turned over to the Owner, and this coverage shall include coverage for relevant electronic media, including, but not limited to, documents stored in computer-aided design drafting (CADD) systems.

15.8 Professional Liability

The Owner's Project Manager shall maintain professional liability insurance covering errors and omissions and negligent acts of the Owner's Project Manager and of any person or entity for whose performance the Owner's Project Manager is legally liable at all times while services are being performed under this Contract. Certificates of professional liability insurance evidencing such coverage shall be provided to the Owner on or before the effective date of this Contract and for a period of at least six years after the earlier of: (1) the date of official acceptance of the completed Project by the Owner; (2) the date of the opening of the Project to public use; (3) the date of the acceptance by the general contractor of a final pay estimate prepared by the Owner pursuant to M.G.L. chapter 30; or (4) the date of substantial completion of the Construction Contract and the taking of possession of the Project for occupancy by the Owner. The certificates shall indicate a retroactive date that is no later than the effective date of this Contract and a limit of not less than \$5,000,000.

15.9 Liability of the Owner's Project Manager

Insufficient insurance shall not release the Owner's Project Manager from any liability for breach of its obligations under this Contract. Without limitation, the Owner's Project Manager shall bear the risk of any loss if its valuable papers insurance coverage is insufficient to cover the loss of any work product covered by this Contract.

15.10 Waiver of Subrogation

To the extent damages are covered by realized property insurance proceeds, the Owner and the Owner's Project Manager waive all rights against each other and against the General Contractor, Subcontractors, consultants, agents, and employees of the other for damages caused by fire or other causes of loss, except such rights as they may have to the proceeds of such insurance as set forth in the Owner-Contractor Agreement. The Owner shall require of the General Contractor, Subcontractors, Owner's Project Manager, consultants, Subconsultants, and agents and employees, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**ARTICLE 16: OWNERSHIP OF DOCUMENTS**

16.1 Unless provided otherwise by law, ownership and possession of all information, data, reports, studies, designs, drawings, specifications, materials, documents, models, and any other documentation, product or tangible materials authored or prepared, in whole or in part, or purchased, obtained, created by the Owner's

Project Manager pursuant to this Contract (collectively, the “Materials”), other than the Owner’s Project Manager’s administrative communications, records, and files relating to this Contract, shall be the sole property of, and shall vest in, the Owner as “works made for hire” or otherwise. The Owner will own the exclusive rights, worldwide and royalty-free, to and in all Materials prepared and produced by the Owner’s Project Manager pursuant to this Contract, including, but not limited to, United States and International patents, copyrights, trade secrets, know-how and any other intellectual property rights, and the Owner shall have the exclusive, unlimited and unrestricted right, worldwide and royalty-free, to publish, reproduce, distribute, transmit and publicly display all Materials prepared by the Owner’s Project Manager. At the completion or termination of the Owner’s Project Manager’s services, all original Materials shall be turned over to the Owner within three (3) business days of a request therefore or such other time period mutually agreed to by the parties.

**ARTICLE 17: REGULATORY AND STATUTORY REQUIREMENTS**

- 17.1 Truth-in-Negotiations Certificate: By signing this Contract, the Owner’s Project Manager hereby certifies to the following:
- 17.1.1 Wage rates and other costs used to support the Owner’s Project Manager’s compensation are accurate, complete, and current at the time of contracting; and
  - 17.1.2 The Contract price and any additions to the Contract may be adjusted within one year of completion of the Contract to exclude any significant amounts if the Owner determines that the fee was increased by such amounts due to inaccurate, incomplete or non-current wage rates or other costs.
- 17.2 The person signing this Contract certifies, as a principal or director of the Owner’s Project Manager, that the Owner’s Project Manager has not given, offered or agreed to give any person, corporation, or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this Contract; no consultant to or Subconsultant for the Owner’s Project Manager has given, offered or agreed to give any gift, contribution or offer of employment to the Owner’s Project Manager, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the Owner’s Project Manager or Subconsultant of a contract by the Owner’s Project Manager; and no person, corporation or other entity, other than a bona fide full-time employee of the Owner’s Project Manager, has been retained or hired by the Owner’s Project Manager to solicit for or in any way assist the Owner’s Project Manager in obtaining this Contract upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this Contract.
- 17.3 Revenue Enforcement and Protection Program (REAP): Pursuant to Massachusetts General Laws, Chapter 62C, Section 49A, the undersigned certifies under the penalties of perjury that to the best of his/her knowledge and belief that the Owner’s Project Manager and the principals thereof are in compliance with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.
- 17.4 Interest of Owner’s Project Manager: The Owner’s Project Manager hereby certifies that it is in compliance with the provisions of General Laws Chapter 268A whenever applicable. The Owner’s Project Manager covenants that 1) he/she presently has no financial interest and shall not acquire any such interest direct or indirect, which would conflict in any manner or degree with the services required to be performed under this Contract or which would violate M.G.L. Chapter 268A, as amended from time-to-time; 2) in the performance of this Contract, no person having any such interest shall be employed by the Owner’s Project Manager; and

- 3) no partner or employee of the firm is related by blood or marriage to any officer, official, or employee of the Owner, unless approved by the State Ethics Commission.
- 17.5 Equal Opportunity: The Owner’s Project Manager shall not discriminate in employment against any person on the basis of race, color, religion, national origin, sex, sexual orientation, age, ancestry, disability, marital status, veteran status, membership in the armed forces, presence of children, or political beliefs. The Owner’s Project Manager shall comply with all provisions of Title VI of the Civil Rights Act of 1964 and MGL c.151B.
- 17.6 Certification of Non-Collusion: The Owner’s Project Manager certifies under penalties of perjury that its proposal has been made in and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word “person” shall mean any natural person, governmental, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.
- 17.7 Governing Law: This Contract shall be governed by the laws of the Commonwealth of Massachusetts.
- 17.8 Federal Clauses: The following clauses of the Federal Transit Administration apply to this Contract (see Attachment D):
1. Fly America Requirements
  5. Seismic Safety Requirements
  6. Energy Conservation Requirements
  7. Clean Water Requirements
  10. Lobbying
  11. Access to Records and Reports
  12. Federal Changes
  14. Clean Air
  15. Recycled Products
  19. No Government Obligation to Third Parties
  20. Program Fraud and False or Fraudulent Statements and Related Acts
  21. Termination
  22. Government-wide Debarment and Suspension
  23. Privacy Act
  24. Civil Rights Requirements
  25. Breaches and Dispute Resolution
  26. Patent and Rights in Data
  28. Disadvantaged Business Enterprises (DBE)
  30. Incorporation of Federal Transit Administration (FTA) Terms

By submission of a response to this RFS, the selected Respondent agrees to comply with all applicable Federal, State and local laws, rules and regulations, all as amended, in the performance of its contract with the SRA.

- 17.9 Dispute Resolution: If a dispute arises between the parties related to this Contract, the parties agree to use the following procedures to resolve the dispute: (a) Negotiation. A meeting shall be held between representatives of the parties with decision-making authority regarding the dispute to attempt in good faith to negotiate a resolution of the dispute; such meeting shall be held within fourteen calendar days of a party’s written request for such a meeting; (b) Mediation. If the parties fail to negotiate a resolution of the dispute, they shall submit the dispute to mediation but not as a condition precedent to litigation and shall bear

equally the costs of the mediation. The parties shall jointly appoint a mutually acceptable mediator; they shall seek assistance from an independent third party in such appointment if they have been unable to agree upon such appointment within 30 days of the meeting just noted in (a) above; (c) Litigation. Either party may file suit in accordance with Article 17.9; and (d) This paragraph of dispute resolution provisions shall survive termination of this Contract.

17.10 Venue: Any suit by either party arising under this Contract shall be brought only in a court of competent jurisdiction in the county where the Project is located. The parties hereto waive any argument that this venue is improper or that the forum is inconvenient.

OWNER  
Springfield Redevelopment Authority

OWNER'S PROJECT MANAGER

By: \_\_\_\_\_  
Its

By: \_\_\_\_\_  
Its

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

Date: \_\_\_\_\_  
(Attach Certificate of Vote of Authorization)

**ATTACHMENT A  
COMPENSATION**

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**ATTACHMENT B  
SCOPE**

The Scope of Services are set forth in Article 10 of the Request for Services dated August 4, 2010.

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**ATTACHMENT C  
OWNER'S PROJECT MANAGER'S TEAM**

ATTACHMENT D  
FEDERAL CLAUSES

1. **FLY AMERICA REQUIREMENTS**

1. **49 U.S.C. § 40118**  
**41 CFR Part 301-10**

**1.1. 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.

**1.1.1. 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.

**1.1.2. 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.

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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.**

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

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

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

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## **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.

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## **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.

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**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.

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**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: \_\_\_\_\_

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**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: \_\_\_\_\_

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**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.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form--LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

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

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

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

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

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

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

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

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

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

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

\_\_\_\_\_ Date

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**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(i)(11).
  
7. FTA does not require the inclusion of these requirements in subcontracts.

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

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

Sources of Authority:

<sup>1</sup> 49 USC 5325 (a)

<sup>2</sup> 49 CFR 633.17

<sup>3</sup> 18 CFR 18.36 (i)

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## **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.

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## **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, certified 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 of the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. 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.

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**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.

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**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).

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

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## **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.

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**18. [ RESERVED ]**

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**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.

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**20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS  
AND RELATED ACTS**  
**31 U.S.C. 3801 et seq.**  
**49 CFR Part 31 18 U.S.C. 1001**  
**49 U.S.C. 5307**

**Applicability to Contracts**

These requirements are applicable to all contracts.

**Flow Down**

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

**Model Clause/Language**

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

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

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to

the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Background and Applicability**

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

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

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

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

**Clause Language**

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

**Suspension and Debarment**

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

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

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

The certification in this clause is a material representation of fact relied upon by **{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**  
**5 U.S.C. 552**

**Applicability to Contracts**

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

**Flow Down**

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

**Model Clause/Language**

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

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

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

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

**Applicability to Contracts**

The Civil Rights Requirements apply to all contracts.

**Flow Down**

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

**Model Clause/Language**

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

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

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

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their

race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

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## **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** - This 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 the 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 2%. 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/offeree 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}**.

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**29. [ RESERVED ]**

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**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.

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**31. DRUG AND ALCOHOL TESTING**

**49 U.S.C. §5331**

**49 CFR Parts 653 and 654**

**Applicability to Contracts**

The Drug and Alcohol testing provisions apply to Operational Service Contracts.

**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).

APPENDIX C  
FEDERAL CLAUSES

**A. Certification Regarding Debarment, Suspension and Other Responsibility Matters**

1. **By signing and submitting this bid or proposal, the prospective lower-tier participant is providing the signed certification set out below.**
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower-tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the SRA may pursue available remedies, including suspension and/or debarment.
3. The prospective lower-tier participant shall provide immediate written notice to the SRA if at any time the prospective lower-tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower-tier covered transaction,” “participant,” “persons,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact the SRA for assistance in obtaining a copy of those regulations.
5. The prospective lower-tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower-tier covered transaction with a debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the SRA.
6. The prospective lower-tier participant further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower-Tier Covered Transaction,” without modification, in all lower-tier covered transactions and in all solicitations for lower-tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower-tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by the U.S. General Services Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower-tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the federal government, the SRA may pursue available remedies including suspension and/or debarment.

**“Certification Regarding Debarment, Suspension, Ineligibility and Voluntary  
Exclusion – Lower-Tier Covered Transaction”**

1. The prospective lower-tier participant certifies, by submission of this bid or proposal, that neither it nor its “principals” [as defined at 49 C.F.R. & 29.105(p)] are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
2. When the prospective lower-tier participant is unable to certify the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**B. Restrictions on Lobbying**

**Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. & 1601, et seq.]** - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CR part 20, “New Restrictions on Lobbying” (see Form 7). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a

member of Congress in connection with obtaining any federal contract, grant or any award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

**C. Prohibited Interests**

1. No member, officer, or employee of the SRA, or of a local public body during their tenure or for one year thereafter will have any interests, direct or indirect, in a contract or the proceeds thereof.
2. In accordance with 41 U.S.C. 22, the contractor agrees that it will not admit any member of or delegate to the United States Congress to any share or part of the project or any benefit derived therefrom.

**D. Termination of Contract**

- a. **Termination for Convenience (General Provision).** The SRA 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 the SRA to be paid to the contractor. If the contractor had any property in its possession belonging to the SRA, the contractor will account for the same, and dispose of it in the manner the SRA 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 SRA 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 SRA 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 SRA, after setting up a new delivery 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 SRA 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 the SRA's satisfaction the breach or default or any of the terms, covenants, or conditions of this contract within [ten (10)days] after receipt by contractor of written notice from the SRA setting forth the nature of said breach or default, the SRA shall have the right to terminate the contract without any further obligation to the contractor. Any such termination for default shall not in any way operate to preclude the SRA 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 the SRA elects to waive its remedies for any breach by contractor of any covenant, term or condition of this contract, such waiver by the SRA shall not limit the SRA's remedies for any succeeding breach of that or of any other term, covenant, or condition of this contract.
  - e. **Termination for Convenience.** The SRA, 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 SRA shall be liable under the payment provisions of this contract only for payment for services rendered before the effective date of termination.
  - f. **Termination for Default (Supplies and Services).** 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 SRA may terminate this contract for default. The SRA 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.
  - 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 SRA may terminate this contract for default. The SRA 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 the SRA goods, the contractor shall, upon direction of the SRA, protect and preserve the goods until surrendered to the SRA or its agent. The contractor and the SRA 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 SRA.

- h. Termination for Default (Construction).** If the contractor refuses or fails to prosecute the work or any separable part, with diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the contractor fails to comply with any other provisions of this contract, the SRA may terminate this contract for default. The SRA shall terminate by delivering to the contractor a Notice of Termination specifying the nature of the default. The SRA may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The contractor and its sureties shall be liable for any damage to the recipient resulting from the contractor's refusal or failure to complete the work within specified time, whether or not the contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the SRA 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 SRA, acts of another contractor in the performance of a contract with the SRA, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The contractor, within [10] days from the beginning of any delay, notifies the SRA in writing of the causes of delay. If in the judgment of the SRA, the delay is excusable,

the time for completing the work shall be extended. The judgment of the SRA 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 SRA.

- i. Termination for Convenience or Default (Architect and Engineering).** THE SRA may terminate this contract in whole or in part, for the SRA's convenience or because of the failure of the contractor to fulfill the contract obligations. THE SRA 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 SRA, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

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 SRA.

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

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

**E. Patent Rights in Data**

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.

**F. Disadvantaged Business Enterprise**

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 percent. The agency's overall goal for DBE participation is 2 percent.

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 the SRA deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

c. Bidders/offertory 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 or concurrent with and accompanying an initial proposal**:

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 participating
4. Written documentation of the bidder/offertory'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.

Proposers must present the information required above as a matter of responsiveness or with initial proposals (see 49 CFR 26.53(3)) (See Section 16. L.)

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 SRA. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractors' work by the SRA and contractor's receipt of the partial retainage payment related to the subcontractors' work.

e. The contractor must promptly notify the SRA 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 the SRA.

**G. 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, or 42 U.S.C., 6102, section 202 of the ADA 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 (US 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.

**I. 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 agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

**J. 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 agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

**K. Energy Conservation**

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

**M. Privacy Act**

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 USC & 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.

**N. ACCESS TO RECORDS AND REPORTS**

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 CFR 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 CFR 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 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a state and is the FTA recipient or a subgrantee of the FTA recipient in accordance with 49 CFR 633.17, 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 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a major capital project excludes contracts 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 CFR 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 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1), through other than competitive bidding, 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 reasonable 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 exception related thereto. Reference 49 CFR 18.39(i)(11).
  7. FTA does not require the inclusion of these requirements in subcontracts.

**Q. Breaches and Dispute Resolution**

**Disputes.** Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the SRA's administrator. 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 administrator. 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 administrator shall be binding upon the contractor and the contractor shall abide by the decision.

**Performance During Dispute.** Unless otherwise directed by the SRA, the contractor shall continue performance under this contract while matters in dispute are being resolved.

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

**Remedies.** Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between The SRA 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 SRA 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 SRA, its 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.

**R. 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 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.

**T. 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 Agreement (Form FTA MA (2) dated October, 1995) 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.

**U. Recycled Products**

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.

**V. 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.

**W. 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 it 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. &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.

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

**DD. Fly America Requirements**

The contractor agrees to comply with 49 U.S.C. 4011.8 (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.

**Legal Notice**

**Springfield Redevelopment Authority**  
**Springfield, Massachusetts**  
**Request for Services**  
**Owner's Project Manager (OPM) for the**  
**Union Station Regional Intermodal Transportation Center**

In accordance with Massachusetts General Laws, Chapter 149, Section 44A ½, and Chapter 193 of the Acts of 2004, the Public Construction Reform Law, the Springfield Redevelopment Authority (SRA) is seeking to retain services of an Owner's Project Manager (OPM) to represent the SRA's interests in the design and construction of the Union Station Regional Intermodal Transportation Center, located in Springfield, Massachusetts. Minimum requirements include: current license and registration by the Commonwealth of Massachusetts as an architect or professional engineer, with a minimum of five years experience in the construction and supervision of buildings, or, if not licensed as described, then seven years supervisory experience in the construction of buildings of similar size and scope of complexity. The fee will be negotiated with the selected OPM. Interested proposers may obtain a copy of the Request for Services (RFS) after 3 p.m. August 4, 2010, on-line at [www.SpringfieldRedevelopmentAuthority.com](http://www.SpringfieldRedevelopmentAuthority.com) and also in the Office of Planning and Economic Development, 70 Tapley Street, Springfield, Massachusetts, 01104, during the weekday hours of 8:15 a.m. to 4:30 p.m. The RFS contains detailed and specific information about the required services, submission requirements and selection procedures.

The contact is Christopher Moskal, Project Manager, (413) 787-6020. Any requests for additional information, questions or clarifications must be received in writing no later than 5 p.m., August 20, 2010. Proposer's may fax or e-mail their requests to the attention of Christopher Moskal, Project Manager. The facsimile number is (413) 787-6524; e-mail is: [cmoskal@springfieldcityhall.com](mailto:cmoskal@springfieldcityhall.com)

All responses to information, questions and/or clarifications will be sent in the form of an addendum to all prospective proposers that have submitted their acknowledgment receipt.

A non-mandatory Pre-Proposal Submission Conference and Site Visit is scheduled for Thursday, August 19, 2010, at 11 a.m. (EDT) at the following address:

Union Station  
55 Frank B. Murray Street  
Springfield, Massachusetts

Proposals are due no later than 2p.m. (EDT) on September 9, 2010, in the Office of Planning and Economic Development, 70 Tapley Street, Springfield, MA 01104. Submissions received past such deadline and/or submitted to any other location shall be deemed not responsive and summarily rejected. The SRA is the awarding authority. The SRA reserves the right to accept any submission deemed to be in the best interest of the SRA, to waive any technicalities or irregularities in any submission and/or to reject any and/or all submissions and to re-advertise for new submissions.

The SRA is an EEO/MBE/WBE/DBE employer.

Published August 4, 2010 and August 18, 2010

# *Springfield Redevelopment Authority*

70 Tapley Street • Springfield, MA 01104 • (413) 787-6020

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## **Addendum No. 1 Bid No. 08-20100001**

Union Station Regional Intermodal Transportation Center  
Request for Services for Owner's Project Manager

***Monday, August 16, 2010***

Addendum No. 1 Bid No. 08-20100001

RFS: Union Station Regional Intermodal Transportation Center

Request for Services for Owner's Project Manager

Submittal Deadline: September 9, 2010 at 2:00 P.M. (EDT)

Ladies and Gentlemen:

This is an addendum to the above revered bid. Special attention should be given to this addendum to preserve the validity of any proposal submitted in response to this request. Bid responses must acknowledge this and all addenda. Failure to acknowledge this addendum can result in rejection of bid.

### **1. CORRECTION # 3, page 2 PRE-PROPOSAL CONFERENCE AND SITE VISIT should read as follows:**

A non-mandatory pre-proposal conference and site visit will be held at 11:00 a.m. (EDT) on Thursday, August 19, 2010 at Union Station, 55 Frank B. Murray Street, Springfield Mass. Please confirm attendance at this conference by submitting the form included as **Form # 2 in Appendix A**. at least 24 hours prior to the above date. NO TELEPHONE CALLS WILL BE ACCEPTED.

### **2. CORRECTION # 2, page 2 ACKNOWLEDGEMENT OF RECEIPT OF REQUEST FOR OPM SERVICES**

The form of Acknowledgment of Receipt of the request for OPM Services is attached as **Form # 1 in Appendix A** and must be completed and returned to the SRA as directed.

With the exception of Addendum No. 1, addenda will be forwarded only to firms that complete and return this Acknowledgement of Receipt of RFS.

Sincerely,

Christopher J. Moskal, Project Manager

*Commissioners*

*Armando Feliciano - Chairman      Gloria Torres. – Vice Chairman  
John Brunton - Treasurer      William MacGregor - Secretary      Dot Lortie*

# *Springfield Redevelopment Authority*

70 Tapley Street • Springfield, MA 01104 • (413) 787-6020

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## **Addendum No. 2 Bid No. 08-20100001**

Union Station Regional Intermodal Transportation Center  
Request for Services for Owner's Project Manager

***Thursday, August 19, 2010***

Addendum No. 2 Bid No. 08-20100001

RFS: Union Station Regional Intermodal Transportation Center  
Request for Services for Owner's Project Manager

Submittal Deadline: September 9, 2010 at 2:00 P.M. (EDT)

Ladies and Gentlemen:

This is an addendum to the above referenced bid. Special attention should be given to this addendum to preserve the validity of any proposal submitted in response to this request. Bid responses must acknowledge this and all addenda. Failure to acknowledge this addendum can result in rejection of bid.

**1. A LIST OF ATTENDEES TO THE PRE-PROPOSAL CONFERENCE HELD ON THURSDAY, AUGUST 19, 2010 IS ATTACHED AND MADE PART OF THIS ADDENDUM.**

**2. AMENDED # 2, page 2 ACKNOWLEDGEMENT OF RECEIPT OF REQUEST FOR OPM SERVICES**

**DELETE** the entire section #2, page 2 ACKNOWLEDGEMENT OF RECEIPT OF REQUEST FOR OPM SERVICES.

**SUBSTITUTE THE FOLLOWING:**

All addenda will be forwarded to firms that have registered on line or picked up a copy of the RFS at the SRA office.

Sincerely,

Christopher J. Moskal, Project Manager

*Commissioners*

*Armando Feliciano - Chair    Gloria Torres – Vice Chair  
John Brunton - Treasurer    William MacGregor - Secretary    Dot Lortie*

**Union Station/ RFS for OPM Services Addendum 2-Attendance at the Pre-Proposal Conference August 19, 2010**

Name of Firm	Contact Name	Contact Number	Street	City	State	ZIP
Parsons Brinckerhoff	James Anderson	(617) 426-7330	75 Arlington Street	Boston	MA	02116
Patrick Engineering	Marc C. Chabot	(617) 270-4407	312 Stuart Street	Boston	MA	02116
Heert Engineering, Inc.	Tom Ellis	(781) 494-9000	8 New England Executive Park, Suite 150	Burlington	MA	01803
Dave Healy	Dave Healy	(413) 627-9202	2 Harvard Street	Holyoke	MA	01040
Arcadis	Norm Benjamin	(413) 788-6256	51 Taylor Street	Spfld	MA	01103
Arcadis	Rich Stinik	(413) 788-6256	51 Taylor Street	Spfld	MA	01103
Cardinal Construction	Matty Arya	(508) 831-4447	89 Shrewsbury Street	Worcester	MA	01604
GLC Development Resources	Robert Chihade	(617) 272-2131	20 Park Plaza, Suite 1115	Boston	MA	02116
Craig Dolan	Craig Dolan	(781) 749-1548	18 Peter Hobart Drive	Hingham	MA	02043
GZA Geo Environmental, Inc.	Guy P. Dalton	(413) 525-3822	296 North Main Street	E Longmeadow	MA	01028
Skanska USA Building Inc.	Dale Caldwell	(617) 574-1400	253 Summer Street	Boston	MA	02210
PMA Consultants	Monther Mardine	(781) 794-1404	25 Braintree Hill, Suite 303	Braintree	MA	
A/Z Corporation	Kenneth Guyette	1-800-400-2420	46 Norwich Westerly Road	N Stonington	CT	06359
URS Corporation	Scot Bini	(857) 383-3820	260 Franklin Street	Boston	MA	02110
Hatch Mott MacDonald	Joseph Wojnas	(413) 535-0135	150 Lower Westford Road	Holyoke	MA	01040
The Louis Berger Group, Inc.	Richard Law	(781) 444-3330	75 Second Avenue, Suite 700	Needham	MA	02494
Reinhardt Associates	John MacMillian	(413) 786-9600	430 Main Street	Agawam	MA	01001
O & G Industries	Sal Salara	(860) 485-8841	112 Wall Street	Torrington	CT	06790

# *Springfield Redevelopment Authority*

70 Tapley Street • Springfield, MA 01104 • (413) 787-6020

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## **Addendum No. 3 Bid No. 08-20100001**

Union Station Regional Intermodal Transportation Center  
Request for Services for Owner's Project Manager

***Monday, August 23, 2010***

Addendum No. 3 Bid No. 08-20100001

RFS: Union Station Regional Intermodal Transportation Center  
Request for Services for Owner's Project Manager

Submittal Deadline: September 9, 2010 at 2:00 P.M. (EDT)

Ladies and Gentlemen:

This is an addendum to the above referenced bid. Special attention should be given to this addendum to preserve the validity of any proposal submitted in response to this request. Bid responses must acknowledge this and all addenda. Failure to acknowledge this addendum can result in rejection of bid.

- 1. IN RESPONSE TO # 4 QUESTIONS, PAGE 2 OF THE RFS, ATTACHED IS A LIST OF QUESTIONS AND ANSWERS RECEIVED FROM REGISTERED ENTITIES.**
- 2. ATTACHED ARE MEETING MINUTES OF THE NON-MANDATORY PRE-PROPOSAL CONFERENCE HELD ON THURSDAY, AUGUST 19<sup>TH</sup> 2010.**

Sincerely,  
Christopher J. Moskal, Project Manager

### *Commissioners*

*Armando Felliciano - Chair    Gloria Torres – Vice Chair  
John Brunton - Treasurer    William MacGregor - Secretary    Dot Lortie*

**UNION STATION REGIONAL INTERMODAL  
TRANSPORTATION CENTER**

**PRE-PROPOSAL CONFERENCE  
FOR OWNERS PROJECT MANAGER**

**QUESTIONS & ANSWERS  
August 23, 2010**

**How wedded are you to the façade of the building?**

The façade of the new building is subject to change based on guidance from the designer during the permitting and design phase.

**Summarize the site work adjacent to the rail tracks? What is the interface with CSX & Amtrak?**

We will need to work with Amtrak and CSX on any work that is proposed at the rear of the site adjacent to the rail tracks. There is some shared access of the elevated track area identified in the HDR plan, which will be updated based on the advancement of design.

**Is the tunnel currently being used?**

Currently Amtrak is utilizing the tunnel for storage. The plan calls for the tunnel to be re-opened as a passageway for train passengers.

**Is HDR precluded from going after this RFS?**

We do not see any legal impediment to HDR submitting a response. HDR prepared the redevelopment plan for the project for the Pioneer Valley Transit Authority and the SRA under contract to the PVTA.

**What is the status of funding?**

There are various funding sources designated for this project including, but not limited to the following: MassDOT transportation bond funding, FTA funding, an Off Street Parking Grant. You may reference the HDR report for additional information on funding sources arranged for the Union Station Regional Intermodal Transportation Center Project. Further, the SRA just received designation as a direct recipient for FTA funds making it eligible to apply for and receive FTA funding.

**Is the City involved in funding?**

The city is providing funding for certain activities through the preliminary stages of this project, mainly for administrative costs, and also through its involvement with the Springfield Redevelopment Authority and its ownership of the building.

**What will the OPM services focus on?**

The OPM's primary focus is to represent the SRA's interests in the design and construction of the Union Station Regional Intermodal Transportation Center. The scope of work for the OPM is provided in the RFS.

**In the solicitation "partial" funding for OPM ("subject to funding") is mentioned. What is the status of funding for the OPM services? Is it moving forward?**

The SRA plans to execute a contract with the selected OPM as per the schedule provided in the RFS.

**Is there any advancement on the commercial space, within Union Station?**

The Redevelopment Plan incorporates space for the Pioneer Valley Transit Authority, the Pioneer Valley Planning Commission, a day care facility, and Peter Pan Bus Lines ticketing and waiting areas. These potential tenants have confirmed their interest in occupying space in Union Station and the SRA is in the process of confirming and updating space layout requirements.

**How will addendum distribution occur?**

Our preference will be electronically, unless otherwise indicated by the entity taking out the RFS.

**Has the Springfield Redevelopment Authority ever hired an OPM?**

No the SRA has not hired an OPM. The City of Springfield has hired OPM's, but not the SRA.

**Is there a level of expectation for the OPM?**

The Springfield Redevelopment Authority has outlined the scope of services for the OPM in the RFS; please refer to the RFS document for detailed descriptions.

**How will the evaluation criteria be weighed? Numerically?**

Respondents who have met the minimum stated qualifications will be evaluated and ranked by a Review Committee based on the criteria contained in the RFS.

All items of the evaluation criteria will be taken into consideration during the review process. No criterion not included in this section of the RFS will be considered. Of the identified criterion, some may be weighed more than others at the discretion of the review committee.

**Is there a requirement of MBE or Disadvantaged Business Program?**

It is the goal of the SRA that certified Disadvantaged Business Enterprises (DBE) participate in a minimum of 2-percent of the total dollar value of all SRA goods and services procurements .The SRA overall goal for DBE participation is 2 percent, please reference the RFS for further detail.

**Is the Springfield Redevelopment the owner of the project?**

Yes, the Springfield Redevelopment Authority has owned this property since 1989 and the property is located within an Urban Renewal Area under the jurisdiction of the SRA.

**In the sources of funds ledger within the HDR plan, New Markets Tax Credits were mentioned, is this still be considered as a funding source?**

The New Markets Tax Credits is still being explored as an option for funding the project or certain elements of the project.

**Have you identified architectural features that you would like retained?**

The project design will adhere to applicable local, state and federal laws and/or permitting requirements and the design and permitting phases will identify any features to be retained at a later date.

**With regard to the selection of a Designer, will the OPM be involved in that decision?**

The SRA will not enter into a contract for a Designer until it has retained an OPM.

**Proposal Submission Requirements Table (RFS page 18) – Tab B Section / Previous Project Experience notes the section should begin with an overview of our recent project history. We interpret the overview is suggested to be one or two pages, not the entire project experience section. Would you please confirm our understanding of the page limitation note?**

The overview is to be one or two pages.

**The paragraph at the top of page 18 notes that the proposal should be printed on 8-1/2 by 11 inch paper. Is it allowable to use a limited number of pages in 11 by 17 format, folded to 8-1/2 by 11 inch format and bound as specified, when the information or chart would better present the required information?**

All information submitted should be in the 8 ½ 'x 11' paper format as stated in the RFS.

**Will a separate Corporate Vote of Authorization Form be required to be submitted with our proposal or only with the executed contract form as noted in Appendix B – Form of Contract? We have at least two different corporate officers who will sign the various forms required to be submitted with our proposal.**

The SRA will require a corporate vote prior to negotiating with a successful applicant.

**UNION STATION REGIONAL INTERMODAL  
TRANSPORTATION CENTER**

**PRE-PROPOSAL CONFERENCE  
FOR OWNERS PROJECT MANAGER**

**MEETING NOTES**  
August 19, 2010

**Start Time:** 11:00 a.m.  
**End Time:** 11:40 a.m.

**Springfield Redevelopment Authority & Project Participants:**

Christopher Moskal- Union Station-Project Manager  
Tasheena Davis - Office of Planning and Economic Development  
Amanda Goncalves- Financial & Compliance Officer for SRA  
Maureen Hayes – Economic Development Consultant  
Peter Barry – Outside legal council

**AGENDA:**

**1. Welcome and introduce of SRA Team (Moskal)**

Remind all to make sure that they check in at the door, and to stay together and AWAY from the railroad tracks when we are trackside. (Attendees list attached)

**2. Purpose of the session (Moskal & Hayes)**

- To offer an opportunity to any interested party to view the project site
- Field any questions at each of the stops- there will be four in all- in the tour as well as at the conclusion of this session in the main concourse.

**3. Tour (Moskal & Hayes)**

- Walk along Frank B. Murray stopping at the edge of the former Hotel Charles site
- First floor of the baggage building
- Terminal building 2<sup>nd</sup> floor large office spaces
- Trackside view
- Main Concourse level

**4. Q & A session and reminder of the deadline for questions (Moskal & Hayes)**

- Questions for the pre-proposal conference are attached and will be issued to RFS responded with the responses to any additional questions submitted prior to the Friday, August 20, 2010 5:00 p.m. deadline for questions.

# *Springfield Redevelopment Authority*

70 Tapley Street • Springfield, MA 01104 • (413) 787-6020

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## **Addendum No. 4 Bid No. 08-20100001**

Union Station Regional Intermodal Transportation Center  
Request for Services for Owner's Project Manager

***Thursday, September 2, 2010***

Addendum No. 4 Bid No. 08-20100001

RFS: Union Station Regional Intermodal Transportation Center

Request for Services for Owner's Project Manager

Submittal Deadline: September 9, 2010 at 2:00 P.M. (EDT)

Ladies and Gentlemen:

This is an addendum to the above referenced bid. Special attention should be given to this addendum to preserve the validity of any proposal submitted in response to this request. Bid responses must acknowledge this and all addenda. Failure to acknowledge this addendum can result in rejection of bid.

- 1. AS OF THE DATE OF THIS ADDENDUM, ATTACHED IS A LIST OF INTERESTED PARTIES THAT HAVE REGISTERED FOR THE RFS FOR OWNER'S PROJECT MANAGER.**

Sincerely,

Christopher J. Moskal, Project Manager

### *Commissioners*

*Armando Feliciano - Chair    Gloria Torres - Vice Chair*  
*John Brunton - Treasurer    William MacGregor - Secretary    Dot Lortie*

**Union Station RFS Report as of Thursday Sep 02, 2010 09:09 am**

<b>Company</b>	<b>Contact</b>	<b>City</b>	<b>State</b>
a/z corporation	john a hurst	franklin	MA
a/z corporation	john a hurst	franklin	MA
A/Z Corporation	Kenneth J. Guyette	North Stonington	CT
ARCADIS	Richard Sitnik	Springfield	MA
Arrowstreet	Keri Drake	Somerville	MA
Arrowstreet	Laurence Spang	Somerville	MA
Atlantic Construction & Management,	Suresh Bhatia	Concord	MA
Baker / Wohl Architects	Doreen Bennett	Boston	MA
bidocean	eric johnson	grand junction	CO
bidocean	eric johnson	grand junction	CO
BidOcean	Eric Johnson	Grand Junction	CO
Cardinal Construction, Inc.	April Kelly	Worcester	MA
Churchill Engineering, Inc.	Richard M. Churchill	Plymouth	MA
City of Springfield	Stephen Cole	Springfield	MA
City of Springfield	Stephen Cole	Springfield	MA
City of Springfield	Stephen Cole	Springfield	MA
City of Springfield	Stephen Cole	Springfield	MA
Consigli Construction Co., Inc.	Vance Freymann	Milford	MA
Consulting Engineer	Craig Dolan	Hingham	MA
Consulting Engineer	David G Healey	Holyoke	MA
CSL Consulting, LLC	Enzo Scalora	Burlington	MA
DHK Architects	Pia Dimm	Boston	MA
Diversified Project Management	Jeff Gutsfeld	East Hartford	CT
Epsilon Associates, Inc.	Doug Kelleher	Maynard	MA
GZA GeoEnvironmental, Inc.	Guy Dalton	East	MA
HAKS	Franco Balassone	Middletown	CT
Heery International, Inc.	Carol Pesaturo	Burlington	MA
Heery International, Inc.	Carol Pesaturo	Burlington	MA
IBI Group	Anna Bonnett	Boston	MA
iSqFt	Jennifer Agnew	Blue Ash	OH
Joslin Lesser + Associates	Jeffery A. Luxenberg	Watertown	MA
Joslin, Lesser + Assoc.	Stuart Lesser	Watertown	MA
Keville Enterprises, Inc	Tom Brown	Boston	MA
KVAssociates, Inc.	Barbara Black	Boston	MA
Leggat McCall Properties	Eric Bacon	Boston, MA	MA
Lindgren & Sharples, P.C.	Darlene Meacham	Springfield	MA
MacRostie Historic Advisors LLC	Albert Rex	Cambridge	MA
McKissack & McKissack	150 W. 30th Street	New York	NY
McKissack & McKissack	Michael Tolliver	New York	NY
McMahon Associates	David Farmer	Taunton	MA
McMahon Associates	Tamorra King	Boston	MA
MDFA	Sara Northrup	Northampton	MA

O&G Industries, Inc.	Aaron Mednick	Torrington	CT
O&G Industries, Inc.	Aaron Mednick	Torrington	CT
O&G Industries, Inc.	Dean Dziejcz	Torrington	CT
Parsons Brinckerhoff	Jay Moskowitz	Boston	MA
Patrick Engineering Inc.	Marc R. Chabot, P.E.	Boston	MA
PMA Consultants	Jenna Carr	Braintree	MA
PMA Consultants	Jenna Carr	Braintree	MA
PMC LLC	Amy Happ	Hingham	MA
PMC LLC	Amy Happ	Hingham	MA
Potomac Capital Advisors, Inc.	Gregory J. Walsh	Boston	MA
RFWalsh Collaborative Partners	Inger Hamre-Foley	Boston	MA
Rosewood Consulting	Lisa Andoscia	East	MA
ROUND ROCK TRADING COMPANY	STEPHEN C. RONDEPIERRE	SPRINGFIELD	MA
Rygate, Inc.	Roger Gurney	Hanove	MA
Skanska USA Building Inc.	Jim Jones	Boston	MA
Smith + St. John	Gregor Smith	Topsfield	MA
Spagnolo Gisness & Associates, Inc	Aurora Cammarata	Boston	MA
Talevi and Haesche, LLC	MARY Jane Haesche	West Brookfield	MA
test	Moskal	Springfield	MA
TEST	TEST	TEST	MA
TEST	TEST	TEST	MA
The Louis Berger Group	Chuck King	Needham	MA
The Pike Company	Heather Mistretta	Rochester	NY
The Rise Group	Andy Vo	boston	MA
Thompson Consultants	Debbie Crooke	Marion	MA
Tishman Construction Corp.	Scott Bates	Boston	MA
URS Corporation	Ray Vasta	New York	NY
URS Corporation	Roslyn DesJardins	Rocky Hill	CT
Vanasse Hangen Brustlin, Inc.	Pat Tracy-Callahan	Watertown	MA
Whelan Associates, LLC	Joe Irvine	New Bedford	MA
WSP Flack + Kurtz	Anastasia Vassos	Boston	MA