

**CENTRAL COUNTY TRANSPORTATION
AUTHORITY
PURCHASING MANUAL**



~~Prepared and Issued by
Administrative Division~~

~~June **15**, 2016~~

~~Revised~~

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~~Sean P. McBride
Executive Director~~

~~Laura Smith
Administrative Division Manager~~

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PURCHASING MANUAL

CHAPTER 1

INITIATING PURCHASES

The following procedures should be used to obtain supplies, goods, equipment, services, construction, capital improvements, and professional services in order to promote effective and efficient public purchasing. A requisition not meeting the following requirements will be returned with instructions for bringing it into conformance with the CCTA's purchasing policy. Staff, upon identification of a need, should determine the approximate cost of the purchase. Based upon that estimated cost, initiate the competition process required by the CCTA Board_purchasing policy.

The different levels of competition required, as determined by the cost of the purchase, are as follows:

COST OF PURCHASE	TYPE OF COMPETITION
\$1 - \$36,000	User's discretion
\$36,000.01 - \$250,000	User obtains at least three quotes, providing written documentation, at a minimum, for the low recommended quote <u>then is approved</u> approved by Deputy Director of Support Services <u>Services</u> .
\$250,000.01 - \$510,000	Deputy Director of Support Services <u>Director of Support Services and Executive Director</u> obtains <u>approves</u> quotes; User Department provides specifications.
\$510,000.01 and over	Deputy Director of Support Services <u>Director of Support Services and Executive Director</u> obtains <u>approve</u> formal sealed bids; User provides specifications.

Additional information about obtaining competition is provided in Chapter 2.

Professional Services are purchased using a ~~qualifications based~~ qualifications-based selection process and information concerning seeking competition for professional services is provided in Chapter 6.

In order to initiate a purchase over \$250,000, forward the specifications for those goods or services to the ~~Deputy Director of Support Services~~ Director of Support Services with a cover note providing the estimated project cost, the division contact person/project manager, the bidders you want contacted and any additional information which may be helpful.

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Commented [O1]: Please know that as of 6-20-2018 the threshold for micro purchases is \$10,000 and Simplified Acquisition Threshold (small purchase) was raised to \$250,000 by OMB. However Buy America is required at \$150,000 as per FTA ltr of 9-16-16.

GRANT FUNDED PURCHASES

It is critical to inform the ~~Deputy Director of Support Services~~Director of Support Services when Federal or State grant money is used to fund a contract or purchase. Prevailing wage is an example of special consideration that must be taken when grant funding is used to pay for services.

SMALL PURCHASES

Small purchases, also referred to as micro purchases, are defined as those \$36,000 or less. ~~Deputy Director of Support Services~~Director of Support Services should designate the staff members who have the authority for making and approving small purchases. When Federal grant funding regulations have more stringent requirements for small purchases these requirements take precedence over this policy.

The procurement card should be used as the primary method for making small purchases. Information regarding procurement card purchases may be found in Administrative Policy 70.2. A copy is attached as Appendix D. Staff members who review procurement card purchases should have authority from the ~~Deputy Director of Support Services~~Director of Support Services for making purchases of \$36,000 or less.

REQUISITIONS

Purchases over \$36,000 are authorized by a purchase order. Staff requests a Purchase order through the CCTA's requisition form. There are two types of requisitions, electronic and paper.

The electronic requisition is used for all purchases except amendments to change orders. Instructions regarding electronic requisitions are found in the Financial Module manual. Electronic requisitions must be electronically routed to the appropriate staff person who is authorized to approve electronic requisitions.

Paper requisitions are used to amend purchase orders. The requisition form is available in Eden through Purchasing/Requisitioning Change Order Requisition Form. Provide the information requested in the form, have it authorized by the appropriate manager and forward to ~~Deputy Director of Support Services~~Director of Support Services. Be sure to include the number for the purchase order to be amended.

The User should retain a copy of the requisition.

EXECUTIVE DIRECTOR APPROVAL

Purchases over \$250,000 requires the ~~Deputy Director of Support Services~~Director of Support Services and Executive Director approval. The User must prepare a memo recommending Executive Director approval for purchases between \$250,000.01 and \$5100,000 and a memo recommending CCTA Board approval for purchases over \$5100,000.

The requisition and memo are routed using the Eden ERP system through the Administrative Division to ensure sufficiency of funds as required by the CCTA Purchasing policy. The electronic requisition is then forwarded to ~~Deputy Director of Support Services~~Director of Support Services for preparation of the contract and the bid results summary. If the purchase is over \$5100,000, the contract with a copy of the recommendation memo and requisition are forwarded to the CCTA Attorney for review. The original

recommendation and requisition are forwarded to the Executive Director for review and for placing on the CCTA Board agenda.

VOUCHERS [\(common and repeating purchases\)](#)

Vouchers are used to authorize payment for CCTA expenses, which are not purchases. A list of items that payment may be authorized by Voucher is attached in Appendix A.

TERM CONTRACTS

Goods and services required on an ongoing basis should be purchased using a term contract. Term contracts reduce the administrative time needed to obtain materials and services

EMERGENCIES [and Exigencies](#)

If an emergency situation arises which affects the health, welfare or safety of the CCTA, certain steps may be taken to mitigate the effects of the emergency. Although competition should not be ignored, it can be waived depending upon the circumstances.

Outside normal business hours a Division Manager has the authority to commit the CCTA to purchases up to \$250,000. The ~~Deputy Director of Support Services~~[Director of Support Services](#) should be contacted at the first opportunity during normal business hours. Out of consideration for the vendor providing the emergency service, a requisition should quickly be prepared. A brief written explanation of the emergency situation is also required.

The ~~Deputy Director of Support Services~~[Director of Support Services](#) should be contacted if the purchase exceeds \$250,000.

Purchases exceeding \$250,000 require Executive Director approval.

The CCTA Board requires the following [local](#) process be used if an emergency necessitates making a purchase that exceeds \$50,000 prior to obtaining Board approval:

“The Executive Director may, if deemed appropriate due to emergency situations that may affect the health, welfare or safety of the CCTA, purchase necessary materials and supplies without the above (Board Policy) procedural requirements with the consent of the ~~Deputy Director of Support Services~~[Director of Support Services](#) and CCTA Attorney; but, such purchase must be reported to the CCTA Board at its next meeting.”

PURCHASING MANUAL

CHAPTER 2

SEEKING COMPETITION

As discussed in Chapter 1, the dollar amount of the purchase and the type of purchase affects the competition method that will be used. The purpose of this chapter is to provide the processes that should be used to seek competition.

When seeking competition for contracts, CCTA staff should make reasonable efforts to generate maximum feasible competition, contacting enough bidders to access the vendor resources available in the marketplace. CCTA staff must be inclusive of all sectors of our diverse economy. Technology should be used advantageously to identify and notify bidders of potential CCTA contracting opportunities.

The CCTA shall not discriminate against a business or bidder with respect to soliciting bids, evaluating bids, awarding bids or administering contracts because of race, sex, color, ethnicity or national origin.

PURCHASES \$~~36~~,000 OR LESS

The User obtains informal competition for these purchases. It is not necessary to document the competition used. Good informal competition should include the following:

- Maintaining a file of previous quotes to use as a reference for competitive sources of products or services;
- Reaching out to businesses in all sectors of our diverse marketplace requesting quotes from them. Bidders lists are available in the Eden system through Bid & Quote Management/Reports/Linked Reports/Bidders list by Commodity Code;
- Being aware of new businesses and business outside your regular social contacts;
- Exploring new products or services in the marketplace which may improve our ability to provide municipal services;
- Using the vendors available in our local community.

“Three quotes” is a proven benchmark for competition. Although not required for purchases less than \$~~6,3~~000, if three quotes are obtained a level of assurance is achieved that a competitive price was obtained.

PURCHASES BETWEEN \$~~36~~,000 and \$~~2550~~,000

Users seek competition for purchases between \$~~36~~,000.01 and \$~~2550~~,000. Before approving a purchase order, approving staff will require at least three quotes with written documentation from at least the one being recommended.

Before requesting quotations the user must prepare specifications for the product or service to be purchased. Specifications should clearly describe what is required and sufficiently define the purchase to provide the User the ability to reject a product not meeting the requirements of the CCTA. Specifications are more fully discussed in Chapter 3.

The telephone is one method for quickly obtaining quotes. After developing the specifications the CCTA staff member calls enough vendors offering the product to obtain at least three quotes. The vendor should be requested to follow-up the verbal quote ~~with a written one~~. ~~The~~ A written quote from ~~at least~~ the successful vendor is required to be provided with the requisition

- Written request for quotes will increase the accuracy when obtaining quotes.
- In addition to U.S. mail, written quotes can be quickly solicited using an attachment to e-mail.

When soliciting quotes the following information should be provided to prospective bidders:

1. Specifications for the product to be purchased
2. CCTA Contact person and telephone number
3. CCTA Division soliciting the quotation
4. Instructions and an Address/Fax number/Email address for returning the quotation
5. The date the quotation went out
6. The closing date for quotes (if one is provided but this is not required)
7. Quantity to be purchased
8. One or more lines (\$ _____) for unit pricing
9. One or more lines (\$ _____) for extending the pricing (Note: extending is the quantity times the unit pricing.
10. A line (\$ _____) for the grand total
11. A line for the bidder to sign, certifying the bid (sample language: My signature is your guarantee that I have carefully read all the provisions contained herein, and am submitting my quote in strict accordance with those provisions.)
12. A line for the printed name of person signing the bid and the date
13. Lines for the Company Name, address, telephone and fax number, and possibly email address.
14. If a service is being provided with the potential for personal injury or property damage the CCTA's standard insurance requirements should be attached. These may be obtained from the Administrative Division.

PROMOTING FAIR AND OPEN COMPETITION

The following practices should be followed to maintain vendor and public confidence in the CCTA's public purchasing process:

- The quotation, which is the lowest total price for the product that meets the minimum requirements specified, should be recommended to the ~~Deputy Director of Support Services~~ Director of Support Services for award.
- Protect against communicating one vendor's pricing to another vendor until after the closing time for receiving quotes. One business's quote shall not be used to negotiate a better price from another business and Users should not be put in a position of being accused of sharing "inside information."
- When an error or unclear specification is discovered during the quote solicitation period a clarification should be communicated, using the same medium as the original request for quotes, to all bidders being solicited.
- Making sure department staff receiving quotes is aware of these practices to promote fair and open competition.

- Not writing on bids in order to prevent confusion regarding the intent of the bidder.
- Vendors should not be allowed to make their quote more favorable by changing their bid after knowing other bidder's pricing.
- If potential bidders have questions about the CCTA's purchasing process or the particular project you are managing, assistance should be provided to encourage participation by all sectors in our diverse economy in submitting quotes. The Administrative staff is also available to assist you and the interested business.

PURCHASES BETWEEN \$250,000 AND \$510,000

The Administrative Division takes quotes or bids for projects between \$250,000 and \$510,000 as directed by the CCTA Board purchasing resolution. Informal quotes follow the procedures outlined above.

FORMAL (SEALED) BIDS

CCTA Board purchasing policy requires "formal sealed bidding shall be used for any purchase over \$510,000--". The Administrative Division must use the following process to solicit formal bids:

1. User prepares specifications for the product to be purchased.
2. Administration prepares the Bid document which incorporates the items described below under BID DOCUMENTS.
3. Administration uses the bidders list it administers through the Bidder Application and other information collection processes for selecting the firms that will be notified of the solicitation.
4. Post the Invitation/Request on the bid board located in Administration (except in those instances only pre-qualified vendors are being solicited)
5. Set and adhere to a fixed bid opening date and time.
6. Post the Invitation/Request on the CCTA's website (except in those instances only pre-qualified vendors are being solicited).
7. If vendors are present have a formal bid opening, if vendors are not present the Buyer, ~~Deputy~~ Director, or Executive Director may open and record the bids received.
8. Prepare a bid tabulation of the bids received at the time of the bid opening.
9. User reviews the bids and recommends award to the lowest bid responsive and responsible bidder to the specifications.
10. A Bid results summary is prepared based upon bids received and input from the User Department.
11. Obtain approval from the appropriate authority to award the contract.
12. Notify the successful bidder with a notice of award and mail the signed contract.
13. After receipt of certificate of insurance, bonding, or other documents issue a notice to proceed with the purchase order
14. Prepare and file a bid pack maintaining the documents that make up a complete record of the purchase.
- ~~14.~~ 15. Diesel fuel purchases are exempt from the sealed bid process (approved by the CCTA and KCTA Boards in May of 2022).

Formal bidding may be done in several formats. They include:

INVITATION FOR BIDS – Used to solicit pricing for the purchase of goods, services (except professional), construction, and term contracts. Contracts are awarded to the lowest responsible bidder

responsive to the specifications. Depending upon the complexity of a project the bidder may have to meet a minimum level of qualifications to be determined as responsible.

REQUEST FOR PROPOSALS – Used to solicit pricing and qualifications for a professional service. The qualifications based selection process is used to award contracts. More information is provided in Chapter 6, Professional Services.

REQUEST FOR QUALIFICATIONS – Used in a two-step process to solicit the qualifications from firms for a professional service. This is used to select a smaller list of firms based mainly upon qualifications. Request for Proposals are then requested from those on the “short list.” May be used for more complex projects or may be used to pre-qualify firms for yet undetermined work.

REQUEST FOR INFORMATION – Used in a two-step process to help identify a product or services that will serve as a solution meeting a User problem. This process is used when the CCTA possess insufficient knowledge to write the specifications for an Invitation for Bids.

BID DOCUMENTS

Bid Documents consist of the following sections:

Announcement or cover page with information such as description of the purchase, due date, and User contact person.

Statement of No Bid

Instructions to Bidders – describes the process that will be used for soliciting sealed bids including the issuing of addendums to the bid document.

Bid and Award – pages the bidders uses to respond to the solicitation. Used by the CCTA to document acceptance of the bid.

Bidders Questionnaire (if required)

General Specifications

Special Provisions for the bid project may be incorporated at this point in the bid document.

Indemnity and Insurance

Terms and Conditions – If using an engineer or architect, general conditions and supplementary conditions may also be incorporated as part of the terms and conditions.

Appendices as necessary

Prevailing Wages if required

Drawings, diagrams, supplementary reports, and attachments as necessary

[FTA clauses](#)

[Qualifications of firm and staff involved with project](#)

[References with list of work performed](#)

BID OPENINGS

Bid openings may be postponed only by the decision of the Administrative Division to allow the bidders more time to respond to information provided in an addendum, cancellation of the project, or in extreme situations due to weather. [If postponement occurs all vendor that requested the bid documents will be notified.](#)

Bids may be received by mail, delivery service, or personally dropped off. A bidder can only retrieve a bid after providing proper identification of who they are and satisfy staff they represent the bidder.

Bids are date stamped with the time received and receiver's initials written on the outside of the envelope. Bids are kept in a file drawer, chronologically by date of the bid opening. Bids are not opened until the time of the stated bid opening. Bids opened by mistake due to failure to identify the envelope that a sealed bid is enclosed or by staff mistake are resealed with a notation written and initialed on the outside of the envelope.

The buyer determines that the bid opening time is past and that no more bids will be received. Bids are opened by a single buyer and recorded on a bid tabulation sheet. If vendors are present bids may be read aloud with a second Administrative Division or CCTA staff member present to provide assistance during the bid opening process.

A determination does not need to be made at the bid opening whether a bid is disqualified. Bids are NOT awarded at the bid opening.

[Bids Pricing](#) may be [reviewed by other bidders announced by staff](#) after the bid opening in the presence of a staff member. [Bidders may request in writing](#) copies of bid tabulations may be provided to bidders. Copies of bids are not provided unless requested through the Freedom of Information process [and may include redaction for proprietary information.](#)

COOPERATIVE PURCHASING

Competition obtained by other governmental entities may also be used to meet the competition requirements of the CCTA. Documentation of that competition must be provided with the requisition and recommendation, [and include all state and federal required clauses if using those funds for purchase.](#) The following methods or cooperative purchasing are available for CCTA purchases:

- [Joint Bids – Purchasing Cooperative:](#) Two or more governmental entities work together on a bid project, combining their specification requirements and making a single invitation for bids [or request for proposal.](#) Each entity makes an individual award to the recommended low, responsive [and responsible bidder for a fixed quantity.](#)

- Piggyback Purchase— The CCTA uses bids for a product that have been taken by another governmental entity and extended for cooperative options purchasing use to other agencies and that current pricing needs to be reviewed to determine if the option pricing is better than market pricing.
- ~~An example of this is the State of Michigan MiDEAL extended purchasing program.~~
- Purchasing Cooperative— Several entities join together for the purpose of structuring joint bids or dividing up bid projects for others to piggyback on.
- Third Party Purchasing Cooperatives—Groups Schedules or Contracts such as REMC, US Communities General Service Administration and MiDEAL have been formed to offer cooperative purchasing services. Bids are usually taken by lead agencies in those organizations and offered to others. Often more than one supplier is identified for a particular product. Realizing that applicable federal clauses apply and that current pricing needs to be reviewed to determine if the option pricing is better than market pricing.

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SOLE SOURCE PURCHASE

A purchase may be awarded without competition when the User advises in writing, after conducting a good faith review of the marketplace, that there is only one available vendor for the required good or service. In order for a purchase to be classified as available from only a sole source and therefore competition is not feasible it must meet one of the following circumstances:

There is a lack of responsible competition for a commodity or service that is vital to the operation and best interest of the CCTA such as:

1. Unique capability or availability. For example: unique or innovative concept, patents or data rights, substantial duplication cost, unacceptable delay.
2. The vendor possesses exclusive and/or predominant capabilities.
3. The product or service is unique and easily established as a one of a kind.
2. Single bid or proposal. As long as there is adequate competition
4. 3. There is a patented feature providing a superior utility not obtainable from similar products Unusual and compelling urgency.
5. 4. A proprietary right exists and the product is only available from one prime source, not merchandised through wholesalers, jobbers or retailers Authorized by FTA.

Sole source purchases must be documented on the CCTA's sole source form. All questions on the form must be answered to determine the sole source nature of the purchase. Pricing must be provided for similar products that could provide the service in order to show that value analysis was performed by the department. The document must be signed by someone in authority and if the FTA has authorized the non-competitive procurement, the request for FTA approval and FTA's response should be together in the contract file.

A written quote is required from the vendor providing the sole source product. Depending upon the size of the purchase it is advisable to prepare a contract incorporating the CCTA's insurance requirements and terms and conditions.

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PURCHASING MANUAL

CHAPTER 3

SPECIFICATIONS

The User is responsible for preparing the specifications for the goods or service they wish to purchase. Preparing technical specifications is one of the most important and difficult functions in the purchasing process. Specifications must clearly describe what is required to promote competitive bids and serve as a means to measure the performance of the Contractor.

Specifications must sufficiently describe the requirements to provide quality service while being mindful of the limited funding resources available to the CCTA. They cannot be unduly restrictive and thereby limit competition.

TYPES OF SPECIFICATIONS:

Performance Specification – Describes the capability requirements that are necessary to satisfy the intended use of the article. Tests or criteria must be developed to measure a product's ability to perform and last, as required. Performance specifications generally provide the best approach for specifications writing.

Price and Performance Cost – Combines acquisition price with a measurable cost for operation or use over the expected life of the product. Also known as life-cycle costing, these bids provide a more complete measure of the total cost of a purchase. These specifications require identification and measurement of the different operational costs for the product.

Design – Details the required characteristics that the product must possess. Depending upon the equipment or commodity purchased, a design specification may be expressed in the terms of tolerance or minimum standards necessary for its application, and should prescribe the essential features to encourage competition.

Samples – Bidders are invited to offer their price and a sample of the product based upon a descriptive specification provided by the CCTA. The samples are then subjected to various kinds of comparisons. Data and relative performance results are documented and determinations are made regarding meeting the written requirements.

Blueprints – Similar to design specifications, the requirements of the work is described by the characteristics it must possess. This, however, uses a visual representation as well as written description of how the work is to be done. The blueprints are prepared by CCTA Engineers or a professional firm contracted to provide the design.

Brand Name – Identifies the quality level of the product by naming manufacturer and model of acceptable product. Since the brand name specification tends to restrict competition, it should be avoided. The specification should also include a description of the particular design, function, and performance characteristics of the product.

A brand name or equivalent specification may be used in the following limited situations:

1. A design or performance specification is not available;
- ~~2. Times does not permit the preparation of another form of specification; or~~
- ~~3.2.~~ The nature of the product or the CCTA's requirements makes use of a "brand name or equal" suitable for procurement.

When using a brand name specification the User should seek to designate three, or as many different brands as practicable, as "or equal" references, and further state that substantially equivalent products will be considered for award.

CONTENTS OF GOOD SPECIFICATIONS

A specification is sufficient when it:

- States exactly what is wanted: clearly, definitively and completely.
- Provides the means or basis for testing the product for conformance with the specifications.
- Avoids non-essential quality restrictions that add to the cost or difficulty in procurement without adding utility and value.
- Avoids definitions that unnecessarily restrict competition.
- Utilizes established commercial and industrial standards.

CCTA SPECIFICATION REQUIREMENTS

The following special requirements must also be included in the CCTA's specifications:

1. Non-Discrimination – Bid documents shall include the Elliott-Larson Civil Rights Act requirement that the contractor and his/hers subcontractors not discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight, or marital status. Breach of this requirement may be regarded as a material breach of the contract. (Elliott-Larsen Civil Act section 209)
2. Insurance – General liability, property damage, automobile, and workers' compensations insurances are required for all construction and service contracts for which the Contractor is performing work on CCTA property, in the right of way, or using vehicles to perform the contact. The ~~Deputy Director of Support Services~~Director of Support Services determines limits of insurance.
3. Bonds – State law requires performance and payment (labor and material) bonds for all public construction contracts exceeding \$50,000. Labor and material bonds are written to ensure payment of sub-contractors and suppliers.
4. Prevailing Wages – CCTA local funded projects requires that Contractors pay prevailing wages for construction, alteration or repair of public buildings or public works over \$100,000.

Federal law requires prevailing wages be paid for construction contracts exceeding \$2,~~000~~500. User must make a determination if Federal funding is being used to ensure that grant guidelines are being followed for prevailing wages and other requirements.

5. Contract Period – Term contracts, including extensions, should not exceed five years in length. An exception may be made to this rule when changing contractors is both exceptionally time consuming and presents an undue hardship to the public or a large number of CCTA staff. In no instance should a term contract exceed eight years. Federal Transit Authority funded contracts [for rolling stock and parts](#) cannot exceed 5 years without FTA approval.

Commented [O2]: The only contract term limits now in effect are those that apply to rolling stock and rolling stock replacement parts. In all other cases FTA requires grantees to exercise "sound business judgment," and "to establish contract terms no longer than necessary to accomplish the purpose of the contract." It would appear you are carefully considering the economic benefits to the agency (and the riding public) of a longer contract term by attempting to attract more competition and thus lowering the operating cost per hour. This is the kind of analysis that FTA encourages grantees to perform as they seek to establish the optimum terms of their contracts. **(Revised: September 1, 2009)**

PURCHASING MANUAL

CHAPTER 4

BIDDERS LISTS

The Administrative Division compiles bidders lists for two reasons. The first is to have a readily available list of vendors for the purpose of soliciting pricing and entering into contracts meeting the CCTA's needs. The second reason is to provide vendors access to bidding on the CCTA's procurement requirements in a fair and impartial manner.

Vendors are added to the bidders list either at their request or as needed to expand competition. When it is necessary to seek new sources, trade journals, businesses directories, ~~and~~ purchasing associations, and Michigan Department of Transportation Unified Certification Program (MDOT- UCP) should be consulted. Trade shows can also be helpful for identifying new sources for a bidders list.

To be placed on, and remain on, a bidders list suppliers are required to meet the following conditions:

1. Complete an application providing pertinent information necessary for placement on the correct list. (This requirement may be waived when staff is placing a bidder on bidders list.)
2. Respond to bid requests as completely as possible in accordance with the terms, conditions and specifications set forth in the bid document.
3. Employ necessary technical personnel and have the equipment and facilities necessary to adequately perform.
4. Have the capability for providing insurances, performance and labor and material bonds when required. ~~Not have a reputation for failing to pay employees and suppliers.~~
5. Have sufficient financial capacity.

The CCTA reserves the right to not solicit all firms on the bidders list for a particular product. CCTA staff will exercise their judgment to establish a representative bidders list within the constraints of available competition, cost for soliciting bids, and geographic impacts on responsiveness to CCTA service requirements.

VENDOR OUTREACH AND INCLUSION

While administering the CCTA's bidders list it is our goal to access the vendor resources available, being inclusive of all sectors of our diverse economy. Technology should be used advantageously to identify potential bidders.

In order to have the minority and women vendor resources necessary to comply with federal grants minority business enterprise (MBE) and women business enterprise (WBE) goal requirements, the CCTA will identify MBEs and WBEs in the bidders' lists, and utilize the MDOT-UCP.

The CCTA shall not discriminate against a business or bidder with respect to soliciting bids because of race, ~~sex~~, color, ~~ethnicity, or~~ and national origin.

The Division will report annually to the Executive Director the dollar amount of purchases/contracts spent with minority and women owned businesses and compare that dollar amount as a percentage to the total purchases/contracts of the CCTA.

DELETION FROM BIDDERS LIST (FAILURE TO BID)

Bidders are removed from the bidders list when mail is returned with no forwarding address, they fail to respond to three or more invitations to bid, if removal is requested by the bidder, or if failing to respond to a direct request to confirm wanting to remain on a bidders list. A business will be removed without further notice; however, if requested by the business, they may be restored immediately to the CCTA's bidders list.

DEBARMENT FROM CONTRACT AWARD (FAILURE TO PERFORM)

The ~~Deputy Director of Support Services~~Director of Support Services is authorized to debar a business, for cause, from consideration for award of CCTA contracts. The debarment cannot be for a period of more than three years. Causes for debarment include:

- Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or in the performance of such contract or subcontract.
- Conviction of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility of the business as a CCTA Contractor.
- Conviction under antitrust statutes arising from the submission of bids or proposals.
- Violation of a contract provision(s) as described below, or of a character which is regarded by the ~~Deputy Director of Support Services~~Director of Support Services to be so serious as to justify debarment action:
 - Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts whether or not with the CCTA, provided the failure to perform was caused by factors beyond the control of the Contractor.
- Any other cause the ~~Deputy Director of Support Services~~Director of Support Services determines to be as serious and compelling as to affect responsibility of the business as a CCTA Contractor, including debarment by another governmental entity for any cause listed in this manual.

The ~~Deputy Director of Support Services~~Director of Support Services will issue the written decision to debar or suspend. The decision will state the reasons for the action taken and inform the business its rights concerning administrative review. A decision to debar or suspend is final and conclusive unless the debarred business, within 10 days after receipt of the decision makes an appeal to the Executive Director.

DISCLOSURE OF BIDDERS LIST

The Administrative Division will not voluntarily disclose to bidders while bids are being solicited the names of other bidders on the bidders list. Construction projects are the exception to this rule since subcontractors need to be informed the names of the potential general contractors to facilitate their submitting quotes. The purpose of not disclosing bidder's lists is to promote competition.

PURCHASING MANUAL

CHAPTER 5

AWARDING CONTRACTS BIDDING IRREGULARITIES APPEALS AND REMEDIES

AWARDING CONTRACTS

CCTA Board policy states “Purchases and contracts shall be awarded to the responsible bidder submitting the lowest quote or bid that is responsive to the CCTA’s specifications, terms and conditions. This shall not, ~~however,~~ restrict the CCTA from:

- A. Awarding professional service contracts based solely upon qualifications of the bidders, nor limit the CCTA from being the sole determiner of which bidder meets the required specifications, terms and conditions;
- B. Making purchases and entering into contracts cooperatively or through pricing extended by other governmental agencies;
- C. Contracting with other governmental agencies on a non-competitive basis for required services or commodities.”

RESPONSIBLE BIDDER

A responsible bidder is a business that has the capability in all aspects to fully perform the contract requirements. Consideration is given to the business’s experience, integrity, capacity, facilities, equipment, reliability, and financial resources that will assure good faith performance.

Construction Invitation for Bids and other IFBs upon which the CCTA relies upon the contractor to provide a service should include a section for the bidder to provide three references. Additional information should be requested specific to the goods and services bid. For instance, if the contractor’s equipment is an important consideration for performing the contract, the bidders should be requested to provide an inventory of their relevant equipment. When evaluating bids, CCTA staff should fully consider the bidders wherewithal to perform the contract. Consideration should be given at the time of writing the bid document or evaluating bids received to such areas as:

- Inspection of facilities
- Longevity of the company
- Ability to obtain a performance and labor & material bonds
- Known bankruptcy proceedings, regulatory violations, or criminal legal proceedings
- Not being in default for failure to pay taxes or failure to meet prior contractual obligations with the CCTA

When a bid is disqualified because the bidder is deemed to not be responsible that fact must be documented in writing with an explanation why the bidder is determined to not be responsible.

RESPONSIVE BID

A bid is responsive to the CCTA's Invitation for Bids, ~~or~~ Request for Quotes [and Request for Proposals](#) when it conforms in all material aspects to the requirements of the instruction to bidders, specifications, and terms and conditions.

When a question arises concerning a bid's conformance to the specifications of an Invitation for Bids, time and effort should be taken to determine that accepting the bid will result in receiving the product specified. Some judgment is involved in evaluating responsiveness of a bid because in some cases acceptance of a small variation from the specifications will result in little material difference while in other cases it completely changes the usability of the product purchased. It is beneficial, when evaluating the responsiveness of a bid, to also determine that the specification being measured against is required for the proper function of the product.

In those instances when the low bid is not responsive to the required specifications of the CCTA the variances must be documented in writing to maintain a record why the bid was not awarded.

The total cost of the contract is used to determine which bid or quote is the lowest. The total cost is usually calculated based upon the pricing provided in the bid. Other material and documentable costs may be used to determine the low bid. However, to promote open competition outside factors should only be used for exceptional reasons. All costs affecting the outcome of the award that are not part of the bid must be fully documented.

CONTRACTORS NOT EXCLUDING FORMER CRIMINAL OFFENDERS FROM EMPLOYMENT

Invitation for bids, request for quotes, and request for proposals for purchases over \$~~250~~,000 must include a certification by the bidder that it does not bar or preclude a person with a criminal conviction from being considered for employment. If a bidder does not sign the certification they are deemed to be non-responsive to the CCTA's specifications. If not signed as an oversight a bidder may be given a limited opportunity to correct the mistake.

DIRECTIONS FOR HANDLING A BIDDING IRREGULARITY

Late Bid

Any bid or proposal received after the set bid opening time is late. All late bids should remain unopened and be rejected. If delivered in person it is returned to the messenger. If it is delivered by mail or delivery service the receipt date and time should be noted on the envelope or packaging and the bid is not opened.

If, however, it can be determined beyond a reasonable doubt, before the award, that the CCTA in fact received the bid before the designated time, but because of mishandling by the CCTA it was not available at the bid opening, the bid may be opened and considered. After documenting the reason for mishandling the bid it may be opened in the presence of a second witness; adding it to the bid tabulation to be considered with the other bids.

Bid Bond

When a bid bond is required by the Invitation for Bids, [Request for Proposal](#) and if the bidder fails to provide it at the time of the bid opening, the bid is rejected and the bidder is not allowed additional time to furnish a bid bond.

Commented [O3]: Might want adjust this to offer bidders a fixed amount of time to obtain a bond. It can be a undue burden on small and minority businesses.

Mistake or Error on the Bid Page – Pricing

A bid price may be changed after being delivered to Purchasing, but only if the change is received in writing and in a sealed envelope prior to the bid opening. After the bid opening a bidder may not change a unit price or a lump sum price. The unit pricing or the lump sum pricing will be given the greatest consideration for determining the lowest cost.

If, however, an error is self-evident on the face of the bid, that information may be used to ascertain the intent of the bid. If there is an extension error, the unit prices will be used to determine the bid's total price. The CCTA is the sole determiner whether the true intent of the bid is self-evident or not.

If a bidder makes an unintentional mistake or error in judgment, which is not correctable and is so low that the bidder will incur severe loss if the contract is awarded and enforced, the bidder is permitted to withdraw the bid without penalty. Documented evidence must be provided by the bidder of the mistake and potential loss.

Technical Irregularity

When a bid does not conform to the instructions to bidders or contains some other technical irregularity, the overriding considerations for accepting and/or resolving the irregularity are impartiality and legality. The irregular circumstances and potential outcomes must be examined to determine that the bidder is not receiving an additional opportunity or benefit not afforded to the other bidders. The CCTA must also be able to have an enforceable contract when accepting the irregular bid. The CCTA Attorney should be consulted.

If a business fails to sign the bid but it otherwise adequately identifies the bidder, the bid should be accepted. If the bidder fails to provide requested technical information, depending upon any overriding CCTA parameters or schedule of the project, the bidder may be given a second, limited opportunity to provide the information.

Alternate Bids

An alternate bid is one submitted with a known variance to the terms, conditions or specifications and should be clearly identified as such by the bidder. A bidder may submit an alternate bid; however, since the bid is not responsive to the bid document, it is the CCTA's sole discretion whether to consider the bid. An alternate bid should be evaluated to determine if it meets the specification's requirements. An alternate bid should not be accepted if it reduces the value and/or quality of the purchase or if other bidders potentially have similar alternative products available but were not afforded the opportunity to bid them. An alternate bid may be beneficial to the CCTA when a product is new or complex and therefore difficult to write specifications for. Judgment should be exercised when evaluating an alternate bid to obtain a good solution for the CCTA, without providing the bidder an unfair advantage.

One Bid Received

Receiving only one bid is a symptom of lack of competition for that product. The bid process should be thoroughly evaluated to check that the specifications are not unnecessarily tight, the correct vendors are being solicited, and that competition exists in the marketplace. The possibility of collusion should not be overlooked. There is no prohibition against making an award after receiving only one bid; however, a price analysis should be performed to determine reasonableness of the bid. Negotiations are also appropriate to ensure the best value for the CCTA.

Tie Bids

When it is determined that tie bids have been received lots should be drawn before witnesses to choose the successful bidder. ~~FTA Circular 4220.1F prohibits geographical preferences on FTA-funded projects.~~

COLLUSION, CONFLICT OF INTEREST, CONTINGENT FEES

The CCTA ~~local requirements requires~~ that all bidders certify within their bids that:

1. Prices are arrived at independently, without consultation, communication or agreement for the purpose of restricting competition with any other bidder or competitor;
2. No CCTA employee or official will personally benefit in any contract or purchase resulting from the bid; and
3. The bidder has not employed or retained a third party to solicit or secure the contract with the understanding of receiving a commission, brokerage or contingent fee. This restriction, however, is not applied to bona fide employees or established commercial selling agencies.

Collusion, conflict of interest, and contingency fees are difficult to detect because they are usually arranged in secret. If, however, one of these actions is suspected, it is the CCTA employee's responsibility to report it to the CCTA Attorney for determination of a course of action.

REJECTION OF BIDS

The CCTA reserves the right to reject any and all bids. The ~~Deputy Director of Support Services~~ Director of Support Services may reject all bids if one of the following is determined:

1. All bids exceed the budgeted amount;
2. There are no responsive bids;
3. There are no responsible bidders;
4. The project is abandoned;
5. Any other circumstance when it is in the best interest of the CCTA.

NEGOTIATING BIDS

~~The CCTA reserves the right, at its sole option, to negotiate with bidders in the event of, but not limited to:~~

- ~~1. No bids received;~~
- ~~2. A single bid received;~~
- ~~3. Prices bid are over budget or unreasonable.~~

~~The Deputy Director of Support Services will be notified prior to negotiations. Negotiations will only be conducted with the responsive low bidder. Negotiations will not place one bidder in the position of matching or reducing pricing against another. Negotiations will not be made for the purpose of allowing a bidder to increase a bid to correct a mistake.~~

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Negotiations may be made only with the responsive low bidder to decrease the price, clarify the product to be received, modify the schedule for completing the work, or other similar items which do not give a bidder an unfair advantage over other bidders and is in the best interest of the CCTA.

BID PROTESTS AND APPEALS

1. Right to Protest

Any actual or prospective bidder or Contractor who is aggrieved in connection with the solicitation or award of a contract may file a written protest with the ~~Deputy Director of Support Services~~Director of Support Services. A protest with respect to an Invitation for Bids or Request for Proposals shall be submitted in writing prior to the opening of bids or the closing date of proposals, unless the aggrieved person did not know and should not have known of the facts giving rise to such protest prior to bid opening or the closing date for proposals. In all cases, the protest shall be submitted within ten (10) calendar days after receiving knowledge of the action about which the protest is being made or the award of the bid, whichever is sooner.

2. Stay of Procurement during Protests

In the event of a timely protest, the ~~Deputy Director of Support Services~~Director of Support Services shall not proceed further with the solicitation or award the contract until all administrative remedies have been exhausted or until the Executive Director makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of the CCTA.

3. Notification of Grantor Agency – Grant Funding

If a procurement action that spends grant funding is subject to a protest, the grantor agency shall be notified in writing of such protest and any subsequent responses made by the CCTA or the challenging vendor.

4. Decision of ~~Deputy Director of Support Services~~Director of Support Services

The ~~Deputy Director of Support Services~~Director of Support Services shall issue a decision in writing within fourteen (14) calendar days after receipt of such protest or notice of other controversy. A copy of that decision shall be mailed, or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.

5. Appeal

The decision of the ~~Deputy Director of Support Services~~ Director of Support Services shall be final and conclusive unless the aggrieved party files a written appeal with the ~~Deputy Director of Support Services~~ Director of Support Services, addressed to the Executive Director, within ten (10) calendar days after receipt of the ~~Deputy Director of Support Services~~ Director of Support Services' decision.

6. 6.—Decision of Executive Director

The Executive Director shall issue a decision, in writing, within fourteen (14) calendar days after receipt of appeal unless the parties agree to a longer period. The decision of the Executive Director shall be the local final and conclusive decision, and a copy of that decision shall be mailed, or otherwise furnished, to the aggrieved party and shall state the reasons for the action taken. In the absence of a decision by the Executive Director within the time specified, the decision of the ~~Deputy Director of Support Services~~ Director of Support Services shall stand.

7. If the procurement has federal funding involved the aggrieved party may protest the Federal Transit Administration (FTA) within five (5) business of the local decision. The FTA can be reached at:

Region 5 Office
Federal Transit Administration
200 West Adams Street
Suite 320
Chicago, IL 60606
United States
Phone: 312-353-2789

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NON-DISCRIMINATION

The CCTA shall not discriminate against a business or bidder with respect to evaluating or awarding bids because of race, ~~sex~~, color, ~~ethnicity~~ or national origin.

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CHAPTER 6

CONTRACTING FOR PROFESSIONAL SERVICES

Professional services are identified by the nature of the work being performed requiring a combination of three or more of the following attributes: professional training, professional experiences, specialized skills or practice, wealth of knowledge, a high degree of interpersonal skills, or a service generally recognized as being part of a specialized and demanding field. Examples of professional services include accountants, architects, dentists, engineers, lawyers, management consultants, physicians and veterinarians. Other services that also fit this definition include claims adjusters, trainers, risk managers, systems analysts and services replacing or supplementing those of a CCTA division manager.

Professional services will be selected on the basis of qualifications. While cost for the service is an important consideration, the selection decision is not driven by cost similar to the Invitation for Bids decision. The following methods should be used for selecting professional services. Factors that should be taken into account when selecting the best process for receiving qualifications and proposals are total cost, type of service, and length of service contract.

PROFESSIONAL SERVICES UP TO \$250,000

Professional services costing less than \$250,000 may be purchased on an informal basis. The User submits with the requisition written documentation describing the rationale and qualifications of the recommended professional service firm and a written proposal for the services to be contracted. The rationale should include:

- 1) Type of professional services required;
- 2) Brief explanation of qualifications this particular firm has that recommend it for this work; and
- 3) Other firms considered (if any) for providing this service.

PROFESSIONAL SERVICES OVER \$250,000

The Administrative Division will solicit Request for Qualifications / Proposals for professional services contracts over \$250,000. The provisions of the previous chapters regarding Invitation for Bids apply except for two fundamental differences. First, proposals for professional services are evaluated based upon the qualifications of the proposers and the strength of the proposal and not necessarily the cost. Second, the CCTA may negotiate the proposal price, the scope of the work, and possibly the terms and conditions with the professional service provider. A one-step or a two-step method will be used to receive qualifications and proposal prices.

1) Requests for Qualifications (Two-Step Method)

The first step of the two-step method, is asking for each professional firm's qualifications by sending a Request for Qualifications (RFQ) to the vendors on the appropriate bidders list. The RFQ should describe the scope of the project and state the evaluation factors that will be used to judge the qualifications of the professional service providers. A date and time is set for receipt of the qualifications. To afford impartial evaluation of the qualifications, prior to the time of evaluation, a scoring form should be prepared to identify and weight the factors

used for assessing each firm's qualifications. Depending upon the scope of the project, a committee may be formed to perform the evaluation process.

The firms submitting qualifications are ranked from most qualified to least qualified using the pre-established evaluation criteria. The second step is to negotiate a contract including the fee with the most qualified firm. If the CCTA is unable to reach agreement on an acceptable fee and work plan, negotiations are broken off with the most qualified firm and begin with the next most qualified.

Alternate Method

If the User does not have sufficient information to determine what a reasonable fee would be, the Request for Proposal process is used as the second step. Proposals are solicited from a shortened list of the most qualified firms submitting qualifications. The professional firms would submit formal proposals using a sealed bidding process. They may also be asked to submit their work plan for the project. NOTE: This method cannot be used when grant money governed by the Federal Brooks Act is funding the contract.

2) Request for Proposals (One-Step Method)

Proposals (RFP) including both qualifications and price are solicited as a one-step process. The RFP process follows the same sealed bid protocols as the Invitation for Bids process. The RFP provides the specifications for the professional services requested the scope of the project, the terms and conditions for the contract and the qualifications and other criteria that will be used for evaluating the proposals submitted. If all terms, conditions and specifications are acceptable, the RFP may become the contract.

Unless published advertising is required by grant rules, posting the announcement on the CCTA bulletin board and using the CCTA's website will constitute public notice.

3) Evaluation

Request for Qualifications and Request for Proposals are evaluated based upon the firm's experience, staff qualifications, capacity, responsiveness to the CCTA's needs, and location of the professional firms responding. Measuring the qualifications may be somewhat subjective. By forming an evaluation committee, several perspectives can be brought to the qualifications evaluation process. Interviews may be used to further evaluate the qualifications of the firms. Information received from proposals and interviews should not be disclosed to other firms. A written evaluation instrument that requires the evaluator's to quantify information received will assist in ranking the relative qualifications of the firms.

4) Award

Award shall be made to the firm determined to be best qualified based upon the evaluation factors set forth in the Request for Proposal and whose proposed compensation is determined to be fair and reasonable. The authority level required for award is the same as that for the purchase of goods and services.

LONG TERM RELATIONSHIPS WITH PROFESSIONAL FIRMS

Because of the critical and interpersonal nature of contracts with professional firms, it is recognized that it may be in the best interest of the CCTA to not put professional contracts out for competition each year. However, to keep the sharpness and responsiveness afforded by competition, professional service relationships should not exceed five years without complete re-evaluation. Formal contracts should include definite terms of service. Informal professional service relations, such as trainers, may be evaluated every year or two. Care should be taken for all purchases of professional services to avoid conflict of interest as outlined in Chapter 9.

PURCHASING MANUAL

CHAPTER 7

CONTRACT ADMINISTRATION

The User has the primary role in contract administration. The User is responsible for scheduling, ordering, receiving, inspecting, and if necessary, rejecting goods and services. The Administrative Division is responsible for notification of award, ensuring receipt of required proof of ~~necessary~~ insurance and bonds, providing a formal notice to proceed, administering change orders, administering prevailing wages and if necessary, termination of contracts for failure to perform.

NOTICE OF AWARD AND NOTICE TO PROCEED

When the User takes the quotations the Administrative Division uses a purchase order to formally notify the vendor it has been awarded the contract. For more formal contracts Administration sends a written Notice of Award to the Contractor. The Notice of Award is also used to notify the Contractor to provide an insurance certificate and/or performance and labor and material bonds when required. After receipt of the certificate of insurance and bonds the buyer sends a written Notice to Proceed, copying the User. The Notice to Proceed marks the beginning of a contract. If insurance and bonds are not required the buyer sends the purchase order and the signed contract to the Contractor, starting the contract period.

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FOLLOW-UP AND EXPEDITING

It is the responsibility of the User to follow-up and if necessary, expedite delivery of materials and services. Documenting the completion or delivery date on the purchase order or the contract assists the process of following-up and expediting contracts. In those instances where the User has exhausted expediting options and the Contractor proves unresponsive, the Administrative Division will also provide assistance.

RECEIVING, INSPECTING AND TESTING

The User must have a receiving and inspection program in place to monitor the performance of the vendor and ensure timely receipt of materials and services conforming to the specifications of the contract. Failure to ensure compliance with specifications will defeat the competitive bid system, allowing a Contractor to obtain an unfair advantage if providing inferior goods or services.

In order to be effective the inspection should take place as soon as possible after the materials are received to detect items damaged, inferior, or missing during delivery. Written records should be kept of any discrepancies to assist in documenting claims for correcting the problem. If it is determined that items do not meet specifications, the supplier should be advised of the deficiencies and given a time period to correct the problem. If necessary, the default provision of the contract must be exercised to ensure the CCTA receives goods and services meeting the requirements of the contract. Special testing may be required from time to time to ensure the authenticity of the product. If the contract does not provide for testing as part of the cost of the contract it is the User's responsibility to pay for the tests.

CONTRACT MODIFICATIONS, AMENDMENTS, AND CHANGE ORDERS

During the administration of a contract sometimes a modification is required. Alterations to the specifications, design, quantities, duration, completion time, etc. should be documented between the project manager and the Contractor to ensure enforceability of the contract. When the price of the contract increases or decreases the purchase order must be amended with the new cost.

The Contractor is required to anticipate all costs in fulfilling the requirements of the contract when preparing the bid. Price changes are not permitted to correct a Contractor's oversight. The only two reasons a contract price may be increased are:

- As a result of a modification approved by the CCTA;
- A pre-existing condition, not reasonably known or anticipated prior to the bid is discovered that affects the cost of performing the work

Changes to informal contracts are made by purchase order amendments while the change order form is used for material modification of formal contracts

A change order form is used to document changes to the formal contract. The Administrative Division, the Contractor or the Professional Design firm may prepare the change order form. Change order forms not prepared by the CCTA should be examined to ensure that the terms and conditions are not unknowingly altered. The change order form, whether prepared by the Contractor or the CCTA, should state the original price of the contract, the total cost of any previous approved changes, a description and cost for the change being authorized, and the new total of the contract. The form should also provide a place for the CCTA's and the Contractor's authorized signatures. Change orders are numbered sequentially for easy identification.

Depending upon the dollar amount of the change orders, approval is required as follows:

\$- 0 - \$ 2550 ,000	Both Division and Deputy Director of Support
Services Director of Support Services	
\$250,000.01 - \$ 5100 ,000	Executive Director and Deputy Director of Support
Services Director of Support Services	
\$ 5100 ,000.01 and over	CCTA Board

All change orders to CCTA Board approved contracts that exceed 15% of the contract or \$~~5100,000.01~~ must be reported on a monthly basis to the CCTA Board. If one or more change orders causes a contract not approved by the CCTA Board to exceed \$~~12550~~,000 that change-order must be taken to the CCTA Board for approval. [If the original contract's Independent Cost Estimate didn't account for these modifications then a new ICE will be created based the changes.](#)

TERM CONTRACTS AND EXTENSIONS

Term contracts are commodity or service contracts covering a period of time and specifying an estimated quantity. These contracts are beneficial for the CCTA because they reduce the administrative time for preparing multiple purchase orders throughout a year to meet anticipated demands. They also promote competition by combining quantities from multiple divisions and for extended periods of time. Term contracts ~~may~~ are not intended to exceed five years. If a division has a special circumstance that justifies a limited extension past five years, approval must first be obtained from the ~~Deputy Director of Support~~

Services Director of Support Services. Term contracts must include the provision that it may be cancelled with 30-days written notice for CCTA Board non-appropriation of funds.

Depending upon the price volatility of the product, term contracts may be bid for a one to ~~five year~~five-year period. If the term contract is less than five years, it is advisable to include a provision allowing for one or more extensions to the contract bringing it to a total five-year period. Contract extensions can only be approved when both the Contractor and the CCTA mutually reach agreement on the price for the new period. The Administrative Division ~~may will~~ perform a market study (ICE) if the price extension appears to be out of line with the economic and market indicators. The appropriate authority, based upon the total dollar cost of the extension, approves contract extensions.

In accordance with FTA 2 CFR Parts 180 and 200 and Circular 4220.1F, Chapter VI, all contract extensions should include a presolicitation Independent Cost Estimate (ICE) as part of a cost or price analysis to ensure that the CCTA does not pay unreasonably high prices to third party contractors. Prices, however, that are unreasonably low can also be detrimental to an agency's program if they prove to be an indication that the offeror has made a mistake or doesn't understand the work to be performed. It is important for recipients to do a cost analysis or price analysis for every procurement action in excess of the Simplified Acquisition Threshold in order to determine how realistic the costs are, and for recipients not to permit a "buy in" (an unrealistically low estimated contract cost and fee) that will eventually result in a substantial cost overrun.

The following is further guidance on the subject from the Federal Transit Administration (FTA). FTA recognizes that some recipients may have difficulty obtaining the information necessary to conduct a proper cost or price analysis. Although neither FTA nor DOT may change the requirements for cost or price analysis, FTA continues to seek a fair, practical solution to this problem consistent with the flexibility provided to Federal contracting officers under the FAR. Recipients may also use their own cost principles if they are consistent with the Federal cost principles. The requirement to use the FAR cost principles affects the allowability of costs not only on cost-reimbursement contracts but also when evaluating and negotiating cost elements in order to establish fixed price contracts. Thus, whenever a recipient does a cost analysis of an offeror's cost/price proposal, it will need to use the Federal cost principles or its own cost principles consistent with the FAR to determine what costs are acceptable for reimbursement under the FTA grant program. Prior to developing a cost or price analysis, a recipient must develop a presolicitation independent cost estimate (ICE). Once bids or offers are received and prior to award, the recipient must then develop a cost or price analysis. Use of a cost or price analysis form can help recipients conduct consistent and sufficiently documented procurements.

PREVAILING WAGE ADMINISTRATION

CCTA requires Contractors to pay prevailing wages to and meeting overtime requirements for their employees when the contract, to which the CCTA is a party, is "for construction, alteration, or repair, including painting and decorating of public buildings or public works in or for the CCTA, and which requires the employment of mechanics or laborers." Prevailing wage requirements apply to all locally funded construction contracts exceeding \$100,000 and \$2,000 for federally funded contracts, improving or maintaining CCTA of Kalamazoo buildings and infrastructure, regardless if the CCTA is directly paying the Contractor. Prevailing wages may also apply if required by grant funding requirements.

The Administrative Division uses the United States Department of Labor, Kalamazoo County, Michigan prevailing wage determination for the type of work to be performed. These are incorporated into the

[Invitation for Bids-procurement](#) document. The contractor is responsible for administering the prevailing wage requirements as provided for in the ordinance, the bid document, and if appropriate, the federal guidelines. This includes posting the wage rates at the work site, ensuring that all sub-contractors are paying prevailing wages, and providing at least bi-weekly certified payrolls for employees working on the job. A staff member from the Administrative Division may make one or more on-site inspections to interview Contractor's employees regarding their being paid prevailing wages. Staff from the Administrative Division reviews the certified payrolls to monitor that Contractors are paying prevailing wages.

If a complaint is filed in writing with the CCTA that a Contractor is not in compliance with the prevailing wage requirements, the Administrative Division will investigate the complaint. After completing the investigation, a written report will be made to both the Complainant and the Contractor regarding the CCTA's findings. Payments may be withheld from the Contractor if any provision of the prevailing wage requirements is not being met, until the Contractor has made the appropriate correction.

CONTRACT TERMINATION

If a Contractor is not performing according to the requirements of the contract the User must communicate in writing with the Contractor regarding how it is not meeting the requirements of the contract, that it is in default of the contract, and provide the Contractor with a specific number of days to correct the reason for the default. A copy of that written communication must be given to the Administrative Division. Default may be for one of the following reasons:

- Failure to provide proof of insurance or bonds;
- Failure to deliver supplies or perform services within the specified time;
- Unauthorized substitution of articles for those specified and bid;
- Failure to make progress if such failure endangers performance of the contract in accordance with its terms;
- Failure to perform in compliance with any provision of the contract;
- Not meeting the Standard of Performance for commodities, goods or services in accordance with accepted standards of the industry.

If the Contractor does not take appropriate steps to correct the default, and if in the Divisions' judgment the appropriate action is to terminate the contract, the User should prepare a written recommendation to the Administrative Division recommending termination of the contract. After review and concurrence by the Administrative Division, the Contractor will be notified in writing that the contract is terminated and be informed of any obligations it must fulfill to receive final payment.

Contracts for which the remaining value exceeds ~~\$5100,000~~ [of local funds or \\$120,000 of federal funds](#) may only be terminated after informing the Executive Director.

In some unusual circumstances the CCTA may need to terminate a contract for its own convenience. Those circumstances are:

- Unavailability of funds;
- Change in the CCTA's requirements, and
- Discontinuance of the project or municipal services for which goods or services was intended.

Termination of a contract for the convenience of the CCTA may result in great inconvenience and financial hardship for the Contractor. The CCTA should make reasonable efforts to arrive at a fair estimate of the impact upon the Contractor and afford fair treatment.

CONTRACT CLAIMS

~~1.~~ Contract Claims

All claims by the Contractor against the CCTA relating to a contract, except bid protests, shall be submitted in writing to the ~~Deputy Director of Support Services~~ Director of Support Services for a decision. The Contractor may request a conference with the ~~Deputy Director of Support Services~~ Director of Support Services on the claim. Claims include, without limitation, disputes arising under a contract and those based upon breach of contract, mistake, misrepresentation or other cause for contract modification or cancellation.

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~~2.~~ Notice of the ~~Deputy Director of Support Services~~ Director of Support Services' Decision

The decision of the ~~Deputy Director of Support Services~~ Director of Support Services shall be issued in writing within fourteen (14) calendar days after receipt of such claim, and shall be immediately mailed or otherwise furnished to the Contractor. The decision shall state the reasons for the decision reached, and shall inform the Contractor of its appeal rights.

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~~3.~~ Finality of ~~Deputy Director of Support Services~~ Director of Support Services' Decision; Contractor's Right to Appeal

The ~~Deputy Director of Support Services~~ Director of Support Services' decision shall be final and conclusive unless, within ten (10) calendar days from the date of receipt of the decision, the Contractor mails or otherwise delivers a written appeal to the Executive Director.

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~~4.~~ Decision of Executive Director

The Executive Director shall issue a decision, in writing, within fourteen (14) calendar days after receipt of an appeal unless the parties agree to a longer period. The decision of the Executive Director shall be final and conclusive and a copy of that decision shall be mailed, or otherwise furnished to the aggrieved party, and shall state the reasons for the action taken. In the absence of a decision by the Executive Director within the time specified, the decision of the ~~Deputy Director of Support Services~~ Director of Support Services shall stand.

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The Executive Director will notify the FTA in writing of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations.

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NON-DISCRIMINATION

The CCTA of Kalamazoo shall not discriminate against a business with respect to administering a contract because of race, ~~sex, color, ethnicity-color,~~ or national origin.

PURCHASING MANUAL

CHAPTER 8

SALE AND DISPOSITION OF CCTA PERSONAL PROPERTY

CCTA requires that personal property be sold through the ~~Deputy Director of Support Services~~Director of Support Services, under the oversight of the Executive Director. Users are in the best position to determine, on the basis of their program needs, what personal property is excess. Surplus personal property should be disposed of when identified to reduce carrying and storage costs and to obtain the best value for unused items.

METHODS OF DISPOSITION

When disposing of CCTA personal property or scrap, the following criteria should be used to determine if an appropriate disposal method is being used.

- Is the CCTA receiving a reasonable return for the surplus disposed of?
- Is a reasonable effort being made to generate competition?
- Does the personal property have true value or is it more properly classified as refuse.
- Does a CCTA employee have an unfair advantage in obtaining the property/scrap?

Divisions are responsible for the proper disposal of their surplus personal property or scrap. A Division may sell scrap materials up to \$36,000 in value after seeking competition and documenting the sale to the Administrative Division. With prior approval from the ~~Deputy Director of Support Services~~Director of Support Services a Division may sell personal property up to \$36,000 that was purchased with local funds. This sale must also be documented in writing to the Administrative Division.

Documentation for the sale of both scrap and personal property should include a description of what is sold, the method used to seek competition, revenue received by the CCTA from the sale, and the name and address of the buyer.

One of the following methods may be used for disposal of CCTA personal property or scrap.

1. Transfer

Surplus property may be sold to other governmental agencies for fair market value.

~~2.~~ Trade-ins

Incorporating the trade-in of surplus equipment being replaced by new through an Invitation for Bids reduces the administrative costs for the sale of that equipment. A possible trade-off of using the trade-in method is not obtaining the full potential value from its sale.

~~3.~~ Sale by Auction

Auctions are an effective method for selling a quantity of surplus items. The Administrative Division administers two auctions a year in cooperation with other units of government. This

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cooperative effort helps provide the quantity of items necessary to generate competition. A special auction may also be held when the quantity of CCTA surplus and time constraints for its disposal justify the administrative and out-of-pocket expense of a special auction. If an item has little or no value it should be thrown away, or recycled instead of incurring the expense of cataloging, transporting and auctioning it.

The Internet may also be used through sites such as E-bay for auctioning surplus property. The advantage of the Internet is the wider audience available to participate in generating competition.

~~4.~~ Sealed Bids/Quotes

Sealed bids and quotes are used to seek competition when other methods of disposal are not appropriate or practical. The item(s) are described for the potential buyer to bid upon. Time and thought should be given to generating competition and public notice should be made at a minimum on the CCTA website.

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ADDITIONAL CONSIDERATIONS WHEN SELLING CCTA ~~PERSONAL~~ PROPERTY

The terms of sale for CCTA personal property is that it is sold on an "as is/where is" basis. Although reasonable efforts should be made to briefly describe known major faults of equipment, the CCTA does not make any warranties or guarantees, expressed or implied regarding the condition, function, or safety of the property sold. It is surplus property of the CCTA being sold because it no longer is of use to the CCTA. The buyer is responsible for removing the property purchased and for its safe operation.

Personal property purchased with Federal Transit Authority (FTA) grant money with a unit fair market value exceeding \$5000 may be transferred to another governmental and/or nonprofit agency or sold with reimbursement to FTA of an amount calculated by multiplying the total aggregate fair market value at the time of disposition, or the net sale proceeds, by the percentage of FTA's participation in the original grant. Any disposition of equipment purchased using FTA grant money ~~before the end of its useful life~~ is subject to prior FTA concurrence in the method of disposition.

Any personal property, supplies or equipment purchased through the Federal and State Surplus programs must be placed in use for the purpose for which it was acquired. The Use Restrictions including disposal restriction of Federal Surplus Property must be followed by the User. This property may not be used for private or personal use.

PURCHASING MANUAL

CHAPTER 9

ETHICS IN PUBLIC CONTRACTING

CONFLICT OF INTEREST PROHIBITED

State statute (MCL 15.231) prohibits CCTA officials and employees from being a party to a CCTA contract. In order to comply with the state law, the CCTA will not contract with a company owned by a CCTA employee. Also, CCTA employees may not directly or indirectly represent a firm that is doing business with the CCTA nor solicit the CCTA for a contract.

GRATUITIES AND KICKBACKS

1. It is unethical for any person to offer or give to a CCTA employee, or for a CCTA employee to solicit or accept a gratuity or an offer of employment in connection with any decision, recommendation or preparation of any part of a purchase request. CCTA employees must avoid receiving personal gain from a vendor for the purpose of influencing the content of a specification or procurement standard, providing advice, influencing an investigation, audit, or other advisory capacity of a purchasing proceeding or decision.
2. Inexpensive advertising items such as pens, pencils, calendars, mousepads, etc. are not considered gratuities relative to this policy.
3. It is unethical for any payment, gratuity or offer of employment be made by or on behalf of a subcontractor under a prime contractor or higher tier subcontractor or any person financially associated with a contractor, as an inducement for the award of a subcontract or order.
4. The prohibition against gratuities and kickbacks described in this section must be conspicuously included in every [Invitation for Bid or Request for Proposal purchase or procurement](#) by the CCTA.

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PROHIBITION AGAINST CONTINGENT FEES

It is unethical for a person to be retained to solicit or secure a CCTA contract with an agreement or understanding of receiving a Board, percentage, brokerage, or contingent fees except for retention of bona fide employees or bona fide established lawful commercial selling agencies for the purpose of securing business.

OTHER UNETHICAL ACTIONS

It is unethical for a CCTA employee who is participating directly or indirectly in the procurement process, to become or to be while a CCTA employee, the employee of a vendor contracting with the CCTA.

It is unethical for an employee or former employee to knowingly use confidential information for his/her actual or anticipated personal gain, or for the actual or anticipated personal gain of another person.

It is unethical for a CCTA employee to use his/her position or status to solicit business, special discounts, or special concession for purchases for private use from a person who sells or solicits sales to the CCTA.

SANCTIONS

One or more of the following sanctions may be imposed on a CCTA employee for violations of the ethical standards in this chapter:

EMPLOYEES

- a. Oral or written warnings or reprimands;
- b. Suspension without pay for a specified period of time; or
- c. Termination of employment.

NON-EMPLOYEES

- a. Written warning or reprimands;
- b. Termination of contracts; or
- c. Debarment or suspension from bidding on future CCTA contracts.

The value of anything transferred or received in breach of these ethical standards may be recovered from both CCTA and non-CCTA employees.

Upon showing that a subcontractor made a kickback to a prime contractor or higher tier subcontractor in connection with the award of a subcontract or order as part of a contract with the CCTA, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract, or order and ultimately borne by the CCTA and will be recoverable from the recipient. In addition, that amount may also be recovered from the subcontractor making the kickback. Recovery from one offending party does not preclude recovery from other offending parties.

If the purchase is grant funded the applicable grantor requirements should be consulted to determine if more stringent rules apply.

APPENDIX A

VOUCHERABLE ITEMS

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VOUCHERABLE ITEMS

- Subscriptions
- Reimbursements and Refunds
 - Tuition
 - Tools
 - Customer deposits
 - Duplicate payment
 - Overpayments
 - Physicals
 - Approved business expense
 - User fee refunds
- Utilities
- Bond issuance costs
- Petty cash reimbursements
- Mileage
- Meals reimbursement
- Classified advertisements
- Expenses for services provided by other governmental agencies (federal, state and local)
- Conferences and
- ~~T~~ raining expenses (non-contractual)
- Travel expenses, including employee cash advances
- Claim and lawsuit settlements
- Court, arbitration and meditation fees and expenses
- Attorney witness fees
- Distribution of taxes
- Railroad repairs
- Fringe benefits providers
- Misc. items approved by the ~~Deputy Director of Support Services~~ Director of Support Services
- Books, text, manuals, video & audio tapes
- Memberships

Postage & UPS

Diesel Fuel purchases

APPENDIX B

FEDERAL TRANSIT ADMINISTRATION PURCHASING PROVISIONS

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FTA REQUIREMENTS

APPENDIX B-1 NONDISCRIMINATION

During the performance of this contract, the contractor agrees as follows:

- ~~(1)~~ **Nondiscrimination** – in accordance with Title VI of the Civil Rights Act, as amended, 42 USC subsection 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 USC subsection 6102, section 202 of the Americans with Disabilities Act of 1990, 42 USC subsection 12132, and Federal transit law at 49 USC subsection 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.

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

- a. Race, Color, Creed, National Origin, Sex ~~—~~ In accordance with Title VII of the Civil Rights Act, as amended, 42 USC subsection 2000e and Federal transit laws at 49 USC subsection 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of the Department of Labor (USDOL) regulations. “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” 41 CFR 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 USC subsection 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 tested 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 of 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 USC subsections 623 and Federal transit law at 49 USC subsection 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 USC subsection 12112, the Contractor agrees that it will comply with the requirements of the US Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements the FTA may issue.

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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FTA REQUIREMENTS

APPENDIX B-2 APPLICATION OF FEDERAL TRANSIT ADMINISTRATION REGULATIONS AND REQUIREMENTS

To achieve compliance with changing Federal requirements, the CCTA hereby includes notice that Federal requirements may change and the changed requirements will apply to this contract, as applicable, unless the Federal government determines otherwise.

The contractor also recognizes that the United States Environmental Protection Agency, Federal Highway Administration, and other agencies in the Federal Government have issued and are expected to issue regulations, guidelines, orders, or other requirements that may affect this contract. The Contractor acknowledges that other obligations relative to this contract involving Federal law may exist.

The CCTA has agreed to include provision adequate to ensure compliance of participation entities with Federal requirements. The contractor agrees to include in its subcontracts for service under this contract provisions adequate to impose Federal requirements including those below:

For all Contracts:

NOTICE OF FEDERAL REQUIREMENTS: The contractor shall comply with the rules of 49 CFR Part 18, relative to third party contracts with the CCTA, Uniform Administrative Requirements for Grants and Cooperative Agreements.

INTEREST OF MEMBERS OR DELEGATES TO CONGRESS: No member or delegate to the Congress of the United States shall be admitted to any share or part of this project or any benefit therefrom.

ENERGY CONSERVATION REQUIREMENTS: 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.

ACCESS TO RECORDS (sole source or offer): The contractor agrees to provide the CCTA system, 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/her 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. 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. 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 CCTA System, 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).

FTA REQUIREMENTS

CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS (applies to the contractor and its employees that administer any system of records on behalf of the Federal Government under any contract. Specific attention is drawn to contractors administering drug and alcohol enforcement activities for FTA): (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. subsection 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.

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, 1999) between the CCTA System, and the 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.

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 designed in Subpart B of 40 CFR Part 247.

NO OBLIGATIONS BY THE FEDERAL GOVERNMENT: (1) The CCTA System and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government or in 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.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS: These 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 2 CFR Parts 180 and 200 and Circular 4220.1DF](#), dated ~~April 15, 1996~~ [March 3, 2013](#), 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 CCTA requests which would cause CCTA to be in violation of the FTA terms and conditions.

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. subsection 3801 et seq. And U.S. DOT regulations, Program Fraud Civil Remedies, 49 CFR 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 assistance 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

FTA REQUIREMENTS

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. subsection 5307, the Government reserves the right to impose the penalties of 18 U.S.C. subsection 1001 and 49 U.S.C. subsection 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 the FTA. It is further agreed that the clauses shall not be modified, except to identify the contractor who will be subject to the provisions.

DISADVANTAGED BUSINESS ENTERPRISE PROVISION: The Federal Fiscal Year goal has been set by CCTA in an attempt to match projected procurements with available qualified disadvantaged businesses. CCTA goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established by CCTA as set forth by the Department of Transportation Regulations 49 C.F.R. Part 23, March 31, 1980, and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this solicitation.

- (1) Policy. It is the policy of the Department of Transportation and CCTA that Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, and as amended in Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Section 106(c) of the STURRA of 1987, apply to this contract.

The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 23 and Section 106(c) of the STURAA of 1987 have the maximum opportunity to participate in the whole or in part with federal funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age, or physical handicap in the award and performance of subcontracts. It is further the policy of CCTA to promote the development and increase the participation of businesses owned and controlled by disadvantaged individuals. DBE involvements in all phases of CCTA procurement activities are encouraged.

- (2) DBE obligation. The contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.
- (3) Where the contractor is found to have failed to exert sufficient reasonable and good faith efforts to involved DBEs in the work provided, CCTA may declare the contractor noncompliant and in breach of contract.

FTA REQUIREMENTS

- (4) The contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with CCTA's DBE program. These records and documents will be made available at reasonable times and placed for inspection by an authorized representative of CCTA and will be submitted to CCTA upon request.
- (5) CCTA will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request: identification of a qualified DBE; available listing of minority assistance agencies; holding bid conferences to emphasize requirements.
- (6) Definitions:
 - X Disadvantaged business: A small business concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it - OR - Which is at least 51 percent owned by one or more women, or in the case of public owned business, at least 51 percent of the stock of which is owned by one or more women; and, whose management and daily business operations are controlled by one or more women who own it.
 - X Small Business Concern: A small business, as defined by Section 3 of the Small Business Act and Appendix B - (Section 106(c)) Determinations of Business Size.
 - X Socially and economically disadvantaged individuals: Those individuals who are citizens of the United States or lawfully admitted permanent residents and who are black Americans, Hispanic Americans, native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, or any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act. Black Americans includes persons having origins in any of the Black racial groups of Africa; Hispanic Americans includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race; Native Americans includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians; Asian-Pacific Americans includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas; Asian-Indian Americans includes persons whose origins are from India, Pakistan, and Bangladesh.

FTA REQUIREMENTS

TRANSIT EMPLOYEE PROTECTIVE PROVISIONS: (1) The contractor agrees to comply with applicable transit employee protective requirements, as follows: (a) General Transit Employee Protective Requirements. To the extent that FTA determines that transit operations are involved, the contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. subsection 5333(b), and U.S. DOL guidelines at 29 CFR Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the US 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 US 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. subsection 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. subsection 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. subsection 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. subsection 5310(a)(2), and if the US Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. subsection 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. subsection 5333(b), US DOL guidelines at 29 CFR Part 215, and any amendments thereto. These terms and conditions are identified in the US 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 US DOL letter. (c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. subsection 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. subsection 5311, the contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the US Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by US DOL or any revision thereto. (2) The contractor also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by the FTA.

ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES: The contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA) as amended, 42 USC subsection 12101, et seq; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC, subsection 794, 49 USC subsection 5301(d), and the following Federal regulations, as they relate to this contract:

- (1) United States Department of Transportation regulations, Transportation Services for Individuals with Disabilities (ADA), 49 CFR Part 37.
- (2) United States Department of Transportation regulations, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, 49 CFR Part 27.
- (3) United States Department of Transportation regulations, Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles, 49 CFR Part 38.
- (4) United States Department of Justice regulations, Nondiscrimination on the Basis of Disability in State and Local Government Services, 28 CFR Part 35.

FTA REQUIREMENTS

- (5) United States Department of Justice regulations, Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 28 CFR Part 36.
- (6) United States General Services Administration regulations Accommodations for the Physically Handicapped, 41 CFR Subparts 101-19.
- (7) United States Equal Employment Opportunity Commission, Regulations to Implement the Equal Employment Provisions of the ADA, 29 CFR Part 1630.
- (8) United States Federal Communications Commission regulations, Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled, 47 CFR Part 64, Subpart F.
- (9) Federal Transit Administration regulations, Transportation for Elderly and Handicapped Persons, 49 CFR Part 609.
- (10) Any implementing requirements FTA may issue.

TERMINATION PROVISIONS – If there is a conflict between the termination provisions of the terms and conditions and these FTA provisions, the FTA provisions prevail.

- a. Termination for Convenience – The CCTA 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-outs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the CCTA ~~to be paid the Contractor~~. If the Contractor has any property in its possession belonging to the CCTA, the Contractor will account for the same, and dispose of it in the manner the CCTA directs.
- b. Termination for Default (Breach or Cause) – 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 CCTA may terminate this contract for default. Termination shall be effective 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 CCTA that the Contractor had an excusable reason for not performing, such as strike, flood, events which are not the fault of or are beyond the control of the Contractor, the CCTA, 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 – The CCTA 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 CCTA’s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within the established timeframe, the CCTA shall have the right to terminate the Contract without any further obligation to the Contractor. Such termination for default shall not in any way operate to preclude the CCTA from also pursuing all available remedies against the Contractor and its sureties for said breach or default.
- d. Waiver of Remedies for Any Breach – In the event that the CCTA elects to waive its remedies for any breach by the Contractor of any covenant, term or condition of the Contract, such waiver by the

FTA REQUIREMENTS

CCTA shall not limit the CCTA's remedies for any succeeding breach of that or of any other term, covenant or condition of this Contract.

FLY AMERICA REQUIREMENTS – The Contractor agrees to comply with 49 USC 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide the 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.

CARGO PREFERENCE REQUIREMENTS - Use of United States Flag Vessels: (applies to anything transported by ocean vessels) The contractor agrees to a) 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) furnish within 20 working days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rates, 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 CCTA System; 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.

For Operational Contracts (excluding transportation services) in excess of \$2,500; rolling stock contracts; and, construction contracts over \$2,000 (in conjunction with the Davis-Bacon Act clauses set forth below).

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT: Pursuant to Section 102 (Overtime):

- (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 damage.** In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore 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.

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- (3) **Withholding for unpaid wages and liquidated damages.** The CCTA System shall upon its own action or upon written request for 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 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 this section.
- (5) **Special Provision of Section 102 Nonconstruction Contracts: Payroll 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.
- (6) **Section 107 (OSHA): (This section is applicable to construction contracts only) Contract Work Hours and Safety Standards Act -**
- (i) The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 USC section 333 and applicable DOL regulations. "Safety and Health Regulations for Construction" 29 CFR Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.
- (ii) Subcontracts – The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for a specific

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project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a “subcontractor” if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a “subcontractor.” The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

For Research Contracts:

PATENT AND 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, CCTA or the contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may CCTA 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 CFR subsection 18.34 and 49 CFR subsection 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 purchase by CCTA 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, CCTA 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

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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 adaptation of automatic data processing equipment or programs for which CCTA or the 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, CCTA 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 CCTA or the 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 CCTA nor the contractor shall be required to indemnify the Federal Government of 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 CCTA or the 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 CCTA or the 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.), CCTA 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 CFR 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.

PATENT RIGHTS: (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, CCTA and the 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), CCTA 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 CFR Part 401. (3) The contractor also agrees

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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.

For Operational Service Contracts:

DRUG AND ALCOHOL TESTING: (Maintenance contractors and subcontractors -- these rules do not apply): The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the Michigan Department of Transportation, or the CCTA System 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 and to submit the Management Information System (MIS) reports before February 15th to the CCTA System Operations Supervisor. 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.

CHARTER BUS REQUIREMENTS: The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients 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., must not interfere with or detract from the provision of mass transportation).

SCHOOL BUS REQUIREMENTS: 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.

Special Requirements for Construction Contracts

Prime Contractor Participation. The prime contractor shall perform on the site with his/her own staff, work equivalent to at least ten percent of the total amount of construction work at the site. Only pay items of the construction contract will be used in computing the total amount of construction work at the site. The CCTA may increase this minimum amount of prime contractor participation depending upon the degree of specialization or time to perform the work.

Certified Payrolls Construction Project. The CCTA shall obtain from each contractor and subcontractor, a certified copy of each weekly payroll within seven days after the regular payroll date. Following a review by the CCTA of compliance with State and Federal labor laws, the payroll copy shall be retained by the CCTA for later review by FTA. A contractor may use the Department of Labor form WH-347, optional payroll form, which provides for all of the necessary payroll information and certifications. This Department of Labor form may be purchased at nominal cost from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. However, the contractor may use his/her own payroll form provided it includes the same information and certifications as the Department of Labor form WH-348 Statement of Compliance.

Site Inspections. The CCTA shall have access to the site of construction and shall have the right to inspect all work.

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Project Signs. The contractor shall erect at the site of construction, and maintain during construction, signs satisfactory to the Department of Transportation identifying the project and indicating that the Government is participating in the development of the project.

Warranty of Construction. For a period of one year from the date of completion as evidenced by the date of final acceptance of the work, the contractor warrants the work performed under this contract conforms to the contract requirements and is free of any defect of equipment, materials, or workmanship performed by the contractor or any other subcontractors or suppliers.

Under this warranty, the contractor shall remedy at his/her own expense any such failure to conform or any such defect. Nothing in the above intends or implies that this warranty shall apply to work which has been abused or neglected by the owner.

Accessibility Requirements. Construction projects shall comply with 41 CFR, Section 101-19.6, General Services Administration specifications on construction design for the physically disabled, and other mandates for accessibility as contained elsewhere in this specification or as may be implemented by the Federal Government.

For Construction Contracts in Excess of \$2,000

DAVIS-BACON ACT

(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 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 and 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 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.

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- (ii) 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.
- (iii) 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.
- (iv)
 - (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 therefore 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 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 (1)(iv) (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.

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- (2) **Withholding.** The CCTA 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 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 CCTA 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 violation 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 of 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 CCTA 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 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

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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 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 (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 persecution 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 (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 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

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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 as 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.

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- (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 be 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, 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 of 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 statement is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

For Contracts in Excess of \$100,000

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 CCTA. 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 Executive Director. 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 Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.

FTA REQUIREMENTS

PERFORMANCE DURING DISPUTE: Unless otherwise directed by the CCTA, 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 his/her employees, agent or others for who acts he/she is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

REMEDIES: Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the CCTA 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 CCTA 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 CCTA, Architect or Engineer, 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 constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

USE OF FACILITIES: In contracts exceeding \$100,000, the use of facilities included on the EPA list of violating facilities is expressly prohibited, per the requirements contained at 49 CFR Part 15.

CLEAN WATER REQUIREMENTS: (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 the FTA.

LOBBYING: (Construction/A&E/Rolling Stock/Professional Service/Operational Service) 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 CCTA System.

BUY AMERICA: (Applicable to construction contracts; acquisition of goods or rolling stock (over \$100,000)): The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR 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 CFR Part 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchased (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

FTA REQUIREMENTS

A bidder or offeror must submit to the CCTA System the appropriate Buy America certificate with all bids 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 non-responsive. The requirement does not apply to lower tier subcontractors.

SEISMIC SAFETY (applies to buildings - new construction or additions): 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 the 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.

CLEAN AIR: (1) The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 41 U.S.C. subsections 7401 *et seq.* The contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchase 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.

FOR CONTRACTS IN EXCESS OF \$250,000

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 CCTA System may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to CCTA 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, lower tier covered transaction, 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 CCTA 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 person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction unless authorized in writing by CCTA.
6. **The prospective lower tier participant further agrees by submitting this proposal that is will include the clause entitled Certification Regarding Debarment, Suspension, Ineligibility, and**

FTA REQUIREMENTS

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 determined the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of 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.
- ~~8. 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, CCTA may pursue available remedies including suspension and/or debarment.

~~—~~ Debarment Process Review – In addition to the CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS document that all vendors are required to sign for contracts over \$100,000, the Director of Support Services or designee shall be responsible for also ensuring that a System for Award Management (SAM) review is executed on sam.gov. Prior to contract award, a printout showing no debarment shall be printed and included in the bid file.

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Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Transactions

- (1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its principals [as defined at 49 CFR subsection 29.105(p)] is 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 to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

For Rolling Stock Procurement

BUS TESTING: The contractor agrees to comply with 49 U.S.C., subsection 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 grand fathered

FTA REQUIREMENTS

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

PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS: The contractor agrees to comply with 49 U.S.C. subsection 5323(1) and FTA's implementing regulation at 49 CFR 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 activities that will take place at 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.

Special Requirements for Vehicle Acquisition

Buy America. In accordance with 49 CFR Part 661.13, the attached certification shall be completed and submitted with the bid in accordance with this part.

Motor Vehicle Pollution. 40 CFR Parts 84 and 85, Motor Vehicle Pollution Requirements, establish emission standards for vehicles, and are applicable to Federal contracts for vehicle acquisition.

Safe Vehicles. Contracts for vehicles must comply with 49 CFR Part 500, Motor Vehicle Safety Standards, which set forth requirements for delivery of safe vehicles.

Accessible Vehicles. Contractors must comply with 49 CFR Part 27, Elderly and Handicapped. This regulation implements Section 504 of the Rehabilitation Act of 1973, and outlines accessibility requirements. In the provision of accessible vehicles, the contractor shall also comply with the U.S. Department of Transportation regulations Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles, 49 CFR Part 38.

FTA REQUIREMENTS

BUY AMERICA CERTIFICATE (A)

Certification requirement for procurement of steel, iron, or manufactured projects:

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

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date _____

Signature _____

Company _____

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), but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date _____

Signature _____

Company _____

Title _____

FTA REQUIREMENTS

BUY AMERICA CERTIFICATE (B)

Certification requirement for procurement of buses, other rolling stock and assorted 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 CFR U.S.C. 5323(j)(2)(C) and the regulations at 49 CFR Part 661.

Date _____

Signature _____

Company _____

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 CFR U.S.C. 5323(j)(2)(C), but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations at 49 CFR Part 661.7.

Date _____

Signature _____

Company _____

Title _____

FTA REQUIREMENTS

**CERTIFICATION OF COMPLIANCE WITH
FTA'S BUS TESTING REQUIREMENTS**

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

The undersigned understand 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.

Certification requirement for procurement of buses, other rolling stock and assorted 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 CFR U.S.C. 5323(j)(2)(C) and the regulations at 49 CFR Part 661.

Date _____

Signature _____

Company _____

Title _____

FTA REQUIREMENTS

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 certifies to the best of his/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, or 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 as 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., subsection 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. subsection 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., subsection 3801, et seq., apply to this certification and disclosure, if any.

Date _____

Signature _____

Company _____

Title _____

FTA REQUIREMENTS

DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by U.S. Department of Transportation regulations on Government and Suspension at 49 CFR 29.510, the Contractor certifies to the best of its knowledge and belief, that it and its principals:

- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
- (2) Have not within a three-year period preceding 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 anti-trust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
- (3) Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, state, or local) with the commission of any of the offenses listed in paragraph (2) of this certification.
- (4) Have not within a three-year period preceding this contract had one or more public transactions (Federal, state, or local) terminated for cause of default.

The contractor certifies that if it becomes aware of any later information that contradicts the statements of paragraphs (1) through (4) above, it will promptly inform FTA. Should the contractor be unable to certify to the statements of paragraphs (1) through (4) above, it shall acknowledge on its signature page and provide a written explanation to FTA.

Signature of Authorized Individual

Title

This certification must be attached and returned with any bid/proposal/offer exceeding \$~~250~~50,000.

FTA REQUIREMENTS

APPEALS AND REMEDIES - FTA GRANT REQUIREMENTS

(A) PROTESTS

(1) *Right to Protest*

Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may file a written protest with the ~~Deputy Director of Support Services~~Director of Support Services. A protest with respect to an Invitation for Bids or Request for Proposal shall be submitted in writing prior to the opening of bids or the closing date of proposals, unless the aggrieved person did not know and would not have known of the facts giving rise to such protest prior to bid opening or the closing date for proposals. In all cases, the protest shall be submitted within ten (10) calendar days after receiving knowledge of the action about which the protest is being made.

(2) *Stay of Procurement During Protests*

In the event of a timely protest, the ~~Deputy Director of Support Services~~Director of Support Services shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or until the Executive Director makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of the CCTA.

(3) *Notification of Granter Agency - Grant Funding*

If a procurement action which spends grant funding is subject to a protest, the grantor agency shall be notified in writing of such protest and any subsequent response made by the CCTA or the challenging vendor.

(4) *Decision of ~~Deputy Director of Support Services~~Director of Support Services*

The ~~Deputy Director of Support Services~~Director of Support Services shall issue a decision in writing within fourteen (14) calendar days after receipt of such protest or notice of other controversy. A copy of that decision shall be mailed, or otherwise furnished, to the aggrieved party and shall state the reasons for the action taken.

(5) *Appeal*

The decision of the ~~Deputy Director of Support Services~~Director of Support Services shall be final and conclusive unless the aggrieved party files a written appeal with the ~~Deputy Director of Support Services~~Director of Support Services, addressed to the Executive Director, within ten (10) calendar days after receipt of the ~~Deputy Director of Support Services~~Director of Support Services's decision.

FTA REQUIREMENTS

(6) *Decision of Executive Director*

The Executive Director shall issue a decision, in writing, within fourteen (14) calendar days after receipt of appeal unless the parties agree to a longer period. The decision of the Executive Director shall be final and conclusive, and a copy of that decision shall be mailed, or otherwise furnished, to the aggrieved party and shall state the reasons for the action taken. In the absence of a decision by the Executive Director within the time specified, the decision of the ~~Deputy Director of Support Services~~Director of Support Services shall stand.

(B) CONTRACT CLAIMS

(1) *Decision of the ~~Deputy Director of Support Services~~Director of Support Services*

All claims by the contract against the CCTA relating to a contractor, except bid protests, shall be submitted in writing to the ~~Deputy Director of Support Services~~Director of Support Services for a decision. The contractor may request a conference with the ~~Deputy Director of Support Services~~Director of Support Services on the claim. Claims include, without limitation, disputes arising under a contract and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

(2) *Notice to the Contractor of the ~~Deputy Director of Support Services~~Director of Support Services' Decision*

The decision of the ~~Deputy Director of Support Services~~Director of Support Services shall be issued in writing within fourteen (14) calendar days after receipt of such protest, and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of its appeal rights.

(3) *Finality of ~~Deputy Director of Support Services~~Director of Support Services' Decision: Contractor's Right to Appeal*

The ~~Deputy Director of Support Services~~Director of Support Services' decision shall be final and conclusive unless, within ten (10) calendar days from the date of receipt of the decision, the contractor mails or otherwise delivers a written appeal to the Executive Director or commences an action in a court of competent jurisdiction.

(4) *Decision of Executive Director*

The Executive Director shall issue a decision, in writing, within fourteen (14) calendar days after receipt of an appeal unless the parties agree to a longer period. The decision of the Executive Director shall be final and conclusive and a copy of that decision shall be mailed, or otherwise furnished, to the aggrieved party, and shall state the reasons for the action taken. In the absence of a decision by the Executive Director within the time

FTA REQUIREMENTS

specified, the decision of the ~~Deputy Director of Support Services~~Director of Support Services shall stand.

APPENDIX C

GLOSSARY OF PURCHASING TERMS

Glossary of Public Purchasing Terms

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Brand Name or Equal Specification: A specification limited to one or more items by manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet CCTA requirements, and which provides for the submission of equivalent products.

Brand Name Specification: A specification limited to one or more items by manufacturer's names or catalogue numbers.

Business: Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

Change Order: A written order signed and issued by the ~~Deputy Director of Support Services~~Director of Support Services, directing the contractor to make changes which the "Changes" clause of the contract authorizes.

Confidential Information: Any information which is available to an employee only because of the employee's status as an employee of the CCTA and is not a matter of public knowledge or available to the public on request.

Construction: The process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

Contract: All types of CCTA agreements, regardless of what they may be called, for the procurement of supplies, services or construction.

Contractor: Any person having a contract with the CCTA or using an agency thereof.

Cost Analysis: The evaluation of cost data for the purpose of arriving at costs actually incurred or estimated of costs to be incurred, prices to be paid, and costs to be reimbursed.

Cost Data: Factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred by the contractor in performing the contract.

Cost-Reimbursement Contract: A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this Ordinance, and a fee or profit, if any.

Direct or Indirect Participation: Involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

Employee: An individual drawing a salary or wage from the CCTA, whether elected or not.

Gratuity: A payment, loan, subscription, advance, and deposit of money, service, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

Invitation for Bids: All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

Person: Any business, individual, union, committee, club, other organization, or group of individuals.

Price Analysis: The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.

Pricing Data: Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices, and current selling prices. The definition refers to data relevant to both prime and sub-contract prices.

Procurement: The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service or construction, including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Procurement Card: A credit card with electronic embedded information used to purchase materials and services consistent with delegated authority.

Public Agency: A public entity subject to or created by the CCTA.

Purchase Order: The document used to formalize a purchase transaction with a vendor. It may serve as the actual purchasing contract or be one of several documents necessary to make up a complete contract. Also serves as an internal form for certifying receipt of goods or services.

Qualified Products List: An approved list of supplies, services, or construction items described by model or catalogue numbers, which, prior to competitive solicitation, the CCTA has determined will meet the applicable specification requirements.

Request for Proposals: All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

Responsible Bidder or Offeror: A person who has the capacity in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

Responsive Bidder: A person who has submitted a bid which conforms in all material respects to the requirements set forth in the Invitation for Bids.

Services: The furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.

Sole (or single) Source Purchase: An award for a commodity or service that can only be purchased from one supplier, usually because of its technological, specialized, or unique character.

Specification: Any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or properly preparing a supply, service, or construction item for delivery.

Supplies: All property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

User: Any internal division, Board, or public agency requiring supplies, services, or construction procured.

APPENDIX D

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CCTA BOARD / EXECUTIVE DIRECTOR
APPROVAL PROCESS

APPROVAL PROCESS FOR PURCHASES OVER \$~~250~~50,000

1. **EVALUATION:** Evaluate the bids or proposals received and determine the best purchase for the CCTA (including meeting the CCTA’s purchasing policy)
2. **RECOMMENDATION:** Prepare a recommendation memo:
 - a) Addressed to the Executive Director for purchases \$~~250~~0,001 to \$~~50~~100,000
 - b) Addressed to the CCTA Board for purchases over \$~~5~~100,000 (~~template attached~~)
3. **REQUISITIONING:** Prepare an electronic requisition in the Eden ERP system
4. **ATTACHING:** Attach the recommendation memo (in Word format) to the requisition and forward through the Eden approval process.
5. **ROUTING:** The approval steps are:
 - a) Division Manager
 - b) ~~Deputy Director of Support Services~~Director of Support Services
 - c) CCTA Attorney (contracts over \$100,000)
 - d) Executive Director
6. **TIMING:** The cutoff for submitting items to be placed on a CCTA Board agenda is ~~noon, the~~ noon, the Friday ten days before the Board meeting. Requisitions should start the routing ~~process the Monday—~~ process the Monday of that week to allow sufficient time for review by Division Manager and CCTA ~~A~~Attorney and assembly of the contract by ~~Deputy Director of Support Services~~Director of Support Services.

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