

Purchasing and Procurement Policy

Atlanta Regional Commission

Effective: May 1, 2018



POLICY STATEMENT

It is the policy of the Atlanta Regional Commission that all procurement transactions shall be conducted in a manner that provides maximum open and free competition consistent with the efficient performance of its work program and with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (the "Super Circular") effective as of December 26, 2014. When applicable, Department of Transportation (U.S. DOT) regulations, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 C.F.R part 1201, will supersede and apply in lieu of U.S. DOT's common grant rules, 49 C.F.R. parts 18 and 19 and the Federal Cost Principles Circulars, 2 C.F.R. parts 220, 225, and 230. All laws and regulations for the state of Georgia and relevant funding agencies should also be adhered to.

It is also the policy of the Atlanta Regional Commission that Disadvantaged Business Enterprises (as defined in 49 CFR 26) and Small Business Concerns (as defined by the United States Small Business Administration) shall have the maximum practicable opportunity to participate in the performance of ARC's contracts. It shall be the responsibility of each ARC Center Director to ensure that purchasing and contracting activities by members of their respective Centers allow DBEs and Small Business Concerns the opportunity to participate.

This policy applies to all operations of the Atlanta Regional Commission, including its subrecipients and anyone who acts on behalf of the Atlanta Regional Commission. This policy also applies to the operations of any department or agency to which the Atlanta Regional Commission extends federal financial assistance. Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance.

All ARC Policies and provisions shall be adhered to when applying these procedures, including but not limited to, ARC bylaws and enabling legislation, ARC Standards of Ethical Conduct policies, ARC Financial Policies and Procedures, ARC DBE Plan, ARC Title VI Plan, and the ARC Personnel Policy. The Executive Director has designated the Contracts and Grants Analyst and Purchasing Agent to enforce and update this Guide as necessary.

Materials, services, and supplies shall be purchased only when available funds have been appropriated and included in the Annual Budget of the Atlanta Regional Commission.

ARC is committed to sustaining the environment through education, principled advocacy, and inclusive decision-making in order to make Georgia a premier environmental state. Where it is financially feasible ARC will - procure office supplies, furniture and equipment that are made from recycled or earth friendly materials; procure cleaning supplies that are Green Seal Certified; consider the emission footprint of automobiles when making selections for fleet replacement; make an effort to purchase hybrid or alternative fuel vehicles when possible; procure rechargeable batteries for use whenever possible; and procure break room supplies, such as coffee cups, stirrers, napkins and paper towels that are recyclable or earth friendly.


Douglas R. Hooker
Executive Director


Date

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CHAPTER I. INTRODUCTION

PART I. PURPOSE

Procurement of materials, supplies, and services is an important function of the Atlanta Regional Commission (ARC). The purpose of this guide is to establish procedures for the staff of the Atlanta Regional Commission (hereinafter, “ARC”) to follow regarding the procurement, purchasing and contracting of goods and services. The procedures set forth herein are designed to ensure timely and efficient acquisition of services at reasonable cost; consistent with sound business practices, and to assure full and open competition among parties interested in doing business with ARC.

These procedures shall be followed for any procurement of goods and services. The purchase of any item not requiring a Purchase Order and \$ 3,500.00 or below in value shall comply with the Accounts Payable procedures. The purchase of ordinary goods between \$ 3,500.01 and \$25,000.00, or those under \$ 3,500.01 requiring a purchase order, shall comply with the purchasing guidelines. Ordinary goods are specific in nature and typically do not require a formal contract. Operating supplies, materials, and other tangible objects that are normally billed in one or two payments are considered ordinary goods. These types of purchases are generally small in nature, do not exceed \$25,000, and do not require any advance payment or authorization beyond the Group Manager and/or Center Director.

The purchase of services over \$ 3,500.00, the purchase of goods over \$25,000.00, the award of a grant or subgrant, and any other legally binding agreements shall comply with the contracting guidelines. Procedures for contracts normally apply to professional/consulting services, leases, and license agreements regardless of the amount. Services are usually projects that involve professionals and require payments over time. Any legally binding written agreements ARC engages whether there is an exchange of funds or not, shall be governed by these policies. Procedures for the procurement of consultant services and subgrants shall be superseded by any grantor requirements. If a project is to be carried out in multiple phases and/or multiple years, the dollar threshold should be based on the current best estimate of the total value of the project, NOT each separate phase or year in determining which rules apply to the purchase.

PART II. STANDARD OF ETHICAL CONDUCT AND CONFLICTS OF INTEREST

Section One: Statement of Policy

Management and staff must discharge their duties impartially to ensure fair competitive access to governmental procurement by responsible vendors, contractors, etc. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the agency procurement process. To achieve this purpose, it is essential that those doing business with the agency also observe the ethical standards prescribed herein.

Employees should avoid any action, whether or not specifically prohibited here or in the Standard of Ethical Conduct, which might result in or create the appearance of:

1. Using public office for private gain
2. Giving preferential treatment to any organization or person
3. Impeding government efficiency or economy
4. Making decisions outside official channels
5. Losing independence or impartiality of action
6. Denying any citizen or group access to the decision-making process of ARC
7. Affecting adversely the confidence of the public in the integrity of ARC

Section Two: General Standards of Ethical Conduct

Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee’s duties is a breach of public trust. In order to fulfill these standards, employees must meet the specific standards set forth as adopted in ARC’s Standards of Ethical Conduct, found at: [ARC Standards of Ethical Conduct](#) and summarized briefly in the following paragraphs:

Conflict of Interest: ARC shall not enter into any contract involving services or property with a Board member, Committee member, or employee, or with a business in which a Board member, Committee member or employee has an interest.

- a. A Board member, Committee member or employee may be deemed to have an interest in a contract in which any of the following have an interest:
 - i. Any person in his/her immediate family
 - ii. His/her employer, business associate, or a principal customer or client
 - iii. A business in which he/she owns five percent or more of the ownership interests or in which he/she takes an active part in the management of the business
 - iv. A business in which he/she is a creditor, whether secured or unsecured.
2. Employee Disclosure Requirements: A Commission member, Committee member, or employee, who has reason to believe that he has an interest which may be affected by his official acts or actions or by the official acts or actions of the Commission, shall disclose the precise nature and value of such interest by sworn written statement to the Ethics Committee and ask for its opinion as to the propriety of said interest.
3. Confidential Information: A Commission member, Committee member, or employee may not directly or indirectly make use of, or direct others to make use of, for the purpose of furthering a private interest, confidential information acquired by virtue of his position or employment with the Commission.
4. Contracts Involving Former Board members, Committee members, or Employees: ARC shall not enter into any contract with, or take any official act or action favorably affecting any person, or business represented by or employing any person who has been within the preceding twelve (12) months, a Board member, Committee members, or employee in the grade of Group Manager or higher, and who by virtue of his/her knowledge of ARC operations, would give the person or business unfair advantage over its competitors.

Section Three: Violations

A contract made in violation of these prohibitions is illegal. If the Chairman of the Board determines that the conflict is substantial and material, and it was not properly disclosed, such violation will be reported to the relevant local Board from which that member was elected. If such a determination is made by the Chairman of the Board or the Executive Director involving a citizen Board member, Committee member, or employee, that individual may be removed from his/her current position under the process outlined in the ARC By-Laws or Employee Personnel Policy as applicable.

Board members and employees should avoid all situations in which their personal interests affect their public actions or come into conflict with them.

The Bylaws of the Atlanta Regional Commission adopted September 10, 1971, amended through October 22, 2014; effective January 1, 2015, Article VIII, are to be adhered to in the strictest manner and will supersede items in this document. Documents are available at – [ARC Bylaws](#)

PART III. MISCELLANEOUS

Section One: Small and Minority Business Opportunity

ARC will make efforts to get small, minority, and women owned businesses to compete for contracts. These efforts include: advertising procurements in media serving the local and minority communities; establishing bidders list to inform small and minority-owned businesses of specific procurement opportunities. ARC is committed to extending competition and the realizations that lower prices are caused by increased competition. ARC also has a DBE policy on file.

Section Two: Non-Geographic Preference

ARC recognizes and adheres to the law prohibiting state and local government grantees from using state or local geographic preferences in evaluating bids, except where federal statutes expressly mandates or encourages such preference.

Section Three: Delivery and Receipt of Goods

Deliveries are made to the lobby receptionist office at ARC. The receptionist contacts the receiving staff person for pick up. The receptionist maintains a log of the staff person who picks up the delivery. Large deliveries are coordinated with the General Services Manager or Purchasing Agent for delivery to the Peachtree Center loading dock. Once items are received, they should be inspected by the staff immediately. If there is a problem with the order, the packing slip should be kept and staff should contact the vendor to resolve any problem.

Section Four: Unallowable costs

The following purchases are a non-exhaustive list of unallowable costs with the use of federal funds: alcohol, certain public relations and advertising costs including promotional items such as models, gifts or souvenirs, or advertising and public relations designed solely to promote the agency, bad debts, contributions or donations, prosecution of claims against the federal government, entertainment costs, costs incurred for fund raising, personal items, costs for securing patents or copyrights, lobbying, membership in a country club, dining club or social club, and travel costs above those outlined in the ARC Travel and Reimbursement Policy.

Section Five: Special purchases

The purchase of alcohol and entertainment costs may be made if all the following criteria are met:

- Private funds (i.e. non-public) are available and utilized to cover the entire cost
- Purchase is an integral part of an ARC-hosted special event
- Pre-planned special event is hosted off-site

Such a purchase requires pre-approval by the Executive Director. The purchase must comply with the competitive requirements of this Manual. The purchase may not be made on a purchasing card or through staff reimbursement. Purchase must be completed under regular accounts payable, purchasing, or procurement policies and depends upon availability of private (i.e. non-public) funds.

Section Six: Sponsorships or Donation

ARC funds may never be used to make a charitable donation, as this is a violation of the Gratuities Clause of the Georgia Constitution. GA. CONST. Art. III, Sec. VI, Para. VI(a). ARC funds may be used for sponsorships dependent upon grant allowability. Such sponsorships must result in a clear and substantial public benefit. Sponsorship payments should follow the AP process or the Contracting process dependent upon the amount of the sponsorship and the availability of a sponsorship agreement.

Section Seven: Special Events

Staff attending local special events requiring the purchase of a ticket, table or other registration should request payment through the AP process, or follow the Employee Travel and Reimbursement Policy. ARC staff should be prioritized in extending invitations where additional seats purchased by ARC may be available at such events. ARC regional partners and member agencies may be invited where additional seats are available and ARC staff invitations have been exhausted. The Executive Director may purchase an additional ticket, or other registration, to accommodate a single guest when the event is after business hours, on a weekend, or on a holiday.

PART IV. POLICY IMPLEMENTATION

The Executive Director shall have responsibility for the administration and proper implementation of this Policy. In the absence of the Executive Director, his designated agent(s) shall assume said responsibility. Each ARC employee shall comply with the provisions of this Policy, unless otherwise directed by the Executive Director or Board of Directors.

The ARC employees holding the positions of Contracts and Grants Analyst and Purchasing Agent shall be responsible for assisting the Executive Director with the administration and implementation of this Policy. The Contracts and Grants Analyst and Purchasing Agent, subject to the approval of ARC's Executive Director, shall

have the authority to develop standard forms and documents for use in procurement transactions, including, without limitation, compilation of general terms and conditions applicable to ARC contracts.

For each transaction, other than transactions completed with a purchasing card, an ARC employee shall be designated as “Project Manager.” Typically, this will be a Center Director or a designee thereof. This employee shall be responsible for monitoring the vendor’s performance to ensure that ARC receives the services to be provided in accordance with the terms and conditions of the applicable agreement.

Throughout this Document, references to “financial invoicing system” refers to Concur or CostPoint as applicable.

PART V. VIOLATIONS

Notwithstanding specific sanctions and violations established elsewhere in this policy, violations of this policy will be subject to discipline as outlined in the Discipline and Termination chapter of the ARC Employee “Personnel Policy”. Repeated violations will result in an escalation of discipline, with violations resetting every two years. ARC employees shall be periodically retrained on these policies and shall certify every two years that they have reviewed the most recent version of this policy.

CHAPTER II. PURCHASING CARDS POLICY

PART I. PURPOSE

The purpose of the Atlanta Regional Commission (ARC) Purchasing-card (P-card) policy is to provide direction and authority for proper card use. The policy may be amended as needed.

ARC permits staff to obtain P-cards to make purchases and conduct business in an efficient manner within the limits established below. All use and responsibility of the P-card reside with the cardholder and his/her supervisor. Cardholders are responsible for charges made to the card and may be held liable for any unauthorized items appearing on the statement. Cardholders are given online access to their accounts to monitor activity for any fraudulent charges and to print statements or transaction details.

Cardholders are responsible for safeguarding their accounts and using the cards when appropriate. Only the named cardholder may use the card, and the card or number should not be given to other ARC employees. All card purchases must adhere to ARC procurement guidelines as found in this document and include proper documentation including itemized receipts. The P-cards will be linked to the ARC control credit account and one payment for all cards will be processed monthly. Cardholder privileges may be revoked at any time. Fuel purchase cards issued with the use of agency vehicles are also subject to these policies. The only allowable cost for Fuel purchase cards is fuel.

PART II. PROCEDURES

1. The Purchasing Agent and Finance Manager are responsible for authorizing the use of P-cards.
2. Current and prospective cardholders are required to sign a cardholder form and agreement indicating they accept the P-card terms and conditions and will use the card strictly for ARC related business purposes.
3. Cardholders are limited to one active P-Card. Cardholders must be permanent, full-time ARC staff whose jobs require the use of a P-Card.
4. The P-card monthly credit limit is \$ 5,000. In extenuating circumstances where legitimate business purchases may require a higher limit, a memo must be submitted to the Center for Business Services Director requesting a temporary limit increase for no longer than 60 days. No limits may be higher than \$ 25,000.00 under any circumstances. Purchases on P-Cards over \$ 3,500.00 MUST comply with the procurement provisions of this manual. No single purchase over \$ 5,000.00 may be made on a P-Card. Cardholders are prohibited from splitting a transaction to circumvent either the limits, or the procurement process required by this policy.
5. Where it is possible, recurring purchases should not be made on the agency P-Card. IT expenses should be invoiced through the IT department. Contract payments should follow the financial invoice processing system.
6. Travel purchases should not be put on the agency P-Card. Conference registration may be booked on a P-card, but all other travel expenses should be paid through the ARC Travel and Reimbursement Policy.
7. Each cardholder will be responsible for entering transaction details (description/purpose, cost center, accounting code, and requester) as printed on his/her monthly statement in the financial invoicing system.
8. Each transaction must have a corresponding receipt or confirmation – including refunds. Refund documentation may include a print out or screen shot of the transaction details from the online credit card activity center. Expenses submitted without an itemized receipt, must be reimbursed to ARC by the Cardholder at the time the statement is due.
 - a. Itemized receipts and P-card slips with tip amount are required for meal expenses.
 - b. A list of attendees and organization/company affiliation should be included for all meals if it's more than one person.
 - c. An agenda must be attached if applicable.
9. Cardholders or designee will be required to enter transactions from their monthly statement into ARC's accounting system for payment. The monthly statement will be treated as an invoice and given an invoice number. The invoice number should follow this naming convention – first name initial and last name initial, last four digits of P-card account number, first 3 letters of the previous month of statement activities, and four-digit year.

Example: Jane Doe statement closing 1/2/2017 - JD5555Dec2016

10. Cardholders must make sure the invoice amount in the accounting system equals the total amount due on their monthly statement.
11. The deadline to upload the monthly statement and supporting documentation is the 15th or following business day if 15th is on the weekend or holiday.
12. Cardholders must upload the supporting documentation for each transaction in the same order as the transactions are listed on the statement.
13. Late fees will be charged to the Group or center that misses the deadline and delays payment to the control account. Late fees assessed by the P-card company will be charged the following month to the applicable Group or center.
14. Cash advances are not permitted.
15. **PROHIBITED PURCHASES:**
 - a. Alcohol
 - b. Entertainment
 - c. Gift Cards
 - d. Personal purchases
 - e. Individual meals subject to travel policies and the Per Diem
 - f. Tobacco products
16. Staff must notify the Purchasing Agent or Finance Manager immediately in the event a card is lost or stolen.
17. The P- card is the property of ARC and any cardholder leaving the employment of ARC must surrender the P-card to the Purchasing Agent who will close the account.

PART III. PENALTIES FOR VIOLATION

Individuals who do not adhere to these policies and procedures risk revocation of their P-card privileges and/or disciplinary action.

With respect to any purchase made with a purchasing card, if the employee to whom such card was issued does not provide documentation meeting the requirements above, such employee shall be personally responsible for such purchase. The Cardholder will be required to reimburse ARC for such expenses by the date the P-card statement is due. Every effort should be made by the Cardholder to obtain receipt(s) if a receipt does not accompany the documentation (e.g., if records are lost).

A purchase of a prohibited expense under number 15 above on a P-Card will result in the immediate and permanent termination of the Cardholder's account and rights to a P-Card, and Cardholder will be required to reimburse ARC for such purchases. Cardholder may also be subject to additional employee discipline. Other violations of the policy not including prohibited purchases will be subject to the following process:

- 1st P-card policy violation – Verbal warning from the direct supervisor to the cardholder. This is considered a warning but can be elevated to a personnel action depending on the severity of the offense.
- 2nd P-card policy violation – Written warning (memo) from Center for Business Services Director to the cardholder, their direct supervisor, and applicable Center Director.
- 3rd P-card policy violation – Center for Business Services will impose a minimum one-month account suspension and submit a letter to the personnel file of the Cardholder and of their direct supervisor.

Violations shall accrue and reset on a two year basis.

PER O.C.G.A. § 16-9-30 ET. SEQ., VIOLATION OF THIS POLICY MAY RESULT IN CRIMINAL CHARGES PUNISHABLE BY A FINE OF UP TO \$ 5000.00 OR UP TO 3 YEARS IMPRISONMENT.

PART IV. PURCHASING CARD RECONCILIATION

All current ARC purchasing procedures will apply to transactions completed using an ARC P-card. The Purchasing Agent shall have discretion when using his/her card. **All purchases made on the Purchasing**

Agent P-card will require a document signed by the requesting Group Manager or Center Director with cost center and account information prior to the purchase transaction. Payment for P-card purchases shall be handled monthly and each cardholder will be responsible for entering his/her statement into the financial invoicing system. Each cardholder will be responsible for entering transaction details (description/purpose, cost center, accounting code, and requester) as printed on his/her monthly statement in the financial invoicing system and shall attach original or photocopied receipts. **All documentation for P-card charges must be entered in the financial invoicing system by the 15th of the month or the next business day.** The purchasing log and receipts will be attached to the monthly bank statement uploaded as supporting documentation. Itemized receipts should include: name and address of the vendor, date of service, description of goods/service, amount paid for each individual item, and total amount paid. No expense should be approved if a required receipt is missing. Expenses submitted without the appropriate documentation must be reimbursed to ARC by the Cardholder. The supervisor must review all purchases made by the cardholder and indicate his/her approval by approving in the financial invoicing system. If discrepancies are found the Purchasing Agent will notify the cardholder of the discrepancy and wait for the correction to be made. All valid charges must be paid in the month they are billed. Any return of goods or services purchased on a P-card may require the payment to be made before the credit is issued.

CHAPTER III. ACCOUNTS PAYABLE POLICY

Policy Requirements			
Threshold and Minimum Approval	Goods	Services	Grant Awards or Other Legal Documents
\$0-\$ 3,500.00 (Group Manager)	Ch. III. Accounts Payable	Ch. III. Accounts Payable	P- Card Limit- \$5,000.00
\$ 3,500.01- \$ 25,000.00 (Center Director)	Ch. IV. Purchasing Guidelines	Ch. V.Contracting and Procurement Procedures	Ch. V.Contracting and Procurement Procedures
\$25,000.01- \$100,000.00 (Executive Director)	Ch. V.Contracting and Procurement Procedures		
\$100,000.01 and Above (Executive Director and Board Chair)			

PART I. MICRO-PURCHASES

This Policy establishes a uniform policy for the Accounts Payable thresholds which includes purchases as defined by the Federal Acquisition Regulations as Micro-purchases not exceeding \$ 3,500.00 at 48 C.F.R. part 2, subpart 2.1. These purchases may be made without obtaining competitive quotes if the program staff determines that the price to be paid is fair and reasonable. Purchases may not be split to avoid the requirements for competition. A manager's approval is required for all micro-purchases. Prior to making the purchase, staff should verify that the purchase is an allowable cost, that funding exists to make the purchase, and obtain the correct cost center to apply to the purchase.

PART II. OTHER ACCOUNTS PAYABLE EXPENSES

The following purchases may also be entered following the Accounts Payable procedure: conference enrollment fees, rent, utilities, phone services, insurance premiums, other recurring monthly operating expenses, and temporary employment services. Payments relating to travel reimbursements including registration and lodging fees, should be entered into the financial invoicing system at the Group level to be processed by Financial Services. Financial Services cannot enter invoices for individual Groups. Additionally, the following expenses may be processed as AP through the financial invoicing system, if proper procurement has been followed as outlined in this document: final hotel payments where only a single payment is required, annual license or maintenance fees for software, other invoices with a single annual full payment. These payments **MUST** include the contract agreement, fully executed, as documentation for the invoice.

PART III. PROCEDURE

All purchasing activity that results in the issuance of a check requires adequate supporting documentation for the check. ARC is committed to reporting expenses for goods and services in the period rendered. Invoices should be paid in a timely manner, with the standard term being net 30. Approval of invoices is part of each Group's fiscal accountability. This step is intended to assure that no checks are issued merely because an invoice has been received. Managers or other staff authorized to approve invoices shall carefully check the invoice, assure themselves that the goods have been received in good condition and correct quantity (or that the service has been satisfactorily performed), prior to approving payment. Work should be completed prior to submission of an invoice. Partial, periodic, or progress reimbursements may be made according to contract schedules; however, all payments should include documentation that shows progress or work completed for that reimbursement request. A vendor will not be paid until a completed Vendor Information Form, as found on the ARC Intranet, or W-9 has been submitted. ARC must be able to verify the tax ID, legal status, and e-verify status of any vendor. Once documentation has been obtained, new vendor requests should be submitted, with the documentation uploaded, in the Concur payment system. The invoice, and any documentation regarding approvals or funding, should be uploaded into Concur under the Invoice Processing Policy. The following information is found in required Concur fields, and should be included on the invoice: full vendor legal name, payment address, detailed description of services rendered, invoice number, invoice date, total invoice amount, cost center, period of performance, and any special instructions including holding the payment for pick up, or including a remittance slip. Notices, statements or other documentation without sufficient detail should not be submitted as an invoice. Staff must obtain an invoice with sufficient detail. If the special instructions are not completed in Concur, the check, with no additional documentation, will be mailed to the address selected. ARC is a sales tax-exempt entity. Sales tax should not be paid on any invoices. ARC may provide payment via Electronic Funds Transfer. This will require setting up the vendor with the Finance staff and additional information. This cannot be done in Concur. Checks are issued weekly, to go out by Friday. Checks under \$ 5,000.00 are completed with an electronic signature.

CHAPTER IV. PURCHASING PROCEDURES

Policy Requirements			
Threshold and Minimum Approval	Goods	Services	Grant Awards or Other Legal Documents
\$0-\$ 3,500.00 (Group Manager)	Ch. III. Accounts Payable	Ch. III. Accounts Payable	P- Card Limit- \$5,000.00
\$ 3,500.01- \$ 25,000.00 (Center Director)	Ch. IV. Purchasing Guidelines	Ch. V.Contracting and Procurement Procedures	Ch. V.Contracting and Procurement Procedures
\$25,000.01- \$100,000.00 (Executive Director)	Ch. V.Contracting and Procurement Procedures		
\$100,000.01 and Above (Executive Director and Board Chair)			

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PART I. PURCHASING OBJECTIVES

- Support the mission of ARC and its Centers by implementing a fair and competitive purchasing policy.
- Provide customer support.
- Comply with federal and state purchasing rules and guidelines.

PART II. PURCHASE THRESHOLDS

Regardless of the dollar amount, sensible shopping and reasonable efforts should be used to ensure that public funds are used wisely. In those cases where obtaining quotes are required, comparative quotes will be for items of similar type and quality. **All purchases above \$ 3,500 require the requesting Group/Center to enter a Purchase Order Request in the financial invoicing system unless the invoice meets one of the Accounts Payable exceptions listed previously.** If the vendor requires a Purchase Order number for a purchase below that threshold, the requesting Group/Center will also have to enter a Purchase Order Request in the financial invoicing system regardless of the amount. All purchases using a PO number will have to be paid using the PO number in the financial invoicing system.

\$ 3,500 and under: Requires Group Manager approval. This threshold follows the Accounts Payable procedures previously outlined

\$ 3,500.01 to \$25,000.00: Requires Center Director approval. Staff will be required to obtain quotes from at least three prospective vendors on vendor letterhead. Staff should also inquire as to how long the quotations are valid. Purchases which are solely funded by grant funds will follow the particular rules and procedures that may be contained in the grant document in addition to ARC purchasing procedures. The requesting Group/Center enters a Purchase Order Request into the financial invoicing system. Any request for sole source requires a memo from the requesting Group Manager or Center Director to the Director of Business Services.

Over \$25,000.00: Requires Executive Director approval and a contract and shall follow the contracting and procurement procedures in Chapters V and VI of this manual.

PART III. PURCHASE ORDER REQUEST PROCEDURES (over \$ 3,500)

Requests for the purchase of materials, services and supplies are to be originated by the Group/Center using Concur. All purchases of goods over \$ 3,500.00 require the Group/Center to enter a Purchase Order Request.

1. Requested items are to be clearly and completely described including technical data, details, etc. in Concur. All fields should be filled out in Concur and supporting documentation, including quotes, an RFP or sole source memo, should be uploaded to justify the request.
2. Purchase Order Requests and documentation will be reviewed and analyzed by the Purchasing Agent for clarity and completeness to assure procurement of the correct merchandise.
3. If the requesting Group/Center prefers a particular brand or make of an article, valid reasons for such preference should be noted on the Purchase Order Request.
4. The user Group/Center is responsible for verifying funds availability.
5. Purchase requisitions will be approved in Concur and authorized as follows:
 - a. \$00.00 to \$ 3,500.00 -- Approved by Group Manager
 - b. \$ 3,500.01 to \$25,000.00 -- Approved by Group Manager and Center Director
6. If a Purchase Order Request is rejected, it will be documented and sent back within Concur to the requesting Group/Center. Once the correction is made the Request for Payment can be resubmitted for approval by the Purchasing Agent for review and payment authorization.
7. After a Request for Payment is submitted and approved, it will be processed to by the Purchasing Agent to create a Purchase Order.
8. Orders will be placed with the vendor according to instructions given by requesting Group/Center.
9. Upon receipt of invoices, the requesting department will match invoices with outstanding purchases orders in Concur to authorize payment for goods.
10. Professional Services – Periodically ARC uses professional experts as trainers, speakers, facilitators, etc. for amounts below \$ 3,500. There are times when a letter of agreement with a Purchase Order is required - see contracting and procurement procedures for professional services.

11. Goods over \$25,000 shall require a contract – see contracting and procurement procedures.

PART IV. PROCUREMENT

Section One. Sole Source

1. Non-competitive Procurements (also referred to as “Sole Source”) may only be used when the Request for Proposal (RFP) or Sealed Bid process is not feasible. For a sole source procurement to be made, a minimum of one of the following circumstances or conditions must be applicable:
 - a. The goods and/or services to be procured are only available from one source. (Sole Source Justification must be signed off by the Center for Business Services Director.)
 - b. There is a public emergency or immediate need for the good or service that will not permit the delay associated with a competitive procurement process. The authorizing Center Director must explain and approve the emergency need. Timeliness due to a failure to begin the contracting and procurement procedures with enough advance does not constitute a public emergency. (Documentation of the emergency condition must be attached to the Sole Source Justification memo.)
 - c. The grantor agency authorizes non-competitive proposals; or after solicitation of a number of sources, competition is determined to be inadequate. In such instances, staff must include a memo explaining why sole source procurement is being used. The memo must be signed by the appropriate Center Director.
 - d. ARC is sponsoring a program which is held out of the region and procurement resources are limited or cannot meet performance elements of the program. In such instances, appropriate documentation is required.
2. The Center for Business Services Director must approve all sole source requested procurements.
3. Any purchase or contract sole sourced, must go out for competitive bid within 3 years of the sole sourced agreement.
4. Standard Competitive Selection methodology will be utilized in all cases not meeting the definition of any of the aforementioned methods. The selection process detailed herein below shall be followed.

Section Two. State Contracts

1. ARC is authorized to purchase from the State of Georgia contracts per O.C.G.A. § 50-8-45. State contracts are available at – <https://solutions.scquest.com/apps/Router/Login?OrgName=Georgia>
 - a. User Name: **tgmguest**
 - b. Password: **tgmguest**
2. The Purchasing Agent will assist with checking the availability of goods and services using State Contracts. In most cases, State Contracts have competitive prices. Where these prices are not the lowest, and another procurement method must be used, the State contract price should be entered as one of the price comparisons. In cases where the State Contract has selected more than one vendor, ARC shall compare prices and services with three GA State listed vendors and select the best vendor. When obtaining property or services in this manner, the recipient must ensure all Federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental contract or in the recipient's purchase document.

Section Three. Competitive Selection

All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of 2 CFR Part 200 et. Seq.. To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

1. Placing unreasonable requirements on firms for them to qualify to do business;
2. Requiring unnecessary experience and excessive bonding;

3. Noncompetitive pricing practices between firms or between affiliated companies;
4. Noncompetitive contracts to consultants that are on retainer contracts;
5. Organizational conflicts of interest;
6. Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
7. Any arbitrary action in the procurement process.

Staff will be required to obtain quotes from at least three qualified, potential prospective vendors. For most small purchases, an informal solicitation may be made in writing, email, or by fax. Give all potential vendors the same item description or specification as well as a closing date and time by which quotations should be submitted. Staff should also inquire as to how long the quotations are valid. Staff may not split purchases to avoid more competitive purchase requirements. Prior to recommending or making any award, staff should conduct a cost or price analysis, as appropriate; determine that the low vendor is “responsible” and “responsive;” document the basis for the award decision. A quotation is not an offer and cannot be accepted to form a binding contract. A purchase order is an offer to contract, i.e., to buy at the prices and under the stated terms and conditions. Issuing the order by itself gives no assurance that the supplier will provide the requested delivery or performance, nor does it obligate the supplier to perform. Only when the supplier accepts the purchase order by performance does the unilateral order become a formal contract. The supplier accepts simply by proceeding to furnish the supplies or services ordered or by proceeding to carry out the order to the point where substantial performance has occurred.

PART V. EMERGENCY PURCHASES

The following procedures are to be followed for emergency open market purchase orders. Emergency is defined as a situation with adversely or unduly affects the life, health, or convenience of citizens, and generally requires a publicly declared state of emergency. ARC has limited public impact and must justify the use of any emergency purchases even in the case of a declared state of emergency. If the need generated by the emergency will continue over an extended period of time, a competitive procurement method must be used when the emergency has been resolved.

1. Centers should notify purchasing of an emergency purchase and why it cannot be submitted under the established procedure. All emergency orders must have justification on the purchase requisition and be approved by the Center Director and Director of Business Services.
2. If it is determined that the situation is not an emergency, established purchasing procedures will be used.
3. If it is determined that there is a bona fide reason (emergency purchases are commonly described as a situation which adversely and unduly affects the life, health, or convenience of citizens) then the following understanding must be agreed upon and information obtained:
 - a. Vendor’s name and mailing address.
 - b. Name and telephone numbers of all vendors contacted.
 - c. Full description of item(s) to be purchased.
 - d. Price of item.
 - e. Discount terms.
 - f. Total amount of order.
4. Staff must understand its responsibility to obtain proper approval of funds. The Purchasing Agent or Financial Services Group does not have the authority to approve funds.
5. When contacting vendors for prices, staff should get quotes, express ARC’s terms (usually net 30) and no late fee payments. Explain to vendor the price is F.O.B. (Free on Board) Point of Delivery.
6. **Approval from the Executive Director should be obtained on an emergency purchase over \$10,000.**

PART VI. VENDOR PERFORMANCE EVALUATION

1. Purpose: To provide a uniform method of recording specific information pertaining to a vendor’s performance. If a staff person is dissatisfied with performance of a vendor, they should prepare a memo stating the reasons for dissatisfaction. Some examples are:

- a. Late Delivery
 - b. Non-Delivery
 - c. Partial Shipments without indicating additional items to be shipped.
 - d. Poor Service
 - e. Other
2. The memo prepared by the using party will provide clear, factual information, which can be substantiated. The memo will also include the following:
 - a. Vendor's name and address.
 - b. Date memo submitted.
 - c. Purchase Order Number
 - d. Signature of Group Manager or Center Director.
3. ROUTING - The memo will be submitted to the Purchasing Agent. The Purchasing Agent will evaluate the memo and notify the vendor of any negative evaluation. If the vendor does not respond or correct the unacceptable performance as determined by ARC, the vendor may be restricted the deficiency is corrected. A copy of the memo and any correspondence with the vendor will be filed in the Purchasing Agent file.

PART VII. SURPLUS

Each Center/Group should establish its own list of surplus equipment. It is the responsibility of the Center/Group to determine if surplus items can be used internally. A list of surplus items that cannot be used within a Center/Group must be submitted to the General Services Manager. The moving or surplus of fixed assets must be coordinated with the General Services Manager. The General Services Manager will then compile a list for agency review. If no staff in the agency can use the surplus items, it may be surplus with the Georgia Center of Administrative Services Surplus Center, in-house or through other appropriate means. All surpluses will be in accord with the grant requirements under which the item was purchased.

PART VIII. PRINT/COPY PROCEDURES

Administrative Assistants or designated staff from each Group or Center shall place graphic orders with outside copy services that have been designated by ARC's Graphic Services Group. Use the following general guidelines to determine when a duplication job can be sent to the outside copy vendor:

1-page document — over 150 copies

2 to 14-page document — over 50 copies

15-page or more document — over 25 copies

Graphic Services staff shall be available to provide assistance in the case of more complex jobs or answer questions about direct ordering.

Following are the steps that all staff should follow when sending a job to the outside copy vendor:

1. Submit all jobs to the Administrative Assistant or other trained personnel who will submit the job to the vendor. Graphic Services staff is available to assist with submission of jobs if needed.
2. The job will be sent to the attention of the person who submitted the job and the reception desk will notify him/her when the job is delivered.
3. For work involving just copy jobs the current vendor will bill ARC to the attention of the person who submitted the job. This person is responsible for submitting the invoice for payment.

PART IX. INFORMATION TECHNOLOGY SERVICES PURCHASING

IT hardware, software and anticipated technology project requirements should be developed during the ARC budget process each year and included in the appropriate Group and Center budgets. Every effort should be made to anticipate needs and provide as much information as possible in the budget document. The Information Technology Services (ITS) Manager will provide a template for compilation of this data and will provide assistance with development of requirements and specifications. It is expected that most IT hardware, software and project requirements will be anticipated and addressed in the original budget document. However, unanticipated requirements that arise during the year will be processed, provided the requesting Group/Center has adequate funding available.

All purchases of IT hardware, software and IT project services must be coordinated with the ITS Group. The ITS Group will provide assistance with researching available products and solutions, obtaining quotes and negotiating with vendors. Once the appropriate product or service specification is determined the requesting Group/Center will enter the Purchase Order Request into the financial invoicing system and submit for approval.

ARC's purchasing guidelines above and contracting and procurement procedures below will guide the procurement of IT equipment and software.

CHAPTER V. CONTRACTING and PROCUREMENT PROCEDURES

Policy Requirements			
Threshold and Minimum Approval	Goods	Services	Grant Awards or Other Legal Documents
\$0-\$ 3,500.00 (Group Manager)	Ch. III. Accounts Payable	Ch. III. Accounts Payable	P- Card Limit- \$5,000.00
\$ 3,500.01- \$ 25,000.00 (Center Director)	Ch. IV. Purchasing Guidelines	Ch. V.Contracting and Procurement Procedures	Ch. V.Contracting and Procurement Procedures
\$25,000.01- \$100,000.00 (Executive Director)	Ch. V.Contracting and Procurement Procedures		
\$100,000.01 and Above (Executive Director and Board Chair)			

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PART I: GRANT APPLICATION PROCEDURES

Each Group shall be responsible for applying for their own grants. Grant applications procedures shall be determined by individual funding agencies. Before applying for a new grant, the Group applying shall submit the application to the Grant Review Information Team based in the Financial Services Group. No new grants will be executed prior to review by this team. When applying for grants, any agency information needed for the application that is not readily available on the website, should be coordinated through the Contracts and Grants Analyst.

PART II: SUBGRANT PROCEDURES

For each subgrant, selection procedures should follow those required by the funding agency. In the absence of funding agency guidance on subgrants, subgrant selection should follow the procurement procedures outlined here. Processing of subgrants shall follow the same requirements of Contract Content and Processing a Contract in Concur as outlined below except that the cognizant Center Director shall also transmit to the Director of Business Services a memo which provides documentation and justification for the selection of the Subrecipient(s). If the selection was based upon a grantor approved process, such as the preparation of an area plan, the memo should include appropriate references to that process. Otherwise, the memo should include the following information:

1. A summary of the selection process;
2. A list of all agencies which submitted proposals for the work covered by the subgrant. If there were none, other than the selected Subrecipient, explain why not;
3. A summary of the criteria used to evaluate proposals;
4. Justification for the specific selection;
5. The basis of the cost or price negotiated; and
6. Other appropriate information.

Any of this information which is on file in the cognizant Center may be referenced in the memo rather than detailed. Grant and funding agency requirements shall always supersede these procedures in Subgrant Selection.

PART III: PROCUREMENT

Section One: Non-Competitive Procurements

Non-competitive Procurements (also referred to as “Sole Source”) may only be used when the Request for Proposal (RFP) process is not feasible. In order for a sole source procurement to be made, a minimum of one of the following circumstances or conditions must be applicable:

1. The goods and/or services to be procured are only available from one source.
2. There is a public emergency or immediate need for the good or service that will not permit the delay associated with a competitive procurement process. The authorizing Center Director must explain and approve the emergency need. Timeliness due to a failure to begin the contracting and procurement procedures with enough advance does not constitute a public emergency.
3. The grantor agency authorizes non-competitive proposals; or after solicitation of a number of sources, competition is determined to be inadequate. In such instances, staff must include a memo explaining why sole source procurement is being used. The memo must be signed by the appropriate Center Director.
4. ARC is sponsoring a program which is held out of the region and procurement resources are limited or cannot meet performance elements of the program. In such instances, appropriate documentation is required.

The Center for Business Services Director must approve all sole source requested procurements. Consultant contracts will not be awarded on a sole source basis unless modified procedures are approved pursuant to the Modification of Procedures set forth herein below.

Any purchase or contract sole sourced, must go out for competitive bid within 3 years of the sole sourced agreement.

Standard Competitive Selection methodology will be utilized in all cases not meeting the definition of any of the aforementioned methods. The selection process detailed herein below shall be followed.

Section Two: Modification of Procedures

On a case-by-case basis, the Center Director may make a written request to modify these procedures suggesting, for each case, how they should be modified and adequately justifying the request. Such written requests shall be routed through the Center Director for Business Services, who will attach written recommendations regarding the request prior to forwarding same to the ARC Executive Director. The Executive Director will make a written decision regarding the request. Such decisions shall be promptly furnished to the Center Director for Business Services and the initiating department.

Section Three: Procurement

1. Procedures

The following steps shall be followed by ARC staff when a determination has been that goods or services are needed:

- a. The Center Director shall compose a memo to the Director of Business Services that provides the following:
 - i. A detailed description of the services needed (including details regarding how the determination of the need was made) and a preliminary Scope of Work.
 - ii. The Grant Name and Number or other fund source from which the services identified shall be compensated.
 - iii. The Cost Center to which the costs of the professional services will be charged.
 - iv. The type of procurement proposed: For Services: (1) Quotes (see requirements below) (2) Open Request for Proposal (RFP) (3) RFP sent to a pool of firms selected from ARC’s Potential Vendor Database; or (4) Sole Source. For Goods: (1) Sealed Bids (2) State Contract (3) Sole Source

- v. An estimate of the probable total cost of the contract(s) resulting from the procurement. The estimate is to be titled "Independent ARC Staff Cost Estimate."
 - 1. The independent estimate shall be prepared without knowledge of the contractor's proposed pricing. The independent cost estimate may be completed in-house by ARC staff or by an external estimator independent of any offerors. The written independent cost estimate must state how it was derived and the basis of the estimate.
 - vi. Written concurrence from the Director of any Center with a significant interest in the work to be performed.
 - b. The Director of Business Services will review the memo to confirm that all the aforementioned items are adequately documented. The Director for Business services shall consider:
 - i. Eligibility for funding under the specified grant
 - ii. Avoidance of unnecessary purchases of property or services; only quantities in the amount needed
 - iii. Lease v. purchase alternatives
 - iv. Specifications that are not exclusionary
 - c. The Director of Business Services in collaboration with the DBE Liaison will review the proposed procurement for DBE/Small Business Concern considerations.
 - d. The Director of Business Services will forward the Needs Memo to the Contracts and Grants Analyst to work with Project and Budget Managers once notice to proceed has been granted.
2. Types of Procurement for Services
- a. Contracts less than \$25,000
 - i. Projects less than \$ 25,000.00 may be procured based on a minimum of 3 quotes. Quotes should be submitted with the needs memo for review by the Director of Business Services.
 - ii. Contracts which amount to less than \$25,000 may be drafted in an informal contract format.
 - 1. Any contracts using an informal format shall be in a unilateral letter of engagement format. Beginning of work by the Vendor shall constitute acceptance of the terms.
 - 2. This form of contract is only permitted when grant funding does not require a formal contract. These agreements may not be amended.
 - 3. Procedures to create an informal agreement shall follow normal contracting and procurement procedure. The cognizant Center Director should indicate a desire for an informal agreement in the initial memo to the Director of Business Services. The Contracts and Grants Analyst will draft the agreement.
 - b. "Short List" Procedure to be used when the Potential Vendor Database contains at least four (4) firms, including at least one MBE/WBE, which appear to be well qualified to perform the contract.
 - i. Potential Vendor Database
 - 1. The Contracts and Grants Analyst will maintain a Potential Vendor Database for all areas of expertise. Vendors may submit to be added to the Database via the ARC website. Sufficient information on each firm to allow a judgement to be made as to their basic and general qualifications to perform work under contract will be kept in the files.
 - 2. The file of prospective consultants should be maintained to include current information on when the firm was added to the file, current contact information, and MBE/WBE/Small Business status. Firms on the list longer than 10 years shall be deleted. A firm shall be deleted from the list after 2 non-responses to this RFP process. A response declining to bid will not be considered a non-response.
 - ii. The Center Director, or designated Project Manager, will search the Database to identify at least four (4) firms which appear to be well qualified and experienced relative to the

task. One or more of the firms must be a DBE or Small Business Concern. The criterion used to identify well qualified firms shall be documented and incorporated in the memorandum described in the Procurement Procedures section.

- iii. Following receipt of the response described in the Procurement Procedures section, the Center Director or his/her designee prepares a Request for Proposals, which is sent to each prospective consultant identified and meets the requirements in the section Request for Proposals below.
- iv. The RFP shall be sent to all firms at essentially the same time, and after the RFP is sent, additional information will not be provided to any firm by any ARC staff member other than the Center Director. If the circulation of any additional information becomes imperative, such information must be issued only in writing through the Center Director and must be simultaneously distributed to all firms responding affirmatively. Should a highly-qualified firm be identified after the RFP is mailed but before the due date, they may be added to the process if they are able to comply with the due date.

c. Open RFP by Public Notice

- i. If the Database file of prospective consultants does not contain at least four (4) firms, including at least one DBE/Small Business Concern, which appear to be well qualified to perform the contract, an open RFP by public notice may be held.
- ii. Following receipt of the response described in the Procurement Procedures section, the Contracts and Grants Analyst will work with the Center Project Manager and Budget Manager to prepare a Request for Proposals based on the requirements below, which is posted to the ARC website notifying potential vendors of ARC's intent to award a contract for the contemplated work.
- iii. Notice of the available RFP shall be advertised in the Official Legal Organ of Fulton County. The RFP must be open for a minimum of 14 days not including the day of posting and the day of closing. The RFP shall specify that a response be either postmarked or received by a certain date and time and that no responses postmarked or received after that date and time will be considered.

3. Type of Procurement for Goods

a. Sealed Bids

- i. When competitive procurement is necessary for a good over \$25,000, the sealed bid process should be used.
- ii. Following receipt of the response described in the Procurement Procedures section, the Contracts and Grants Analyst will work with the Center Project Manager and Budget Manager to prepare a Bid Opening, which is posted to the ARC website notifying potential vendors of ARC's intent to award a contract for the goods.
- iii. The Bid Opening should contain the exact specification of the goods required, the amount of goods, the cost to be expended, and any other details as necessary based on the item. This should be clear and specific enough that no questions are necessary and no expertise is necessary in determining the needs.
- iv. Notice of the Bid Opening shall be advertised in the Official Legal Organ of Fulton County. The Bid must be open for a minimum of 14 days not including the day of posting and the day of closing. The Bid shall specify that no questions will be answered and a response must be received by a certain date and time. No responses received after that date and time will be considered. The bid should also include the date and time that all sealed bids will be opened, and the date a response should be expected by.

b. State Contracts

- i. Purchases for goods over \$25,000.00 may be purchased on State Contract following the Georgia State contract requirements and procedures.
- ii. The Purchasing Agent will assist with checking the availability of goods and services using State Contracts. In most cases, State Contracts have competitive prices. Where these prices are not the lowest, and another procurement method must be used, the State

contract price should be entered as one of the price comparisons. In cases where the State Contact has selected more than one vendor, ARC shall compare prices and services with three GA State listed vendors and select the best vendor. When obtaining property or services in this manner, the recipient must ensure all Federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental contract or in the recipient's purchase document.

4. Procurement for Hotels

- a. Hotels in state may be selected on state contract.
- b. Hotels out of state should be selected based on the least expensive option available taking into consideration proximity to the business destination, venue appropriateness, and personal safety. Quotes should be solicited from all hotels meeting the proximity, venue appropriateness, and safety criteria. The travel arranger must inquire about the government rate availability, or the conference lodging rate, and select the lowest available rate.

5. Request for Proposal Requirements

- a. ARC procurement requirements shall not contain features that unduly restrict competition. The requirements shall not impose unreasonable business requirements for bidders or offerors but shall, for procurements of:
 - i. Products: state the quantitative nature of the material, product, or service to be procured and when necessary, describe minimum essential characteristics and standards to which the property or services must conform in order to satisfy the intended use.
 - ii. Services: Describe the technical requirements in terms of “functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.”
- b. Each Request for Proposals shall notify contractors of ARC’s intent to award a contract and shall address the following information:
 - i. Description of the property or services as found in Attachment A- Scope of Services;
 - ii. Evaluation factors- Cost must be included among the evaluation criteria but shall not be weighted at more than 25% of the overall criteria
 - iii. Contract type specified
 - iv. Other federal requirements
 - v. If the contract is funded by a grant of transportation funds, the proposal should require submission of a DBE plan.
 - vi. Award to other than the lowest bidder
 - vii. Rejection of all bids or offers
 - viii. Request of written response based on criteria for responsiveness listed below.
 - ix. Interviews dates if applicable
 - x. Deadline for questions if applicable and deadline for responsiveness
- c. Prohibited requirements that contain features that unduly restrict competition or are exclusionary or discriminatory include:
 - i. Excessive qualifications
 - ii. Retainer contracts
 - iii. Excessive bonding
 - iv. Brand name only
 - v. In-state or local geographic preferences with the exception of architectural and engineering geographic preferences, licensing, and major disaster or emergency relief
 - vi. Organizational conflicts of interest, which exist if:
 - 1. Because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice.
 - 2. A contractor’s objectivity in performing the contract work is or might be otherwise impaired; or
 - 3. A contractor has an unfair competitive advantage

6. Responsive Proposals

- a. To be considered responsive, a proposal from a consultant shall include at a minimum the following information to enable the Center Director to evaluate and rank the proposers:
 - i. Statement of the proposed methodology and approach to the contemplated work.
 - ii. Documentation of personnel who would actually work on the study (background, etc.).
 - iii. Documentation of current workload and availability of all required fields of expertise.
 - iv. Documentation of cost proposal, unless prohibited by grantor. The consultant's cost proposal should be so titled and shall otherwise follow the format outlined in Appendix M.
 - v. Documentation of Civil Rights compliance and Equal Employment/Affirmative Action Program.
 - vi. Documentation of DBE/Small Business status of the proposer, or documentation of DBE/Small Business participation
- b. Submitted proposals are required to meet adequate competition. This requires responsive proposals from two or more competitors. In the event of a single responsive bid received, ARC shall perform an analysis and ensure documentation is retained in the procurement file to document the determination of the existence of a competitive environment for the procurement. The procurement file shall also include all efforts for sourcing, proof of notice of advertisement and participation at pre-bid conference, if applicable.

PART IV: EVALUATION

Section One: Interviewing of Consultants

1. After the RFP process, the Project Manager and a review committee shall review all responsive proposals. Staff must document System for Award Management confirmation that the vendors are not debarred or suspended. Staff should then select one of the following interview processes:
 - a. The firms are ranked based upon their written proposals, and only a competitive range of firms are interviewed. The firms are then ranked again after the interview process for selection purposes.
 - b. All firms submitting proposals are interviewed, and are ranked after the interview process for selection purposes.
 - c. If included in the evaluation criteria in the RFP, no firms are interviewed and evaluations are conducted based on submitted materials only.

Section Two: Evaluation

1. The evaluation criteria should be established in the RFP.
2. Criteria should include:
 - a. Price
 - b. Technical Experience
 - c. Preferred Qualifications
 - d. Prior Experience
 - e. Past Performance
 - f. Ability to comply with project schedule
3. Award of contract is not based exclusively on price or price-related factors but to the responsible firm whose proposal is most advantageous to ARC with price and other factors considered. ARC should use Best Value consideration when contracting where Best Value describes a competitive, negotiated procurement process in which ARC reserves the right to select the most advantageous offer by evaluating and comparing factors in addition to cost or price so that ARC may acquire technical superiority even if it must pay a premium price.

Section Three: Notifications to Firms Not Selected

1. The Center Director shall contact each firm (other than the selected firm) responding affirmatively at the time negotiations are entered into, advising them of the status of the contract award. After the contract has been negotiated and awarded, each firm not selected shall be written, notifying them that the contract has been awarded and identifying the selected firm; thanking them for their interest; and stating that they will remain on the Center's list of prospective consultants for future consideration.

PART V: CONTRACT REQUIREMENTS.

Section One: Legal Requirements

1. Sound and Complete Agreement
 - a. ARC shall provide a sound and complete agreement, which, at a minimum, shall include a well-defined statement of work or specification, delivery schedule, a defined contract term, a clear statement of the price and payment terms, and all applicable clauses required by federal, state or local laws, rules and regulations as well as all applicable policies and requirements of ARC.
2. Contract Length
 - a. ARC shall use sound business judgment to determine contract length, however, no contract, including options, will exceed a 5-year period.
3. Federal Cost Principles
 - a. ARC shall ensure that the project costs conform to applicable Federal cost principles for allowable costs. In general, costs must be necessary and reasonable, allocable to the project, authorized or not prohibited by Federal law or regulation, and must comply with Federal cost principles applicable to ARC.
4. Protection Against Performance Difficulties
 - a. A provision should be included to reduce or address potential contract performance problems. The following provisions should address this:
 - i. Amendment procedures
 - ii. Termination clauses with and without cause with an opportunity to cure
 - iii. Disputes and appeals procedures
5. Required Federal Clauses and Certifications: ARC solicitation and resulting contracts shall contain the following clauses as applicable:
 - a. Debarment and Suspension
 - b. Conflict of Interest
 - c. Lobbying and Certification and Disclosure
 - d. Sensitive Security Information
 - e. Federal Civil Rights Laws and Regulations
 - f. Federal EEO requirements
 - g. Disadvantaged Business Enterprises/Small and Minority Firms and Women's Business Enterprises
 - h. Labor Requirements
 - i. Environmental Protections
 - j. Energy Conservation
 - k. Georgia E-Verify
 - l. Audit requirements

Section Two: Hotel Rewards/Frequent Flyer Miles

1. Any promotional benefits or materials received from a travel service provider in connection with official travel may be retained for personal use, if such items are obtained under the same conditions as those offered to the general public and at no additional cost to ARC.
2. Promotional benefits or materials you receive from a travel service provider in connection with your planning and/or scheduling an official conference or other group travel (as opposed to performing official travel yourself) are considered property of ARC, and you may only accept the benefits or materials on behalf of the ARC.
 - a. Such rewards accounts should either be declined, or maintained on behalf of ARC even if requiring a specific user's name.
 - b. If a rewards account is managed on behalf of ARC, the Grants and Contracts Analyst shall be notified. The cognizant Group Manager shall be responsible for ensuring that those benefits are only used on behalf of official ARC business.

PART VI: PROCESSING CONTRACTS REQUIRING PURCHASE ORDERS IN CONCUR

Section One: Contract Request

1. All professional services and subgrant contracts, which will pay vendors through purchase orders will be processed through Concur.
2. Budget Managers shall submit a Contract Request in Concur. This form requires the following information: Grant number, Cost Center, Legal Name and Address of Vendor, Effective and Completion Dates, Total Dollar Amount, type of Procurement completed, and DBE Status.
 - a. If a new vendor is required, User shall submit a new Vendor request in Concur. User must submit correct legal name, legal address, payment address if different, DBE status, E-Verify number and EIN/Taxpayer ID number.
 - b. The effective date of a contract shall not be earlier than the effective date of the grant (or grants) funding the contract. The completion date of a contract shall not be later than the completion date of the grant (or grants) funding the contract unless modified procedures are approved pursuant to Part I.D. and any necessary prior written approval is obtained from the cognizant grantor agency or agencies.
 - c. Budget Managers must complete and upload Attachment A and Attachment B as the final scope of work and the budget. These must be in contract format based on the template provided on the Finance page of the ARC Intranet.
3. In Concur, each contract request will be approved by the Group Manager, approved by the Center Director, and approved by the Director of Business Services based on threshold requirements. This information will then go to the Contracts and Grants Analyst for processing.
4. The Contracts and Grants Analyst will create the contract based on the information provided, assign a contract number, and return the contract as well as certification forms to the project manager to submit to the vendor. Should the contractor need to further negotiate the contract terms, the Contracts and Grants Analyst will work with the Project Manager, Budget Manager, and if necessary, the Center Director, to negotiate terms.
5. When the contract is returned executed by the Vendor, the Contracts and Grants Analyst will submit it for ARC Execution. Once fully executed, the Contracts and Grants Analyst will upload the contract into Concur and submit for PO creation.

Section Two: Guidelines for Preparing "Attachment A - Scope of Services"

1. Format
 - a. The format for "Attachment A: Scope of Services" is provided in the template in the Appendix Document.
2. Guidelines for Negotiation
 - a. When negotiating the Scope of Services, the following minimal guidelines should be observed:
 - i. The character and extent of the services to be performed by the consultant or Subrecipient must be specified with clarity and with sufficient detail to preclude questions as to the scope of the services covered by the contract.
 - ii. The Scope of Services shall state the extent and character of any surveys, tests, studies, investigations, canvasses, analyses, and other activities required to be made or undertaken, the methods to be employed and the sources of information to be used by the consultant or Subrecipient.
 - iii. The Scope of Services shall also identify and specify the types of plans, maps, designs, drawings, models, photographs, charts, estimates, tabulations, reports, recommendations, and other documents required to be prepared by the consultant or Subrecipient.
 - iv. The Scope of Services shall indicate the number of copies of any such documents required to be submitted.

- v. The Scope of Services shall indicate whether, and to what extent, the services include the review, inspection, coordination, or supervision of work performed by others and whether consultations, conferences, and other services are included and the nature thereof.
- vi. For consultant contracts, the Scope of Services might specify the key professional(s) to provide services under the contract and, for each, the estimated number of hours of that person's time to be devoted to the project.
- vii. When more than one Project (cost center) is involved, the subparagraphs within the Scope of Services shall identify each Project which relates to that task. Subparagraphs shall not include work on more than one Project.
- viii. If the Scope of Services calls for the performance of tasks or the delivery of products prior to the final completion date of the contract, a paragraph shall be included which clearly defines the date for accomplishment of each task and/or delivery of each product.

Section Three: Guidelines for Preparing "Attachment B - Compensation and Method of Payment"

- 1. Format
 - a. The format for "Attachment B: Compensation and Method of Payment" is provided in the template in the Appendix Document.
- 2. Guidelines for Negotiation
 - a. In negotiating consultant contracts, the following minimal guidelines are offered:
 - i. Profit. It is not the intent of ARC to dictate profits or establish an absolute upper limit; however, the Federal laws governing direct procurement by the Government should serve as a guide. Title 41, United States Code (Public Contracts) sets guidelines for the amount of profit on a non-RE&D, cost-plus-fixed-fee contract at a suggested maximum of ten percent of the total contract amount. This rate is a suggested maximum and as a rule such items as travel, subsistence, subcontractors and other out-of-the-pocket expenses should warrant a lower fee. Hence, it should be an exceptional circumstance for ARC to agree to profits approaching this maximum in consultant contracts.
 - ii. Overhead. Overhead rates will vary from firm to firm and cannot be easily classified as reasonable or unreasonable. If a consulting firm experiences an excessive overhead rate, it limits their ability to perform the contract within the ceiling price. As a guide to what might be considered reasonable, the overhead rates of many consulting firms range from 120 to 200 percent of direct labor. These suggested rates are not fixed, but merely serve as guidelines.
 - iii. Written justification for profit or overhead rates in excess of these guidelines must accompany the proposed contract.

Section Four: Amendments

- 1. A Center Director, Group Manager, or staff person is not authorized to contractually obligate the Atlanta Regional Commission or to authorize any amendments which alter an existing contract. Requests from contractors or Subrecipients for any such amendments shall be submitted in writing to the cognizant Center Director, for processing following the contract request process in Concur outlined above.
 - a. If an amendment is for a budget increase or a no cost time extension, the request should be submitted in writing to the Contracts and Grants Analyst to draft proper documentation and amend the PO.
 - b. If an amendment requires an additional task or cost center, a new contract request shall be submitted in Concur. This request shall include the entire contract request and the newly issued PO shall supersede the previously existing one.
- 2. Improper Contract Expansion
 - a. Out of Scope Change-ARC is prohibited from an improper contract expansion. This includes an attempt to expand the scope, increase the specified quantities or options beyond the original reasonably anticipated needs. This includes added increased capacity to provide for an assignment of contract rights.

Section Five: Legally binding agreements not requiring a PO

1. For contracts which either involve no financial transactions, or will not be paid through a PO, the Contracts and Grants Analyst forwards the appropriate number of "originals" of the contract to the Center Director to secure necessary consultant (or Subrecipient) signatures. Examples of these contracts include: grants, hotel agreement, memorandum of understanding, or software licenses.
2. The Center Director or designees is responsible for coordinating necessary reviews and approvals from Federal, State or other outside agencies.
3. The Center Director returns the fully executed contract to the Contracts and Grants Analyst after making a photocopy of the contract if the Center wishes to maintain a copy of the fully executed contract in its file.
4. The Contracts and Grants Analyst secures necessary official ARC signatures.
5. The Contracts and Grants Analyst files it into the web based file storage system "Docufree." Hard copies are returned to the Center Director fully executed.
6. The Center Director transmits appropriate numbers of copies of executed contract to the funding agency or agencies and the contractor.

Section Six: Contract Approvals

\$ 0 - \$ 3,500.00: No Contract Required.

\$ 3,500.01 - \$25,000.00: May be executed by the cognizant Center Director following these procedures. Group Managers may not proxy these agreements. **Group Managers may never execute contracts.**

\$ 25,000.01 to \$ 100,000.00: Executive Director.

\$ 100,000.01 +: Executive Director and the Chairman.

All agreements should be attested by an ARC Assistant Secretary. If an amendment to a contract moves the contract into a new threshold, the total contract agreement amount shall be the basis of the threshold. Legal documents creating an obligation on ARC, but without a monetary exchange, must be signed by the Executive Director. **Agreements signed without following these procedures shall not be considered binding on the Atlanta Regional Commission, and persons erroneously executing such documents shall have any such powers to bind ARC revoked.**

Section Seven: Proxy and Electronic Signatures

1. Each authorizing person within the Atlanta Regional Commission shall name a signature proxy who may sign in with that person's physical absence for a day or longer from the office. This information should be kept on file with Contracts and Grants Analyst. Designated proxy signatures will be included in the authorization chain of Concur.
 - a. **While Group Managers may serve as proxy signatures for cognizant Center Directors on payment authorizations, memos, and negotiations, Group Managers may not execute a contract as a proxy signature.**
 - b. A Stamp signature may only be used with prior written designation by the person authorizing the signature AND the outside party who will receive the signature.
2. In the event that an electronic signature is required on a document, the ARC Executive Director may authorize the Contracts and Grants Analyst on his behalf.
 - a. The Contracts and Grants Analyst shall be the point of signature contact for such signatures in federal and state agency databases.
 - b. For other electronically signed documents, the Contracts and Grants Analyst shall print a hard copy of the contract, create a memo to the Executive Director outlining the reasons for an electronic signature and requesting his permission. The Executive Director should sign the memo and the contract. The hard copy documentation will be filed in ARC's contract file software and the Contract and Grants Analyst will execute the electronic document.

Concur Approval Flows			
Threshold	Purchasing Request	Contract Request	Payment Approval, All Invoices
\$0-\$ 3,500.00	Group Manager		Group Manager
\$ 3,500.01- \$ 25,000.00	Group Manager; Center Director	Group Manager; Center Director	Group Manager; Center Director
\$25,000.01- \$100,000.00 6.		Group Manager; Center Director; Center for Business Services Director	Group Manager; Center Director; Center for Business Services Director
\$100,000.01 and Above 6.			
1. For project requests totaling \$0- \$ 3,500.00, no PO is required.			
2. If a Group is lacking a role listed in the approval chart, it automatically goes to the next level up of approval.			
3. Requests in the \$0-\$ 3,500.00 Threshold shall be processed through Accounts Payable.			
4. Purchasing requests and purchase invoices shall be processed through the Purchasing Agent.			
5. Contract requests and contract invoices shall be processed through the Contracts and Grants Analyst.			
6. Contracts will still be externally executed by the Executive Director and Board Chairman where applicable.			

PART VII: CONTRACT MANAGEMENT

Section One: General

1. Full responsibility for consultant or subgrant contract administration belongs to the cognizant Center Director. This responsibility includes, but is not limited to:
 - a. Ensuring consultant or Subrecipient conformance with the terms, conditions and specifications of the contract;
 - b. Expediting and ensuring timely follow-up of all end products/deliverables;
 - c. On a schedule established by the Center Director, periodically examining and evaluating consultant or Subrecipient progress including appropriate periodic meetings with the consultant or Subrecipient to review status and problems;
 - d. Evaluating the consultant's or Subrecipient's planned progress and planned expenditures compared to actual progress and actual expenditures;
 - e. Except for subgrants funded in whole or in part under the Older Americans Act, reviewing and evaluating each consultant or Subrecipient request for payment in comparison with actual progress, prior to approving payment;
 - f. Insuring that inspections, acceptances and approvals by the Center Director of contractual end products/deliverables are performed strictly in reference to all applicable contractual requirements;
 - g. Monitoring and evaluating the consultant's or Subrecipient's technical performance;
 - h. Taking prompt and appropriate remedial action in the event of delivery delinquencies, lack of progress or any other failure on the part of the consultant or Subrecipient to fully comply with the contract stipulations, standards or conditions. This includes initiating amendments before the expiration of a contract; and
 - i. Establishing adequate written documentation of the foregoing and maintaining same for a period of at least seven (7) years following the date of ARC's submission of the final grant expenditure report (or, for grants which are renewed annually, the annual grant expenditure report) to the cognizant grantor agency or agencies or (if an audit by the cognizant grantor agency or agencies or by the Comptroller General of the United States has been initiated during the three-year period and if there are unresolved audit findings) until audit findings are resolved, whichever is longer. Any grantor requirement of longer record retention shall supersede these requirements.

Section Two: Record Keeping and Documentation

1. ARC's record keeping systems include the following records, recording the procurement history of a project:
 - a. Procurement Method
 - b. Contract Type
 - c. Contract Selection
 - d. Cost or Price
 - e. Reasonable Documentation
2. Reasonable documentation as applicable includes:
 - a. Executed contract and notice of award
 - b. Performance and payment bonds, bond-related documentation and correspondence with any sureties, if required
 - c. Contract-required insurance documentation
 - d. Post-award (pre-performance) correspondence from or to the contractor or other Government agencies
 - e. Approvals or disapprovals of contract submittals required by the contract and requests for waivers or deviations from contractual requirements
 - f. Modification/changes to the contracts including the rationale for the change, change orders issues, and documentation reflecting any time and/or increases to or decreases from the contract price as a result of those modifications

- g. Documentations regarding settlement of claims and disputed including, as appropriate results of audit and legal reviews of the claims and approval by the proper authority of the settlement amount
- h. Documentation regarding stop work and suspension or work orders and termination actions

Section Three: Fourth-Party Contracts

1. ARC's standard form contract requires ARC's prior written approval of subcontracts (called "fourth-party contracts"). Requests for subcontracts shall be reviewed by the project manager. A memo should be submitted to the cognizant Center Director with a recommendation to approve or deny the request. The cognizant Center Director should then review and secure the following approvals as necessary:
 - a. Review and comments from the Contracts and Grants Analyst;
 - b. Reviews and approvals from the cognizant grantor agency or agencies.
2. Once approved or denied by the cognizant Center Director, the project manager shall be responsible for notifying the contractor of said approval or rejection.
3. Subcontractors included in a proposal or application do not need to be approved again, unless the information changes from the original proposal.

Section Four: Payments to Contractors

1. ARC's standard form contract requires periodic submission by the consultant or Subrecipient of invoices for payment. Some contracts may be paid at the completion of the work. ARC consultants and Subrecipients are solely responsible for the timely payment of any subcontractors. Though ARC requires approval of said subcontractors prior to engaging in work, ARC will not be responsible for paying subcontractors.
2. Except for subgrants funded in whole or in part under the Older Americans Act, consultant or Subrecipient invoices and any supporting documents shall be promptly processed by the cognizant Center Director as follows:
 - a. User shall upload the invoice into Concur either through the Concur email or manual upload. User shall separate documents, and verify the information.
 - b. If the Invoice is not automatically assigned, the invoice should go to the appropriate Budget Manager to submit for processing. This requires ensuring that the cost center, account, totals, dates, and addresses are all correct. The Budget Manager must also match the invoice with the PO.
 - c. Once the invoice is submitted for processing by the Budget Manager, Concur will send the invoice through the appropriate approval channels.
 - d. At any point in the approval chain, an approver may reject the invoice and return it to the user or budget manager for corrections.
3. Invoices will not be processed if the PO is expended and the contract has not been amended.

PART VIII: DISPUTES AND APPEALS

Section One: Dispute Procedures

1. Any dispute concerning a question of fact arising either from a consultant or Subrecipient selection decision, or under a consultant or subgrant contract, once executed, shall be decided by the cognizant Center Director who, after advisory consultation with all appropriate ARC officials, shall promptly reduce such decision concerning the question of fact to writing and mail, or otherwise furnish a copy thereof, to the disputing party (i.e., as appropriate, either: the unsuccessful proposer; or the consultant or Subrecipient). The Center Director shall concurrently fully advise the disputing party, in writing, of the provisions outlined herein below concerning the disputing party's right to appeal the decision to the ARC Executive Director. A copy of all such documents shall also be furnished to the Director of Business Services and, if appropriate, to the Financial Services Manager.
2. The decision of the cognizant Center Director shall be final and conclusive unless, within ten (10) calendar days of receipt of such copy, the disputing party mails or otherwise furnishes a written appeal concerning the question of fact to the ARC Executive Director, who shall arrange a formal hearing within twenty (20) calendar days after receipt of the appeal. Both the disputing party and the Center Director shall be notified no less than five (5) calendar days in advance of the hearing and shall have the right to present witnesses and give evidence concerning the question of fact at such time. Within twenty (20) calendar days after the hearing, the Executive Director shall make a decision concerning the question of fact in writing to the disputing party and to the cognizant ARC Center Director. A copy of the decision shall also be furnished to the Director of Business Services and, if appropriate, to the Financial Services Manager.
3. The decision of the Executive Director concerning the question of fact shall be final and conclusive unless determined by the cognizant grantor agency or agencies, or the Comptroller General of the United States, or a court of competent jurisdiction to have been arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law.
4. Pending final decision of an appeal to the Executive Director under a consultant or subgrant contract already executed, the consultant or Subrecipient shall proceed diligently with the performance of the contract and in accordance with the cognizant ARC Center Director decision.
5. Nothing in the foregoing shall be construed as making final the decisions of the cognizant ARC Center Director or the ARC Executive Director as such decision relate to question of law.

Section Two: Claims and Litigation

1. ARC shall notify funding agencies of any claims and litigation against ARC involving those agencies funds or interest. ARC shall provide notice on claims on contracts valued over \$100,000.00, claims involving controversial matters, and highly publicized matters, irrespective of amount and a description of the claim. ARC shall enter into reasonable settlement agreements, which can include agreement by the contractor to provide extra property or services in lieu of payments or reduced payments for damages, including liquidated damages. ARC shall maintain sufficient records that demonstrate reasonable and prudent measure to prevent or offset the actions or circumstances resulting in the underlying protest, dispute, claim or litigations. Further, ARC shall secure funding agency review and concurrence in a proposed or final settlement involving a dispute, claim, or litigation before using federal assistance to support its cost if:
 - a. The settlement exceeds \$100,000.00,
 - b. The approved project lacks sufficient funds to cover the settlement costs, or
 - c. A special federal interest or concern is declared due to program management concerns, possible mismanagement, impropriety, waste or fraud.

CHAPTER VI. FEDERAL TRANSIT AUTHORITY ADDENDUM

POLICIES FOR FEDERAL TRANSIT ADMINISTRATION (FTA) FUNDED PROCUREMENTS

ARC conducts work funded via FTA in its Planning and Human Services arenas. This attachment provides guidance and ensures compliance with the utilization of those funds. These ARC FTA Procurement Policies comply with the requirements of the Federal Transit Administration as defined in FTA C 4220.1F. These ARC FTA Procurement Policies complement ARC Contract Procedures for Professional Services and Subgrant Contracts and ARC Purchasing Manual. If there are any differences between ARC Contract Procedures and ARC Purchasing Manual and the ARC FTA Procurement Policies, these ARC FTA Procurement Policies will govern any procurement and contract activity utilizing any FTA funds.

CHAPTER 2: APPLICABILITY OF THE CIRCULAR

The Federal Transit Administration (FTA) requires an FTA recipient to conduct all third-party procurements financed under 49 U.S.C. Chapter 53 in a manner that provides full and open competition as determined by FTA. It is the policy of the Atlanta Regional Commission that all procurement transactions shall be conducted in a manner that provides maximum open and free competition consistent with the efficient performance of its work program and with the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local governments (the "Common Rule") as published in the March 11, 1988 Federal Register.

CHAPTER 3: ARC'S RESPONSIBILITIES

3.1 Written Standards of Conduct

Statement of Policy

ARC shall follow its Board approved written standards of conduct, as outlined in ARC Standards of Ethical Conduct found at: [ARC Standards of Ethical Conduct](#)

3.2 Self-Certification

ARC certifies that its procurement system complies with federal requirements for any FTA assisted third party contract that ARC undertakes and administers.

3.3 Third Party Contracting Capacity

ARC maintains written procurement policies and procedures and qualified procurement personnel to ensure its contract administration system promotes compliance with the terms, conditions, and specifications of their contracts or purchase orders and applicable Federal, State and local requirements.

ARC's procedures address the requirements for:

1. Written Procurement Procedures, including (See also Chapter IV below.)
 - a. Clear descriptions
 - b. Nonrestrictive specifications
 - c. Quality requirements
 - d. Preference for Performance specifications
 - e. Brand name or equal
2. Industry Contracts
3. Special Notification Requirements for States
4. Adequate Third-Party Contract Provisions
5. Record Keeping
6. Use of Technology/Electronic Commerce
 - a. NOTE: ARC does not utilize Industry Contracts or Electronic Bidding/Reverse Auction

3.4 Sound and Complete Agreement

ARC shall provide a sound and complete agreement, which, at a minimum, shall include a well-defined statement of work or specification, delivery schedule, a defined contract term, a clear statement of the price and payment terms, and all applicable clauses required by federal, state or local laws, rules and regulations as well as all applicable policies and requirements of ARC.

3.5 Record Keeping and Documentation

ARC's record keeping systems include the following records, recording the procurement history of a project:

1. Procurement Method;
2. Contract Type;
3. Contractor Selection;
4. Cost or Price; and,
5. Reasonable Documentation.

For sealed bid and competitive negotiations, reasonable documentation includes:

1. Executed contract and notice of award;
2. Performance and payment bonds, bond-related documentation and correspondence with any sureties, if required;
3. Contract-required insurance documentation;
4. Post-award (pre-performance) correspondence from or to the contractor or other Government agencies;
5. Notice to proceed;
6. Approvals or disapprovals of contract submittals required by the contract and requests for waivers or deviations from contractual requirements;
7. Modifications/changes to the contracts including the rationale for the change, change orders issues, and documentation reflecting any time and/or increases to or decreases from the contract price as a result of those modifications;
8. Documentation regarding settlement of claims and disputes including, as appropriate results of audit and legal reviews of the claims and approval by the proper authority of the settlement amount;
9. Documentation regarding stop work and suspension of work orders and terminations actions (convenience as well as default); and
10. Documentation relating to contract closeout.

3.5 Signatory Authority

ARC has established the following signatory authorities:

1. \$ 3,500.00 and under: Requires Group Manager or Center Director approval.
2. \$ 3,500.01 to \$25,000.00: Requires Group Manager and Center Director or Executive Director approval.
3. \$ 25,000.01 to \$ 100,000.00: Requires Group Manager and Center Director or Executive Director or Executive Director or his/her designee approval.
4. Over \$ 100,000.00: Requires Executive Director and Chairperson approval.

3.6 Contract Administration

To ensure proper contract administration, ARC adheres to the following contract management process outlined under ARC Contract Procedures, IV. Contract Management, pp. 14-18.

3.7 Audit

ARC acknowledges that independent audits of its procurement operations can ensure compliance with all regulatory requirements, including FTA. ARC conducts annual procurement audits consistent with the requirements of Uniform Guidance Single Audit, Subpart F. The audit includes, but is not limited to, a review of internal controls, financial operations and procurement operations.

CHAPTER 4 ARC'S PROPERTY AND SERVICES NEEDS AND FEDERAL REQUIREMENTS AFFECTING THOSE NEEDS

CHAPTER 4, SECTION 1: DETERMINING ARC'S NEEDS

4.1.a Procurement Planning

Proposed procurements must be carefully considered prior to initiation of any procurement activities in order to avoid duplicative or repetitive purchases to the greatest extent feasible and consistent with economic and efficient procurement practices. If FTA funding is sought, the Director of Business Services shall identify ARC's needs in writing for development of a procurement schedule.

In procurement planning, ARC shall factor in the following, in determining its procurement needs:

1. Eligibility for FTA Assistance
2. Avoidance of unnecessary purchases of property or services; only quantities in the amount needed.
3. Procurement size—consider whether to consolidate or break out procurements to obtain a more economical purchase. However, should not split a large procurement to gain advantages of small purchase
4. Options to ensure future availability of property or services
5. Lease vs. purchase alternatives
6. Specifications that are not exclusionary

CHAPTER 4, SECTION 2.A: CONTRACTOR QUALIFICATIONS

4.2. a.1 Required Federal Clauses

Each third-party contractor and subcontractor is required to comply with the terms of its third-party contract or subcontract, including requirements to extend those federally required clauses and provisions to its subcontractors. ARC solicitations and resultant contracts shall contain the appropriate FTA required clauses and certifications. The contract clauses provided in Appendix A—Federally Required Clauses - should be referenced to determine the applicability of the clauses to the procurement type. The procurement file shall contain evidence of the inclusion of the applicable FTA required clauses into the solicitation document.

These requirements include, but are not limited to the following:

1. Responsibility Requirements
2. Debarment and Suspension
3. GSA Excluded Parties List System
4. Conflict of Interest
5. Lobbying Certification and Disclosure
6. Sensitive Security Information
7. Seat Belt Use
8. Texting While Driving and Distracted Driving
9. Federal Civil Rights Laws and Regulations
 - a. Federal EEO Requirements
 - b. Nondiscrimination in Federal Public Transportation
 - c. Prohibition Against Employment Discrimination
 - d. Nondiscrimination on the Basis of Sex
 - e. Nondiscrimination on the Basis of Age
 - f. Federal Protections for Individuals with Disabilities
10. Socio-Economic Development
 - a. Disadvantaged Business Enterprises
 - b. Small and Minority Firms and Women's Business Enterprises

CHAPTER 4, SECTION 2.B: ADMINISTRATIVE RESTRICTIONS, ACQUISITION OF PROPERTY AND SERVICES

4.2.b.1. Contract Term Length (Period of Performance) Limitation

ARC shall use sound business judgment to determine contract length, however, no contract, including options, will exceed a 5-year period. *ARC does not engage in purchasing activity related to rolling stock or replacement parts, as such other regulatory requirements are not applicable.*

4.2.b.2 Federal Cost Principles

For FTA-funded procurements, ARC shall ensure that the project costs conform to applicable Federal cost principles for allowable costs. In general, costs must be necessary and reasonable, allocable to the project, authorized or not prohibited by Federal law or regulation, and must comply with Federal cost principles applicable to ARC.

4.2.b.3 Payments

The payment provisions of an ARC contract must be carefully structured to comply with the conditions of FTA contract assistance or reimbursement.

Advance Payment Provisions

The use of FTA funds for payments in advance of the incurrence of costs by the contractor is generally prohibited, without prior written approval from the FTA. The FTA does permit advance payments from FTA funds for those purchases where advance payment is customary in the commercial marketplace such as public utility connections and services, rent, tuition, insurance premiums, subscriptions to publications, software licenses, construction mobilization costs, transportation, hotel reservations, and conference and convention registrations. FTA approval of such advance payments is required when the amount exceeds \$100,000. ARC shall not make advance payments using other funds, including local match funds, unless it is customary in the industry, or there are sound business reasons. FTA recognizes that advance payments may be needed for certain costs supported by sound business judgment. However, upon the determination of sound business reasons to justify the advance payment, shall obtain adequate security for the advance payment. The contract file shall contain sufficient justification of the advance payment.

Progress Payment Provisions

When progress payments are used, ARC must obtain title to property or other adequate security for the amount of the progress payment. Progress payments for construction contracts may be made on a percentage of completion basis; however, this method may not be used for non-construction contracts. The contract file shall contain sufficient written documentation to substantiate the work for which payment has been authorized.

4.2.b.3 Protection Against Performance Difficulties

The FTA recognizes that contract provisions may be included to reduce or address potential contract performance problems. For FTA-funded procurements, the following provisions shall be considered when preparing the solicitation for contract:

1. Changes or changed provisions clause
2. Remedies clause(s), including but not limited to:
 - a. Liquidated Damages;
 - b. Violation or Breach - Third party contracts exceeding \$100,000 must include administrative, contractual, or legal remedies for violations or breach of the contract by the third-party contractor;
 - c. Suspension of Work;
 - d. Termination - Termination for cause and termination for convenience provisions must be included in contracts exceeding \$10,000.

Liquidated Damages

As part of an overall risk management program, ARC shall determine whether or not to include a liquidated damages provision for a specific FTA-funded procurement. The amount of liquidated damages shall be reasonably calculated to reflect the anticipated damages that ARC might suffer as the result of an inadequacy or delay in contract performance,

and such damages would be difficult or impossible to determine. Liquidated damages may be imposed for an entire FTA-funded contract or imposed for a readily identifiable milestone or deliverable. The measurement period may be other than a day, where appropriate. The solicitation document shall clearly identify the conditions of which the liquidated damages shall be imposed and the established damages rate that shall be charged. ARC shall credit any liquidated damages to the project, unless FTA permits other uses of the liquidated damages. The procurement file shall document the calculation rationale and ensure it is reasonable, proper and not arbitrary or punitive.

CHAPTER 4, SECTION 2.C: SOCIOECONOMIC REQUIREMENTS, ACQUISITION OF PROPERTY AND SERVICES

The following socioeconomic requirements are contained in ARC contracts.

1. Labor Requirements—Wage and Hour Requirements, Fair Labor Standards, Veterans Employment
2. Civil Rights—Nondiscrimination in Federal Public Transportation Programs, Title VI of the Civil Rights Act, Environmental Justice, Limited English Proficiency, DBE, Nondiscrimination on the Basis of Disability—Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), The Americans with Disabilities Act of 1990, as amended (ADA), DOT Public Transportation Regulations Implementing Section 504 and the ADA, Electronic Reports and Information
3. Environmental Protections—Environmental Mitigation, National Environmental Policy Act, Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites, Clean Air, Clean Water, Recycled Products, Other Federal Environmental Protection Requirements
4. Energy Conservation
5. Preference for U.S. Property—Buy America
6. Shipments of Property—U.S. Flag Requirements—Shipments by Ocean Vessel, Shipments by Air Carrier
7. Project Travel—Use of U.S. Flag Air Carriers

The Atlanta Regional Commission (ARC) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. ARC has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, ARC has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of ARC to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

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

All FTA funded projects must abide by the adopted and published ARC Disadvantaged Business Enterprise Policy and Goal. This goal is updated every three years. Third party contracts must abide by the ARC DBE Goal.

CHAPTER 4, SECTION 2.D: TECHNICAL RESTRICTIONS, ACQUISITION OF PROPERTY AND SERVICES

4.2.d.1. Intelligent Transportation System

If this Contract involves an Intelligent Transportation System project (ITS), ARC shall require its contractors to agree to conform, to the extent applicable, to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA LU Section 5307, Chapter, 23 U.S.C. section 512 note, and comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects, " 66 Fed. Reg. 1455 et seq., January 8, 2001, and to any subsequent further implementing directives, except to the extent FTA determines otherwise in writing.

4.2.d.2 Metric Measurements

ARC shall accept property and services with dimensions expressed in metric measurements, to the extent practicable and feasible, in compliance with the Metric Conversion Act, amended by the Omnibus Trade and Competitiveness Act.

CHAPTER 4, SECTION 2.E: ROLLING STOCK SPECIAL REQUIREMENTS, ACQUISITION OF PROPERTY AND SERVICES

ARC does not engage in the purchase of rolling stock, as such, this section is not applicable.

CHAPTER 4, SECTION 2.F: PUBLIC TRANSPORTATION SERVICES SPECIAL REQUIREMENTS, ACQUISITION OF PROPERTY AND SERVICES

ARC does not engage in the purchase of public transportation services, as such, this section is not applicable.

CHAPTER 4, SECTION 2.G: ART, SPECIAL REQUIREMENTS, ACQUISITION OF PROPERTY AND SERVICES

ARC does not engage in the purchase of art works for public transit projects, as such, this section is not applicable.

CHAPTER 4, SECTION 2.H: ARCHITECTURE ENGINEERING RELATED SERVICES, ACQUISITION OF PROPERTY AND SERVICES

ARC generally does not contract for A&E Services. However, should the need arise, ARC will use competitive proposal procedures based on the Brooks Act when contracting for A&E services as defined in 40 U.S.C. Section 541. Other types of services considered A&E services include program management, construction management, feasibility studies, preliminary engineering design, surveying, mapping and services which require performance by a registered or licensed architect or engineer. This “qualifications-based procurement method” can only be used for the procurement of A&E services. It cannot be used to obtain other types of services even though a firm that provides A&E services is also available to perform other types of services such as general planning services.

ARC will use the solicitation procedures identified in Part II.A. except that price will not be considered as an evaluation factor. A Request for Qualifications (RFQ) will be used in lieu of the Requests for Proposals and no cost or pricing information will be requested. Qualifications will be evaluated and the firms ranked from best qualified to least qualified. ARC will then request a cost proposal from the best qualified firm and attempt to negotiate a fair and reasonable price. If successful, the contract will be awarded to that firm. If a fair and reasonable price cannot be negotiated with the best qualified firm, then the next best qualified firm will be asked to submit a cost proposal. Negotiations will continue with firms in their order of ranking until a satisfactory agreement can be reached.

CHAPTER 4, SECTION 2.I: CONSTRUCTION RELATED SERVICES, ACQUISITION OF PROPERTY AND SERVICES

ARC does not engage in the purchase of construction services, as such, this section is not applicable.

CHAPTER 4, SECTION 2.J: RESEARCH, DEVELOPMENT, DEPLOYMENT, AND SPECIAL STUDIES SPECIAL REQUIREMENTS, ACQUISITION OF PROPERTY AND SERVICES

ARC does not engage in purchasing that involves copyright and patent issues. However, in the instance that ARC does engage in such purchasing activity which FTA finances in part or in whole, the requirements in Appendix B shall be included in contracts for these federally-assisted research projects.

CHAPTER 4, SECTION 2.K: AUDIT SERVICES—SPECIAL REQUIREMENTS, ACQUISITION OF PROPERTY AND SERVICES

In procuring Audit Service, ARC shall comply 2 CFR 200.509 as a public entities and non-profits spending \$ 750,000 or more in Federal awards in a single year to obtain an audit. When procuring audit services, the objective is to obtain high-quality audits. In requesting proposals for audit services, the objectives and scope of the audit must be made clear and the non-Federal entity must request a copy of the audit organization's peer review report which the auditor is required to provide under GAGAS. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of peer and external quality control reviews, and price. Whenever possible, the auditee must make positive efforts

to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in §200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms, or the FAR (48 CFR part 42), as applicable.

CHAPTER 5: SOURCES

ARC may acquire property and services from the sources described below:

5.1 Joint Procurement

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

5.2 State or Local Government Purchasing Schedules or Purchasing Contracts

An arrangement that a State or local government has established with several or many vendors in which those vendors agree to provide essentially an option to the State or local government, and its subordinate government entities, to acquire specific property or services in the future at established prices. FTA does not authorize grantees to consider intergovernmental purchasing schedules to be the type of State or local intergovernmental agreement to which that Common Grant Rule is referring, but FTA recognizes joint purchases to be the only type of intergovernmental agreement suitable for use by its grantees and subrecipients.

ARC is authorized to purchase from the State contract per O.C.G.A. § 50-8-45. The Purchasing Agent will assist with checking the availability of goods and services using Georgia State Contract. In most cases, the State Contracts have competitive prices. Where these prices are not the lowest, and another procurement method must be used, the State contract price should be entered as one of the price comparisons. In cases where the State Contract has selected more than one vendor, ARC shall compare prices and services with three GA State listed vendors and select the best vendor. When obtaining property or services in this manner, the recipient must ensure all Federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental contract or in the recipient's purchase document.

5.3 Existing Contracts—Piggybacking

ARC may assign contract rights to other recipients if the original contract (ARC) contains an assignability provision that permits the assignment of all or a portion of the specified deliverables under the terms originally advertised, competed, evaluated, and awarded, or contains other appropriate assignment provisions. Procurements are to be limited to the amount (property and services) required to meet reasonably expected public transportation needs without including excess capacity for the purpose of assigning to others at a later date. This process is referred to as “piggybacking”. Piggybacking is permissible under the following circumstances:

1. The solicitation and contract include an assignability clause that allows for the assignment of all or part of the specified deliverable items;
2. The quantities to be ordered were included in the original bid and evaluated as part of the contract award decision. Note that “piggybacking” is not permissible when the action would call for an increase in quantities that were not originally bid on and not originally evaluated as part of the contract award. Such an order for additional quantities - sometimes referred to as “tag-ons” - would constitute a non-competitive procurement;
3. The contract being accessed by the piggybacking procedure contains the clauses required by Federal regulations;
4. The contractor has submitted the certifications required by Federal regulations with its original bid/proposal;
5. The procurement in other respects meets Federal requirements.

5.4 Federal Supply Schedules

Federal laws authorize State and Local Governments to use Federal Supply Schedules to acquire information technology and to purchase products and services to facilitate recovery from a major disaster. State and Local government is defined as “The States of the United States, counties, municipalities, cities, towns, townships, tribal governments, public authorities, school districts, colleges, and other institutions of higher education, council of governments, regional or interstate government entities, or any agency or instrumentality of the preceding entities.” State and Local government does not include “contractors, or grantees, of State or local governments.

5.5 Open Market

Most of ARC’s purchases will be acquired through the open market.

CHAPTER 6 PROCEDURAL GUIDANCE FOR OPEN MARKET PROCUREMENTS

CHAPTER 6, SECTION 1: OPEN MARKET PROCUREMENTS – COMPETITION REQUIRED

6.1.1 Solicitation by the Recipient

It is the policy of the Atlanta Regional Commission that all procurement transactions shall be conducted in a manner that provides maximum open and free competition consistent with the efficient performance of its work program and with the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local governments (the "Common Rule") as published in the March 11, 1988 Federal Register.

6.1.2 Pre-Qualifications

ARC does not pre-qualify bidders. ARC does maintain a professional services vendors list. This list is not utilized for pre-qualification purposes, but merely to identify firms that are interested in receiving information on ARC professional services opportunities.

CHAPTER 6, SECTION 2: OPEN MARKET PROCUREMENTS – SOLICITATION REQUIREMENTS AND RESTRICTIONS

6.A.2.a.1 Solicitation Requirements

ARC solicitation requirements shall not contain features that unduly restrict competition. The requirements shall not impose unreasonable business requirements for bidders or offers but, shall, for procurement of:

- Products - state the qualitative nature of the material, product, or service to be procured and, when necessary, describe minimum essential characteristics and standards to which the property or services must conform in order to satisfy the intended use.
- Services - describe the technical requirements in terms of “functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards”.

Each solicitation shall address the following information:

1. Description of the Property or Services;
 - a. Description of requirements in terms of functions to be performed or level to be performance required
 - b. Quantities limited to ARC actual needs
 - c. Utilize brand names or equal process, if it is impractical or uneconomical to provide a clear and accurate description of the technical requirements.
 - d. Common Rules prohibition against solicitation requirements that unduly restrict competition
2. Requirements that contain features that unduly restrict competition or are exclusionary or discriminatory, include:

- a. Excessive Qualifications
- b. Unnecessary Experience
- c. Improper Pre-qualification
- d. Retainer Contracts
- e. Excessive Bonding
- f. Brand Name Only
- g. In-State or Local Geographic Preferences (exceptions: A&E Geographic preferences, licensing, major disaster or emergency relief)
- h. Organizational Conflicts of Interest, which exists if:
 - 1. Because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice.
 - 2. A contractor's objectivity in performing the contract work is or might be otherwise impaired; or
 - 3. A contractor has an unfair competitive advantage.
- i. Restraint of Trade
- j. Arbitrary Action
- 3. Evaluation Factors;
- 4. Contract Type Specified;
- 5. Other Federal Requirements Affecting the Property or Services to be Acquired;
- 6. Other Federal Requirements Affecting the Bidder or Offeror and the Contractor;
- 7. Award to Other Than the Low Bidder;
- 8. Rejection of All Bids or Offers.

A&E geographic preferences are allowable if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.

6.A.2.a.2 Contract Types

Below are contract types that are allowable, prohibited or restricted by FTA.

Allowable Contract Types: Fixed Price v. Cost Reimbursement

A firm fixed price contract includes a price that remains fixed irrespective of the contractor's cost experience in performing the contract. A firm fixed price contract may include an economic price adjustment provision, incentives, or both.

A cost-reimbursement contract provides for payment of the contractor's allowable incurred costs, to the extent prescribed in the contract. Allowable costs may include incentives if the recipient believes they can prove helpful. Cost-reimbursement contracts are suitable for use only when the uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed price contract.

Prohibited or Restricted Contract Types

The following contract types are restricted or prohibited:

1. Time and Materials (T & M) Contracts (Restricted)—For FTA-funded procurements, ARC is permitted to use time and material contracts only under the following conditions:
 - a. After determining that no other contract type is suitable; and
 - b. If the contract specifies a ceiling price that the contractor may not exceed except at its own risk.
 - c. T & M contracts may be used for the procurement of supplies or services.

The payment of labor costs shall be based on fixed hourly billing rates as specified in the contract. The billing rates would include wages, indirect costs, general and administrative expense, and profit. Materials can be billed at cost unless the contractor sells the materials in normal course of business. T & M contracts may also provide for reimbursement of indirect costs (material handling costs), such as acquisition, inspection, storage, payment.

This type of contract is least preferable as it creates a disincentive for the contractor to complete the contract in a timely manner.

2. Cost Plus Percentage of Cost Contracts (CPPC) (Prohibited)

For FTA-funded procurements, ARC is prohibited from the use of the cost plus a percentage of cost method of contracting.

Improper Contract Expansion

Generally, additions and/or increases in the scope of work constitute a new procurement and, as such, should be processed in the same manner. All such additional requirements should be formalized by contract amendments.

1. Out of Scope Change—For FTA-funded procurements, ARC is prohibited from an improper contract expansion. This includes an attempt to expand the scope, increase the specified quantities or options beyond the original reasonably anticipated needs. This includes added increased capacity to provide for an assignment of contract rights.
2. Cardinal Change—A cardinal change is defined as a major deviation from the original purpose of the work or the intended method of achievement, or a revision of contract work so extensive, significant, or cumulative that, in effect, requires the Contractor to perform very different work than the original contract specified. For FTA-funded procurements, ARC is prohibited from effecting a cardinal change to an existing contract or a contract being evaluated for piggybacking.

CHAPTER 6, SECTION 3: OPEN MARKET PROCUREMENTS – METHODS OF COMPETITIVE PROCUREMENT

Appropriate competitive procedure(s) should be used for procurements. The procedures used must comply with State and local law as well as with Federal requirements. Federal restrictions vary with the type of procurement method used. Following is a list the various methods of procurement as defined by the FTA that ARC may use:

6.3.a Micro-Purchases - purchases of \$3,500 or less

Purchases below the threshold may be made without obtaining competitive quotations if ARC determines that the price is fair and reasonable. If micro-purchase procedures are used, micro-purchases should be equitably distributed among qualified suppliers. A determination that the price is fair and reasonable is required with a description of how that determination was made; limited price analysis.

No Splitting

For FTA-funded procurements, ARC is prohibited from the practice of dividing or reducing the size of its procurement for the purpose of meeting the micro-purchase limit.

Fair and Reasonable Price Determination

Although a micro-purchase does not require obtaining competitive quotations, ARC shall conduct a review of pricing before making a determination as to the fair and reasonableness of proposed pricing. In recognition of the possibility that the cost of verifying the reasonableness of price may offset the potential savings, liberty is granted in the method for fair and reasonable price determination. Some suggestions include, but are not limited to, a "boilerplate" determination for signature that address specific ways to buy products or services; documentation of a telephone quote with confirmation of price paid in recent past; a tabulation of prices obtained; documentation that the procurement is being made from an existing competitively secured contract.

Davis-Bacon

For FTA-funded procurements exceeding \$2,000 for construction, alteration, or repair projects, the Davis-Bacon Act is applicable. Davis-Bacon Act prevailing wage protections apply to laborers and mechanics employed on FTA-assisted construction, alteration, or repair projects. The Common Grant Rules require third party contracts for construction, alteration, or repair at any contract tier exceeding \$2,000 to include provisions requiring compliance with the Davis-Bacon Act. The Davis-Bacon Act requires that contractors pay wages to laborers and mechanics at a rate not less than the

minimum wages specified in the wage determination made by the Department of Labor (DOL). ARC FTA-funded procurements shall include a copy of the current prevailing wage determination issued by DOL. Further, the award of each contract shall be conditioned upon the acceptance of that wage determination.

6.3.b Small Purchases – contracts estimated from \$3,500.01 to \$25,000

Price Quotations

If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources. An abbreviated price analysis is required. Although the FTA defines small purchases as those estimated from \$3,500.01 to \$100,000, the threshold for ARC small purchases (informal/quotation request) shall not exceed \$25,000.

6.3.c Sealed Bids – contracts estimated at greater than \$25,000

FTA requires sealed bids for contracts greater than \$100,000. At ARC, award of contract in excess of \$25,000 must be by competitive sealed bidding whenever this method is practicable under the circumstances. Public notice of the invitation to bid shall be given. A formal advertisement shall be solicited for a max/min contract (indefinite delivery/indefinite quantity) or for a firm fixed price contract (lump sum or unit price) where award - based on price and price-related factors – shall be to the responsive, responsible lowest priced bidder. All bids are publicly opened at the time and place prescribed in the invitation for bids. Discussions with individual bidders are not likely to be necessary.

Clear, Accurate, and Complete Specifications

ARC will have clear and accurate description of the technical requirements for the material, product, or service to be procured to ensure that all potential bidders are given equal knowledge on ARC's requirements.

Adequate Competition – Two or More Competitors

In the event of a single responsive bid received as a result of a FTA-funded procurement and competitive solicitation, ARC shall perform an analysis and ensure documentation is retained in the procurement file to document the determination of the existence of a competitive environment for the procurement. The procurement file shall also include all efforts for sourcing, proof of notice of advertisement and participation at pre-bid conference, if applicable.

Firm Fixed Price

For a FTA-funded procurement that lends itself to a firm fixed price contract, the preference is for the sealed bid procurement method. A firm fixed price contract is usually awarded in writing to the lowest *responsive and responsible* bidder.

Selection on Price

The successful bidder can be selected on the basis of price and those price-related factors listed in the solicitation. Apart from responsibility determinations, selection of contractor may not be determined on the basis of factors other than those whose costs cannot be measured at the time of award.

Discussions Unnecessary

Other than consultations for the purpose of determining responsibility, discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract shall be made based on price and price-related factors alone. However, a pre-bid conference with prospective bidders before bids have been received can be useful. The procurement file shall also include all efforts for sourcing, proof of notice of advertisement and participation at pre-bid conference, if applicable.

Advertised/Publicized, Adequate Number of Sources Solicited, Sufficient Bid Time

ARC will publicly advertise and that bids be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids (minimum of 14 days) prior to the date set for opening the bids. ARC will ensure that it solicits from an adequate number of qualified sources and RFPs are publicized.

Bid Opening

ARC will publicly open bids at the time and place prescribed in the invitation for bids.

Lowest Bid

ARC will identify the specific factors, such as discounts, transportation costs, and life cycle costs, that will be considered in determining which bid was lowest.

Rejecting Bids

After any vendor sealed-bid is opened, any or all bids may be rejected, including those bids in which there is only one responsive vendor. The rejection shall be after determination of a sound documented business reason.

6.3.d Competitive Proposals (Request for Proposals)

RFPs are utilized when the nature of the procurement does not lend itself to sealed bidding; the expectation is that more than one source shall be willing and able to submit an offer or proposal. Competitive proposals are utilized when ARC determines that the use of competitive sealed bidding is not the appropriate procurement method as it is not possible to detail fully the scope or quantity of the services or goods sought by ARC. Contracts may also be competitively negotiated when ARC determines that the bid prices received by competitive sealed bidding either are unreasonable, or were not independently reached in open competition. Proposals or requests for qualifications leading to a negotiated agreement shall be publicly advertised and solicited in order to obtain the greatest possible competition.

Evaluation

The criteria – and order of significance - to be used in evaluating such proposals or requests for qualifications must be included in the solicitation document, and may include:

1. Price;
2. Technical Experience;
3. Personnel Qualifications;
4. Prior Experience;
5. Past Performance;
6. Ability to comply with project schedule.

Each category shall be assigned a relative weight for the purposes of evaluation. Proposals shall only be evaluated on the criteria included in the solicitation documents.

Price and Other Factors

Award of contract is not based exclusively on price or price-related factors but, to the responsible firm whose proposal is most advantageous to ARC with price and other factors considered. Discussions with responding firms are likely in the evaluation process.

Best Value

The term describes a competitive, negotiated procurement process in which ARC reserves the right to select the most advantageous offer by evaluating and comparing factors in addition to cost or price so that ARC may acquire technical superiority even if it must pay a premium price. A “premium” is the difference between the price of the lowest priced proposal and the one that ARC believes offers the best value. The term “best value” also means the expected outcome of an acquisition that, in ARC’s estimation, provides the greatest overall benefit in response to its material requirements. To achieve best value, the evaluation factors for the procurement should reflect the subject matter and the elements that are most important to ARC. The solicitation shall include evaluation factors and specify the order of significance of each of the evaluation factors. Evaluation factors may include, but are not limited to, technical design, technical approach, length of delivery schedules, quality of proposed personnel, past performance, and management plan. The proposal having the “best value” is the one that optimizes quality, cost and efficiency among responsive and responsible proposers. To the extent that it is practicable, a determination that a proposal has the best value should have an objective basis.

6.3.e Special Procurements

Two-Step Contracting

This method involves a combined review of the prospective contractors' technical approach to ARC's request and technical qualifications to carry out that approach. The first step is a review of the responding firms for the purpose of narrowing down (short-listing) the responding firms to those in the competitive range of prospective contractors that demonstrate a technically satisfactory approach and have satisfactory qualifications. The second step consists of soliciting and reviewing complete bids or proposals, including price, submitted by each prospective contractor determined to be qualified.

Architectural Engineering Services (A&E) and Other Services

ARC is required to use qualifications-based procurement procedures for FTA-funded procurements for the acquisition of architectural and engineering services, program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping and related services. ARC must use qualifications-based procurement procedures for other services that are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property.

The basis for determining whether qualifications-based procurement procedures are required is dependent on the nature of the work to be performed and its relationship to construction, as opposed to the nature of the prospective contractor.

1. Qualifications Exclude Price—Price will be excluded as an evaluation factor
2. Serial Price Negotiations—Negotiations will be conducted with only the most qualified offeror. Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose prices is fair and reasonable to the grantee.

ARC does not engage in purchases of design-build, design-bid-build services or revenue contracts, as such, these sections are not applicable to ARC.

CHAPTER 6, SECTION 3.H: OPEN MARKET PROCUREMENTS – METHODS OF COMPETITIVE PROCUREMENT, OTHER THAN FULL AND OPEN COMPETITION

6.3.H.1 Non-Competitive Negotiation

Sole Source and Emergency Purchase

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

1. The item is available only from a single source;
2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
3. The awarding agency authorizes noncompetitive proposals; or,
4. After solicitation of a number of sources, competition is determined inadequate.

Cost Analysis Required for Sole Source

ARC shall ensure a fair and reasonable price is determined prior to award of all sole source contracts. A cost analysis is required when adequate price competition is lacking, including sole source procurements as well as contract modifications, change orders, and exercise of options. The exception is if price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set forth by law or regulation. Adequate price competition may be determined to exist when the presumption of competition exists (evidence of adequate available, capable sources), even if only one bid or proposal is received. The procurement file shall document the existence of a cost analysis in determining fair and reasonable pricing.

Single Bid

If only a single bid or proposal is received in response to a solicitation, ARC shall determine whether competition was adequate. Adequate competition occurs when the reasons for few responses were caused by conditions beyond ARC's control. Inadequate competition occurs when the reasons for few responses were within ARC's control.

CHAPTER 6, SECTION 4- 6: COST ANALYSIS

A cost or price analysis must be performed for every procurement action, including contract modifications, and evaluation and exercise of options, to determine the reasonableness of the offered price. The cost or price analysis must be based on an independent estimate, which should be developed before a solicitation is issued, but always before receiving bids and proposals. The cost analysis, with associated profit negotiation, or a price analysis shall be documented in the procurement file with respect to the initial contract award.

6.4-6.a Independent Cost Estimate (ICE)

ARC shall develop an independent cost estimate (ICE) preferably before a solicitation is issued, but always before receiving bids and proposals. For contract modifications, the independent estimate shall be prepared without knowledge of the contractor's proposed pricing. The independent cost estimate may be completed in-house by ARC staff or by an external estimator independent of any offerors. The written independent cost estimate must state how it was derived and the basis of the estimate. The independent cost estimate must be maintained in the official solicitation file. (See Appendix L, Format for Independent ARC Staff Cost Estimate, p. 38 of ARC Contracting Procedures.)

6.4-6.b Cost Analysis

ARC shall perform a cost analysis when negotiating contract modifications, unless price reasonableness is established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation. A cost analysis must be conducted when proposers are required to break down the estimated cost elements, such as labor hours, overhead, or materials, for example. To establish a fair and reasonable profit, consideration shall be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

A cost analysis shall be necessary when adequate price competition is lacking, including sole source procurements (which include contract modifications, change orders, and exercise of options). For procurement by non-competitive proposals (sole source), a cost analysis, verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of cost and profit, is required.

6.4-6.c Price Analysis

A price analysis is the process of examining and evaluating a prospective price without evaluation of the separate cost elements or proposed profit of the prospective supplier. ARC shall conduct a price analysis in all instances where a cost analysis is not required to determine the reasonableness of the proposed contract price.

6.4.d Federal Cost Principles

For FTA-funded procurements, ARC shall ensure the project costs conform to applicable Federal cost principles for allowable costs. In general, costs must be necessary and reasonable, allocable to the project, authorized or not prohibited by Federal law or regulation, and must comply with Federal cost principles applicable to ARC.

CHAPTER 6, SECTION 7: OPEN MARKET PROCUREMENTS – EVALUATIONS

6.7.a Competitive Proposals (RFP)—Evaluation of Price and Other Factors

The RFP solicitation shall include a numerical range of points assigned to the specified evaluation criteria. The evaluation criteria and specified points serve to indicate the relative importance of the factors being evaluated. ARC shall ensure that the award of contract is made to the responsible firm whose proposal is the most advantageous to ARC with consideration of price and other specified evaluation factors. The exception is an A & E services contract where price shall not be a factor in consideration for award.

The procurement file shall retain the documentation that demonstrates the award of contract are made to the responsible firm whose proposal is most advantageous to ARC with price (as determined fair and reasonable) and other factors identified and considered in the final ranking and final selection.

6.7.b Lowest Price (Sealed Bids)

ARC shall award a FTA-funded procurement for a firm fixed price contract to the lowest responsive and responsible bidder. The procurement file of an award of contract made to other than the lowest responsive and responsible bidder shall include a statement explaining the basis for the decision.

If an offer conforms in all material aspects to the requirements of the solicitation at the scheduled time of submission and does not require further discussions with the offeror, the offer is responsive. For FTA-funded procurements, ARC shall perform a review for responsiveness and document the determination with a Pre-Award Checklist. A responsive bidder is a bidder who responds to the requirements of the solicitation.

6.7.c Award to Responsible Contractor

ARC shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement, considering such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. Staff must document System for Award Management confirmation that the vendors are not debarred or suspended for the Contractor to be considered responsible. (See section 6.8 below)

6.7.d Evaluation and/or Exercise of Options

The prices for option quantities or periods that are offered in response to a FTA-funded bid or proposal must be evaluated prior to contract award and prior to exercise of option in order to justify the need and determine fair and reasonableness of pricing. When options have not been evaluated as part of the award, the exercise of such options shall be considered a sole source procurement. When considering exercising an option clause for an increased quantity or additional time to the contract term, ARC shall ensure the options adhere to the terms and conditions of the option (quantities or periods) as stated in the contract and determine that the option price was better than prices available in the market or that the option was a more advantageous offer at the time the option is exercised.

CHAPTER 6, SECTION 8: OPEN MARKET PROCUREMENTS – CONTRACT AWARDS

6.8.a Award to Other than the Lowest Bidder

ARC may award to other than the lowest bidder if the award furthers an objective consistent with the purposes of 49 U.S.C. Chapter 53, including long-term operating efficiency and lower long-term cost. ARC may also award to other than the lowest bidder when stated in the evaluation factors of the solicitation.

6.8.b Award to Responsible Contractor

ARC shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement, considering such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

The list of criteria that ARC shall consider and ensure, when making a determination on the responsibility of a prospective contractor, include:

1. Integrity and ethics
2. Debarment and suspension
3. Affirmative Action and DBE
4. Public Policy
5. Administrative and Technical Capacity
6. Licensing and Taxes
7. Financial Resources
8. Production Capability
9. Timeliness
10. Performance Record

CHAPTER 7: PROTESTS, CHANGES AND MODIFICATIONS, DISPUTES, CLAIMS, LITIGATION, AND SETTLEMENTS

7.1. Protest Procedures

ARC has written protest procedures to handle and resolve disputes relating to procurements and shall in all instances disclose information regarding protests to FTA. All protest decisions must be in writing. A protester must exhaust all administrative remedies with the grantee before pursuing a protest with FTA.

ARC shall maintain written procedures that are consistent with all applicable ARC policies to consider and resolve protests relating to solicitations and shall comply with all applicable FTA requirements regarding notice of protests and notification of a protestor's right to appeal to the FTA. ARC's protest procedures are delineated in the "Atlanta Regional Commission Procurement Protest Procedures" (Appendix C). All ARC solicitations, funded with FTA money, shall include the procedures for filing a protest. The procedures detail the various phases of procurement (Pre-Submittal protest of solicitation specifications or requirements, or Pre-Award protest of proposed award) and include the submittal requirements including timeframe for timely delivery of protest.

Upon receipt of a protest for any FTA-funded procurement, ARC shall notify the designated FTA Regional Administrator. The information to be provided to the FTA shall include a brief description of the protest, the basis of disagreement, and if open, how far the protest has proceeded or if resolved, the agreement or decision reached. The designated grant manager for ARC shall provide all required protest information to the FTA in ARC's quarterly Milestone Progress Reports and at Project Management Oversight review meetings.

Applicable FTA regulations provide that a protestor may appeal ARC's decision with the FTA only after exhausting its administrative remedies with ARC, and that the protestor must file its appeal in writing with the FTA Regional Administrator within five working days of receipt of ARC's decision. Applicable FTA regulations also provide that the FTA shall only consider a protest if ARC does not have protest procedures or has not complied with its protest procedures or if the issue involves violations of Federal law or regulations.

7.2 Changes and Modifications

ARC shall ensure that it addresses the requirements below in its consideration of the need for change orders and contract modifications.

1. Approval requirements—cost justifications supporting each change order it may issue. Appropriate approvals before change order is issued
2. Cost restrictions—cost of the change, modification, change order or constructive change must be allowable, allocable, within the scope of its grantor cooperative agreement, and reasonable for the completion of project scope.

7.3 Disputes

Unless the Contract provides otherwise, disputes arising in the performance of a Contract with ARC which are not resolved by agreement of the parties shall be decided in writing by ARC's Project Manager for the Contract. 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 ARC's Contract Administrator. In connections 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 Contract Administrator shall be binding upon the Contractor and the Contractor shall abide by the decision. Furthermore, unless otherwise directed by ARC, the Contractor shall perform under the Contract while matters in dispute are being resolved.

Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and ARC, the U.S. Department of Labor, or the employees or their representatives.

7.4 Claims and Litigation

Due to FTA's financial interest in the settlement of third party contract claims and litigation, ARC shall notify FTA of any claims and litigation against ARC involving FTA funds or interest. ARC shall provide notice on claims on contracts valued over \$100,000, claims involving controversial matters and well as highly publicized matters, irrespective of amount and a description of the claim. Claims and litigation should be presented to FTA in the quarterly Milestone Progress Report and at the Project Management Oversight review.

FTA reserves the right to a share of any net proceeds recovered through a third-party contract claim or litigation. FTA expects ARC to credit liquidated damages, if any, recovered to the project, unless FTA permits other uses of the liquidated damages.

7.5 FTA Participation in Settlements, Arbitration Awards, and Court Awards

ARC shall enter into reasonable settlement agreements, which can include agreement by the contractor to provide extra property or services in lieu of payments or reduced payments for damages, including liquidated damages. ARC shall maintain sufficient records that demonstrate that ARC has taken reasonable and prudent measures to prevent or offset the actions or circumstances resulting in the underlying protest, dispute, claim or litigation. Further, ARC shall secure FTA's review and written concurrence in a proposed or final settlement involving a dispute, claim or litigation before using Federal assistance to support its cost, if:

1. The settlement exceeds \$100,000;
2. When the approved project lacks sufficient funds to cover the settlement costs; or,
3. When a special Federal interest or Federal concern is declared due to program management concerns, possible mismanagement, impropriety, waste or fraud.

CHAPTER VII.

PROCUREMENT PROTEST PROCEDURES

ATLANTA REGIONAL COMMISSION PROCUREMENT PROTEST PROCEDURES

The Atlanta Regional Commission (ARC) has developed the following procedures to address complaints or official inquiries related to its procurement process:

Notification

Any interested party may file a written protest during the pre-award phase of the procurement process. Any pre-award protest must be received by ARC at least ten (10) business days before solicitation closing using the procedures described below. Any pre-award protest not received by ARC at least ten (10) business days before the solicitation closing will not be addressed.

Post-award protests may only be filed by parties that submitted bona-fide offers in response to the solicitation. Any party registering a post-award protest must do so in writing within five (5) business days of the date of announcement of the award. Written protests may be submitted by mail to:

Brittany Zwald
Contracts & Grants Analyst
Atlanta Regional Commission
229 Peachtree St, NE, Suite 100
Atlanta, GA 30303

Protests can also be submitted by email to bzwald@atlantaregional.org. Protests submitted via email must include "Procurement Protest" in the subject line.

Initial notifications must contain the following:

- Name and Title of Protester
- Phone Number
- E-mail Address
- Fax Number
- Title/Name of the procurement against which a complaint/protest is being issued

Within five (5) business days of receipt of notification, ARC will provide the protester with a copy of these Procurement Protest Procedures and a Protest Form. Protests not submitted in writing will not be addressed. The protester must return the completed Protest Form to ARC's Contracts and Grants Analyst named above within five (5) business days of its receipt.

Response

ARC's Executive Director or his/her designee will review the protest and respond, in writing, to each substantive issue set forth in the completed Protest Form within ten (10) business days of its receipt. If the protester is not satisfied with the response from ARC's Executive Director, the protester may appeal the Executive Director's decision to ARC's Governance Committee. The appeal to ARC's Governance Committee must be received by the Committee within five (5) business days of the protester's receipt of the Director's (or his/her designee's) response and must be sent via certified mail to:

Atlanta Regional Commission
Governance Committee
229 Peachtree Street, NE, Suite 100
Atlanta, GA 30303
Re: Procurement Protest Request for Appeal

The protester's appeal shall include the following information and details:

- Copy of the Protest Form as submitted to ARC
- Director's written response
- Any additional information submitted by the protester or requested by the Executive Committee, which may include, but is not limited to, additional documentation and/or facts related to the protest.

The Governance Committee shall then review the information. Within twenty (20) business days of its receipt and review of the protest information, ARC's Governance Committee will make a decision and provide a written response to the protester's appeal. If the Executive Committee so chooses, it may, prior to providing its decision and response, invite the protester to address the protest issue at a meeting scheduled by the Governance Committee. Any such meeting shall be held within ten (10) business days of the Governance Committee's receipt of the protest information. However, the Governance Committee reserves the right to render its decision based solely on the written protest information.

The decision of the Governance Committee shall be final.

**ATLANTA REGIONAL COMMISSION
PROCUREMENT PROTEST FORM**

DATE:		
NAME:	TITLE:	
COMPANY NAME:		
ADDRESS:		
CITY:	STATE:	ZIP:
PHONE:		
EMAIL:		
COMPLAINT (attach additional pages if necessary):		

-----For ARC Use Only-----

DATE RECEIVED:
RECEIVED BY:
ACTION TAKEN:
COMMENTS/NOTES:

CHAPTER VIII. RETENTION POLICY

PART I. INTRODUCTION

Section One: Background

The Atlanta Regional Commission recognizes the importance of the Agency's information documents and the need to manage its public records. The Georgia Records Act requires state agencies and local governments to follow specific guidelines for the retention and disposition of records. Legally required retention periods were also developed. ARC follows the guidelines and principles of the Georgia Records Act, the common "[Retention Schedules for State Government Paper and Electronic Records](#)" and Federal Retention Rules. In addition, ARC complies with the U.S. Office of Management and Budget (OMB) [2 CFR 200.333 retention requirements](#). When state and federal requirement differ, the most stringent requirement will be followed.

Section Two: Principles

The Georgia records Act states: (Agency Expectations) – *"Cause to be made and preserved records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the government and of persons directly affected by the agency's activities."*
"Establish and maintain an active and continuing program for the economical and efficient management of records."

The Atlanta Regional Commission will keep public records that pertain to: the conduct of business, regulatory requirements, litigation, governmental actions and documents of historical significance. All other documents will not be kept.

Policies and retention schedules that govern paper documents will also govern electronic documents on PC's, laptops, PDA's, CD's, flash drives, servers and the website.

Instant and text messaging will be treated as telephone voicemail. These items are not required to be retained although these items are subject to Open Records if created on ARC equipment or with ARC accounts.

All managers, including project managers are responsible for managing, preserving, keeping and storing documents relevant to the projects to which they are assigned or records associated with program and statutory responsibilities. In addition, Group managers need to have a record of everything that is stored offsite.

PART II. POLICIES

Section One: General

The Atlanta History Center is the official archival storage site for the Agency. The Communications and Marketing Group keeps a record of all documents sent to the history center.

Staff shall not remove or destroy documents arbitrarily. Authorization should come from the cognizant Group manager or center director. If in doubt, seek advice from the Communications and Marketing Group.

When an employee leaves ARC he/she will not erase electronic information or destroy work documents. The computer will be screened by the supervisor in coordination with ITS. All relevant files will be backed up, stored or transferred to another worker before files are erased and the computer is reassigned.

Electronic information must be backed-up on a regular basis.

Emails that are general or routine communication with no program, administrative, policy or project relevance are retained until no longer useful.

Emails relating to the administration of projects, plans, programs, grants and business activities are retained in accordance with the Georgia Common Schedule or other required federal, state or grantor rules.

Paper documents stored on site that are pertinent to the business and mission of ARC such as HR records, financial records, reviews and contracts must be stored in fire/water proof storage files or containers. If paper documents are stored off site, the facility must have protection against fire, water, mold, moisture and rodents. Also, off-site storage must be retrievable within 6-24 hours. All off-site storage is coordinated with the Facilities Manager.

Section Two: Reviews (Developments of Regional Impact, Metropolitan River Protection Act, Area Plan, Intergovernmental)

Reviews are to be retained permanently for reference, historical, research and potential litigation purposes. This also includes relevant emails, meeting notes and correspondence. Once a review is completed and closed, the paper documents can be stored off site if they are not needed for periodic reference. Electronic materials implementation associated with the review should be stored in retrievable folders.

Section Three: Comprehensive Plans

Comprehensive local plans reviewed by ARC are to be retained permanently. This also includes the actual review and relevant electronic and paper files. Once a plan is updated, the old plan and supporting materials should be stored off site.

Section Four: ARC Regional Development Plans, Functional Plans, Program Plans, Development Guides

ARC adopted plans are to be kept permanently and archived. Once an update is done, the former plan and supporting paper and electronic project files, maps and resource allocation recommendations should be stored off site or electronically.

Section Five: Workforce Solutions Program Grants

The Workforce Solutions Program and its subcontractors must follow the U.S. Department of Labor's regulations governing their program. The grant records retention schedule is three (3) years from the date of the

final closeout. After three years the grant files can be destroyed. If grants are renewed, the retention schedule end dates change in accordance with U.S. Department of Labor's guidelines.

Section Six: Aging and Health Resources Program

The Aging and Health Resources program follows the Georgia Paper and Electronic Records Retention schedules which are attached and federal regulations governing their grants. Specifically, the Georgia Department of Human Services Aging Services grant states:

Records must be retained at least six years following the date of final payment. Records to be maintained include both financial records and service records. If an audit is started prior to six years, then records must be maintained until the audit is satisfied.

The Georgia Department of Human Services also requires that client and resource data bases such as ESP and CHAT be retained for six years.

Section Seven: ARC Administration, Finance, Talent Management, Information Technology and Facilities

The Georgia Paper and Electronic Records Common Retention Schedules complement federal rules and serve as the guide for records retention and archiving material. Also, the rules of 2 CFR 200.333 et seq. must be followed. Depending upon the specific record, retention times range from 3-7 years, except for those items requiring permanent retention such as audits.

Section Eight: Communications and Marketing Records Management

The Communications and Marketing Department is responsible for ARC archival records management. The Georgia Paper and Electronic Records Common Retention Schedules serve as the Agency's guide. Board meeting minutes, annual reports, newsletters are examples of permanently archival materials. A listing of items stored at the Atlanta History Center can be found on the ARC Website under [ARC Archives](#).

Section Nine: Litigation/Audits

If a lawsuit occurs or there is the potential of a lawsuit including legal inquiries or discovery, the ARC Executive Director will override all retention policies and ask the affected department's manager to create a central accessible file for the legal process. No paper or electronic items associated with the legal process will be discarded or destroyed. Further, all project or grant records plus supporting financial, statistical, and other supporting documents must be retained until all legal, audit or claim issues are officially resolved.

The following guidelines should be followed if litigation is anticipated:

Section Ten: What to do When Duty to Preserve Arises for Discovery

- Identify scope: Individuals, subject matter, timeframe, locations, issues
- Identify key systems/backup procedures and tapes
- Identify key players and relevant record types
- Issue hold/preservation notice
- Communicate hold to relevant employees
- Re-issue hold
- Actively monitor the preservation effort
- Document the hold/collection/preservation process Develop a plan for collecting relevant information

Section Eleven: What Must Be Preserved?

- Information Useful to Adversary
- Relevant Information
- Information Likely to be Released
- Information Reasonably Calculated to Lead to Discovery of Admissible Evidence
- Information under Custody and Control of Party Including Potential Evidence which may be in Databases Created by Third Party Vendors

(Source: King & Spalding)

PART III. CRITERIA FOR ARCHIVING ARC MATERIALS

Section One: ARC Archives housed at Atlanta History Center

ARC's archives of documents and digital materials are held at the [Atlanta History Center](#), [Kenan Research Center](#), 130 West Paces Ferry Road, NW, Atlanta, GA 30305-1366.

The archived materials are stored in the Kenan Research Center's closed stacks collection and housed as the Atlanta Regional Commission collection. This storage facility is a secured, climate-controlled storage located on the bottom level of McElreath Hall. The storage area also currently contains the archival collections of the City of Atlanta and of Fulton County.

The research center provides public access to the collection as well as research assistance. The research center is free and open to the public, Tuesday through Saturday, 10 am to 5 pm. Public access is available as an on-call service, and ARC collection materials are pulled from closed stacks for the public upon request. Only appointed ARC staff in the Communications and Marketing Group can check items out of the ARC collection.

ARC Archives can be searched online through the Atlanta History Center's catalog through the [Terminus](#) search engine (execute search for: Atlanta regional commission). A link for this search engine can also be found on ARC's Web site on the [ARC Archives](#) page.

Section Two: Archiving Process

Print: Printed items for the archives should be delivered to Communications and Marketing upon publication. These documents will be bound and sent to the Atlanta History Center.

Electronic: Most of ARC's publications are now available in electronic form only. These publications must be archived when they are removed from ARC's website. Prior to removal from the website, a pdf version of the document or files should be placed in the appropriate folder for your Group under the [Web Archives](#) folder on PCCCommon. Copies of these files will be saved on pcccommon until they are available electronically through the History Center.

Archived items should include any significant studies, regional plans, meeting minutes, final reports, publications, videos or CDs produced by ARC that relate to any ARC program area. These include:

- Regional plans for transportation, wastewater, land use, aging, solid waste, water supply, housing, workforce, greenspace, local governments
- Issue reports
- Feasibility studies

- Impact studies
- Development plans
- Comprehensive plans
- Procedure manuals (i.e., DRI review process, Chattahoochee review process, etc.)
- Guidelines
- Publications
- Board minutes
- Board meeting transcripts
- Committee notes and agendas
- Resolutions
- Financial reports
- Annual reports
- Newsletters
- Brochures
- Videos
- Regional data
- Maps
- CDs
- Classification and pay surveys, plans and proposals
- Board working session reports
- Bylaws
- Toolkits
- Position papers
- Resource Guides
- Work program and budget reports
- State of the Region reports
- Audit reports

CHAPTER IX. TEMPLATES

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Appendix A – Procurement Checklist

PROJECT INFORMATION

project name:	
staff lead:	
budget estimate:	
funding source:	

CHECKLIST

<input type="checkbox"/>	Secure your funding
	Apply for your grant, get it fully executed, get it approved, get use of indirect approved, make note of previously budgeted funds.
<input type="checkbox"/>	Draft a needs memo to the Director of Business Services
	<p>Must Contain the following information:</p> <ul style="list-style-type: none"> A detailed description of the services needed (including details regarding how the determination of the need was made) and a preliminary Scope of Work. The Grant Name and Number or other fund source from which the services identified shall be compensated. The Cost Center to which the costs of the professional services will be charged. The type of procurement proposed: For Services: (1) Quotes (2) Open Request for Proposal (RFP) (3) Short List RFP; or (4) Sole Source. For Goods: (1) Sealed Bids (2) State Contract (3) Sole Source <p>An estimate of the probable total cost of the contract(s) resulting from the procurement. The estimate is to be titled "Independent ARC Staff Cost Estimate."</p> <p>Sole Source documentation must be included if that is the proposed method.</p>
<input type="checkbox"/>	Director of Business Services Approves Need
<input type="checkbox"/>	Begin procurement
	If basing procurement on Quotes or State Contract, skip to "Select Vendor," if basing procurement on Sole Source, skip to "negotiate project terms and budget"
<input type="checkbox"/>	Draft RFP/Sealed Bid as applicable
	<p>RFP must include the following</p> <ul style="list-style-type: none"> Description of the technical requirements in terms of "functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards." Description of the property or services as found in Attachment A- Scope of Services; Evaluation factors- Cost must be included among the evaluation criteria but shall not be weighted at more than 25% of the overall criteria Contract type specified – Contractor, Consultant, Subgrant, Payment or Full, letter agreement, etc. Other federal and grant requirements <ul style="list-style-type: none"> If the contract is funded by a grant of transportation funds, the proposal should require submission of a DBE plan. Federal clauses as required Award to other than the lowest bidder Rejection of all bids or offers Request of written response based on criteria for responsiveness. Interviews dates if applicable <p>Deadline for questions if applicable and deadline for responsiveness</p>
<input type="checkbox"/>	RFP published in legal organ and on ARC website for a minimum of 14 days
	RFP must be reviewed by the Contracts and Grants Analyst and must be finalized and submitted 1 week prior to the date of the RFP Opening
<input type="checkbox"/>	Select Vendor
	<ul style="list-style-type: none"> Must be based on evaluation/interview process as described in the RFP/Sealed Bid If using quotes or state contract, must ensure that the most competitive quote is selected/verify that the state quote is competitive and federal requirements met Cost/Price Analysis

<input type="checkbox"/>	Negotiate project terms and budget
	<ul style="list-style-type: none"> • Verify that vendor is not debarred, suspended or otherwise ineligible for federal funds by checking SAMS.gov • Verify vendor's legal name and address
<input type="checkbox"/>	Draft Selection Memo for the file. Justify and explain how you objectively selected your vendor.
<input type="checkbox"/>	Draft Attachments A & B (Scope of Work and Budget)
	<ul style="list-style-type: none"> • Must work with Budget Managers to develop a Budget • Should be based on ARC contracting template
<input type="checkbox"/>	Submit a Contract Request in Concur
<input type="checkbox"/>	Contracts and Grants Analyst drafts contract.
<input type="checkbox"/>	Send draft contract to vendor for execution
	<ul style="list-style-type: none"> • Contract should include required Vendor Certification Forms- Immigration, Debarment and Suspension, Lobbying, Information Form • Any contract terms that need to be negotiated should be reviewed with the Contracts and Grants Analyst
<input type="checkbox"/>	Return vendor signed contract to Finance for ARC execution
<input type="checkbox"/>	Executive Director, and Chairman as applicable, execute agreement.
<input type="checkbox"/>	PO Issued
	Project work may begin

Appendix B – Needs Memo Template

MEMORANDUM

TO: Douglas R. Hooker, Executive Director _____

FROM: [cognizant Center Director] _____

DATE:

RE: Need for Goods/Services

The purpose of this memorandum is to obtain approval to proceed with the solicitation of *[description of good/service]*.

Documentation:

[Narrative must include a detailed description of the services needed and a preliminary scope of work, the grant name and number, or other funding source, the cost center, the type of procurement proposed, and an estimate of the probable total cost.]

Attachments:

Independent Cost Estimate

Scope of Work

[as applicable]

Sole Source Justification

Draft RFP

State Contract reference

Appendix C – Independent Cost Estimate Template

To be submitted with Needs Memo. The independent estimate shall be prepared without knowledge of the contractor's proposed pricing. The independent cost estimate may be completed in-house by ARC staff or by an external estimator independent of any offerors. The written independent cost estimate must state how it was derived and the basis of the estimate.

Funding Agency: _____

Grant Number: _____

Description of Good or Service: _____

Proposed Procurement Method: _____

Method of Obtaining the Estimate

Published Price List/ Past Pricing

Engineering or Technical Estimate

Independent Third-Party Estimate

Other (specify)

Cost Estimate Details:

Through the method stated above, it has been determined that that total cost of the goods/services, is expected to be \$ _____. Details are shown below.

Cost of Goods

Cost of Services

The preceding cost estimate was prepared by:

Signature

Date

Appendix D – DBE Utilization Plan

This plan will be included in a Title VI and DBE Attachment to all US DOT funded ARC bids and proposals.

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

NAICS Code: _____

Address: _____

City: _____ State: _____ Zip: _____

Description of work to be performed by DBE firm:

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ _____. The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By _____
(Signature) (Title)

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

(Submit this page for each DBE subcontractor.)

Appendix E – Price Analysis Template

To be included with Selection Memo

PO / Contract: _____

The evidence compiled by a price analysis includes:

- Developing and examining data from multiple sources whenever possible that prove or strongly suggest the proposed price is fair.
- Determining when multiple data consistently indicate that a given price represents a good value for the money.
- Documenting data sufficiently to convince a third party that the analyst's conclusions are valid.

The pricing quoted on the submitted proposals/bid(s) is deemed to be fair and reasonable based on the following type of analysis:

- ☐ Comparison with competing suppliers' prices or catalog pricing for the same item. (Complete comparison matrix and attach supporting quotes or catalog pages.)
- ☐ Comparison of proposed pricing with in-house estimate for the same item. (Attach signed in-house estimate and explain factors influencing any differences found. Complete summary matrix.)
- ☐ Comparison of proposed pricing with historical pricing from previous purchases of the same item, coupled with market data such as Producer Price Index or Inflation Rate over the corresponding time period. (Attach data and historical price record).
- ☐ Analysis of price components against current published standards, such as labor rates, dollars per pound etc. to justify the price reasonableness of the whole. (Attach analysis to support conclusions drawn.)

SUMMARY MATRIX

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

Attachments:

Appendix F – Single Bid Analysis Template

(Complete this form when only one bid is received in response to an IFB or RFP, and submit with sole source justification).

Product/Service to be Procured: _____	Action to Plan:
Bid or Proposal Due Date: _____	<input type="radio"/> Award Contract Basis: _____ _____
Number of Solicitations Requested: _____	<input type="radio"/> Extend Deadline (modify solicitation): New Due Date: _____
Number of Bids Received: _____	<input type="radio"/> Reprocure: New Solicitation Due to be Completed: _____
Reasons for Lack of Competition (based on Supplier Contracts)	Projected Due Date: _____
<input type="radio"/> Lack competency	Signed: _____
<input type="radio"/> Lack available resources	Title: _____
<input type="radio"/> Poor timing	Date: _____
<input type="radio"/> Short response due date	
<input type="radio"/> Other: _____	

Appendix G – Sole Source Justification Template

MEMORANDUM

TO: Douglas R. Hooker, Executive Director _____

FROM: [cognizant Center Director] _____

DATE:

RE: Sole Source Justification

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

Check one:

- _____ The goods and/or services to be procured are only available from one source. (sole source justification is attached).
- _____ There is a public emergency or immediate need for the good or service that will not permit the delay associated with a competitive procurement process. (documented emergency condition is attached).
- _____ The grantor agency authorizes non-competitive proposals; or after solicitation of a number of sources, competition is determined to be inadequate. (letter of authorization is attached).
- _____ ARC is sponsoring a program which is held out of the region and procurement resources are limited or cannot meet performance elements of the program. (record of source contacts is attached).

Documentation:

[Narrative must include an explanation of the above required documentation, a description of the project, the funding source, and the funding agency]

Appendix H – Scope of Work and Budget Template

ATTACHMENT A SCOPE OF SERVICES

- I. General: The work to be accomplished by the Consultant is in support of the following ARC Cost Center:

<u>Cost Center No.</u>	<u>Cost Center Title</u>
------------------------	--------------------------

- II. Purpose: *Please describe in this section, the purpose of the work being contracted, how it relates to the applicable grant funding, who the funding agency is, and how this project and grant relate to the work of ARC in whole.*
- III. Study Area: *Please describe in this section, the study area, service area, or if region wide, list which regional boundaries.*
- IV. Work and Services: The Consultant shall personally do, perform and carry out, in a satisfactory and proper manner, as determined by ARC, the following work and services:
- List tasks in as much detail as possible. This should be based on the proposal provided by the consultant, which should be based on the RFP you designed. These tasks should be descriptive enough that the average reader understands what the purpose of this contract is. These tasks should also be technical enough to ensure that ARC receives the work it expects.*
- V. Deliverables: *Please describe the finished product/outcome to be provided by this contract. Provide the deadline, and if a document, software, study, or other material to be produced, specify the format.*

ATTACHMENT B
COMPENSATION AND METHOD OF PAYMENT

- I. Compensation: In no event will the total compensation and reimbursement, if any, to be paid to the Consultant under this contract exceed the sum of \$_____. A breakdown of this budget is listed in "Exhibit B-1, Contract Budget," which is attached to and made part of this contract for financial reporting, monitoring, and audit purposes.
- II. Method of Payment: The following method of payment will be used for this project:
- A. Progress Payments: The Consultant shall be entitled to receive progress payments on the following basis. On a monthly basis during the existence of this contract, the Consultant shall submit to ARC an invoice for payment documenting work performed during the invoice period. Any work for which payment is requested may be disallowed at ARC's reasonable discretion if not properly documented in the required monthly progress report. Invoices properly submitted shall be paid or rejected within 45 days of receipt by ARC.
- Invoices shall be submitted to:
Program manager contact information
- B. Final Payment: Final payment shall only be made upon determination by ARC that all requirements hereunder have been completed. Upon such determination and upon submittal of a final invoice, ARC shall pay all compensation due to the Consultant, less the total of all previous progress payments made.
- Consultant's final invoice and final narrative progress report must be received by ARC no later than fifteen days after the project completion date specified in the contract. ARC may, at its discretion, disallow all or part of a final invoice received after this deadline.
- III. Invoices: ARC shall make payments to the Consultant as the work progresses but not more often than once a month. Invoices shall be submitted to ARC by the ____ day of each month to the above listed contact. Invoices shall include a description of work completed, and percentage of work completed, amount previously billed, a unique invoice number, the period of performance in which the work completed took place, and a valid payment address. ARC may, at its discretion, disallow all or part of a payment of an invoice received after this deadline or determined to be incomplete.

Invoices shall also include payments to approved subcontractors. It should be noted on the invoices if a subcontractor is a DBE/MBE/WBE.

The following are approved Subcontractors:

<u>Name</u>	<u>Subcontract Amount</u>
NNN	\$N

- IV. *For contracts involving funds from the U.S. Department of Transportation (consult the Director of Support Services) over \$10,000 with private for-profit professional services consultants or for subgrant contracts over \$100,000 on an annualized basis with local governments, the following paragraph should be added to Attachment B:*
- Participation by Minority Business Enterprise in Department of Transportation Programs
- A. Policy. It is the policy of ARC and the Department of Transportation that minority business enterprises as defined in 49 CFR Part 23 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 MBE requirements of 49 CFR Part 23 apply to this agreement.

- B. MBE Obligation. The Consultant (or Subrecipient) agrees to ensure that minority business enterprises as defined in 49 CFR Part 23 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 this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of DOT-assisted contracts.

EXHIBIT B-1
CONTRACT BUDGET

Consultant Name and Address:

Contract Period:

Task/Expense Type	Amount	Cost Center
Task 1: <i>NNN</i>	<i>\$ n.nn</i>	<i>NNNNNN</i>
Task 2: <i>NNN</i>	<i>\$ n.nn</i>	<i>NNNNNN</i>
Task 3: <i>NNN</i>	<i>\$ n.nn</i>	<i>NNNNNN</i>
Total:		<i>\$ n.nn</i>

*Note: The estimates listed above are preliminary and actual costs by Task may vary so long as the total contract value does not increase.

Appendix I – Certifications
GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT AFFIDAVIT
CONTRACTOR AFFIDAVIT

By executing this affidavit, the undersigned person or entity verifies its compliance with O.C.G.A. §13-10-91, stating affirmatively that the individual, firm or entity which is engaged in the physical performance of services under a contract with the Atlanta Regional Commission has registered with and is participating in a federal work authorization program, in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

The undersigned person or entity further agrees that it will continue to use the federal work authorization program throughout the contract period, and it will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the undersigned with the information required by O.C.G.A. 13-10-91(b).

The undersigned person or entity further agrees to maintain records of such compliance and provide a copy of each such verification to the Atlanta Regional Commission within five (5) business days after any subcontractor is retained to perform such service.

EEV / E-Verify™ Company Identification Number

Date of Authorization

Company Name

Signature of Authorized Officer or Agent

Title of Authorized Officer or Agent

Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE

____ DAY OF _____, 20__

Notary Public

[NOTARY SEAL]

My Commission Expires:

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY
AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS AND LOBBYING**

1. DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION- LOWER TIER COVERED TRANSACTIONS

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 proposed for debarment under 45 CFR Part 76, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

The terms "covered transaction", "debarred", "suspended", "ineligible", "lower-tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause have the meaning set forth in the Definitions and Coverage sections of rules implementing Executive Order 12549.

The prospective lower tier participant certifies that, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Where the prospective lower tier participant is unable to certify to any of its statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. LOBBYING

As required by **Section 1352, Title 31 of the U.S. Code** (as implemented at 45 CFR Part 93), the applicant certifies that to the best of his or her knowledge and belief that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence 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.
- (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 Section 1352, Title 31, U.S. Code. 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.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any persons for influencing or attempting to influence 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 commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above applicable certification(s).

NAME OF APPLICANT

AWARD NUMBER and/or PROJECT NAME

PRINTED NAME OF AUTHORIZED REPRESENTATIVE

TITLE OF AUTHORIZED REPRESENTATIVE

SIGNATURE OF AUTHORIZED REPRESENTATIVE

DATE

REV ARC 05/08

CONTRACTOR/VENDOR INFORMATION

**Legal name & address
of entity:**

If different from above-
Legal name of Payee:
Payment Address:

(If additional addresses are needed, identify each and its purpose on the reverse of this page.)

Legal entity status (please mark all that apply):

☐ **Corporation/C-Corp LLC/S-Corp LLC** ☐ **Individual/Sole-Proprietor/Single Member LLC**
☐ **Partnership/LLC Partnership/LLP** ☐ **Government: Federal/State/Local/Authority**
☐ **Non-Profit: 501(c)(3)/501(c)(4)** ☐ **Other: (describe)** _____

(Federal) Employer Identification Number: _____

OR

Social Security Number (for an individual): _____

Is this contractor/vendor an attorney/law firm? YES _____ NO _____

Is this contractor/vendor debarred, suspended, ineligible or excluded from participation in federally funded projects? YES _____ NO _____

E-verify Status: _____ **Registered: E-verify Number** _____
_____ **Not Registered**

Is this contractor/vendor a:

Disadvantaged Business Enterprise under 49 CFR Part 26? YES _____ NO _____

Minority or Women Business Enterprise under 49 CFR Part 23? YES _____ NO _____

Attach a copy of current certification(s).

Is this contractor/vendor a Non-federal entity that expends \$750,000 or more in a year in Federal awards? YES _____ NO _____

If so, attach a copy of most recent single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133.

Certified true and correct:

Name: _____

Signature: _____

Title: _____

Date: _____

Appendix J – Subcontractor Approval Form

ARC Grantee shall submit the following form with contract documents and certificates. ARC reserves the right to approve of all subcontracts. Submit additional pages as necessary. New subcontracts obtained throughout the year require additional submissions.

Grantee: _____
Address: _____
City: _____ State: _____ Zip: _____
Grant Term: _____ Grant Total: _____

Subcontractor: _____
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____ E-mail: _____
Contract- Begin Date: _____ End Date: _____ Total: _____

Description of work to be performed: _____

Subcontractor: _____
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____ E-mail: _____
Contract- Begin Date: _____ End Date: _____ Total: _____

Description of work to be performed: _____

Subcontractor: _____
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____ E-mail: _____
Contract- Begin Date: _____ End Date: _____ Total: _____

Description of work to be performed: _____

Subcontractor: _____
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____ E-mail: _____
Contract- Begin Date: _____ End Date: _____ Total: _____

Description of work to be performed: _____

CHAPTER X.

FEDERAL TRANSIT AUTHORITY REQUIRED CLAUSES

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES
APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

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

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.
Civil Rights (Title VI, ADA, EEO except Special DOL EEO clause for construction projects)	All	All	All>\$10,000	All	All
Special DOL EEO clause for construction projects				>\$10,000	
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$150,000	>\$150,000	>\$150,000
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			Transport by ocean vessel.	Transport by ocean vessel.	Transport by ocean vessel.
Fly America	Foreign air transp./travel.	Foreign air transp./travel.	Foreign air transp./travel.	Foreign air transp./travel.	Foreign air transp./travel.
Davis-Bacon Act				>\$2,000 (also ferries).	
Contract Work Hours and Safety Standards Act		>\$100,000 (transportation services excepted).	>\$100,000	>\$100,000 (also ferries).	

Copeland Anti-Kickback Act Section 1 Section 2				All > \$2,000 (also ferries).	
Bonding				\$100,000	
Seismic Safety	A&E for new buildings & additions.			New buildings & additions	
Transit Employee Protective Arrangements		Transit operations.			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit operations.			
Alcohol Misuse and Testing		Transit operations.			
Patent Rights	R & D				
Rights in Data and Copyrights	R & D				
Energy Conservation	All	All	All	All	All
Recycled Products		EPA-selected items \$10,000 or more annually.		EPA-selected items \$10,000 or more annually.	EPA-selected items \$10,000 or more annually.
Conformance with ITS National Architecture	ITS projects.	ITS projects.	ITS projects.	ITS projects.	ITS projects.
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States.	Limited to States.	Limited to States.	Limited to States	Limited to States.

1. Fly America Requirements

49 U.S.C. §40118

41 CFR Part 301-10

Applicability to Contracts

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

Applicability to Micro-Purchases

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

Flow Down Requirements

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

Model Clause/Language

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

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

2. Buy America Requirements

49 U.S.C. 5323(j)

49 CFR Part 661

Applicability to Contracts

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

Flow Down

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The \$100,000 threshold applies only to the grantee contract, subcontracts under that amount are subject to Buy America.

Mandatory Clause/Language

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

Buy America - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded

projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content. A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

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

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

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

Date _____

Signature _____

Company Name _____

Title _____

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

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

Date _____

Signature _____

Company Name _____

Title _____

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

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

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

Date _____

Signature _____

Company Name _____

Title _____

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

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

Date _____

Signature _____

Company Name _____

Title _____

3. Charter Bus Requirements

49 U.S.C. 5323(d)

49 CFR Part 604

Applicability to Contracts

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

Applicability to Micro-Purchases

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

Flow Down Requirements

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

Model Clause/Language

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

Charter Service Operations - The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

3. School Bus Requirements

49 U.S.C. 5323(F)

49 CFR Part 605

Applicability to Contracts

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

Flow Down Requirements

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

Model Clause/Language

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

School Bus Operations - Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions.

When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

4. Cargo Preference Requirements

46 U.S.C. 1241

46 CFR Part 381

Applicability to Contracts

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

Applicability to Micro-Purchases

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

Flow Down

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

Model Clause/Language

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

Cargo Preference - Use of United States-Flag Vessels - The contractor agrees: a. *to use* privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry

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

5. Seismic Safety Requirements

42 U.S.C. 7701 et seq. 49

CFR Part 41

Applicability to Contracts

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

Applicability to Micro-Purchases

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

Flow Down

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

Model Clauses/Language

The regulations do not provide suggested language for third-party contract clauses. The following language has been developed by FTA.

Seismic Safety - The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

6. Energy Conservation Requirements

42 U.S.C. 6321 et seq.

49 CFR Part 18

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Applicability to Micro-Purchases

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

Flow Down

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

Model Clause/Language

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

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

7. Clean Water Requirements

33 U.S.C. 1251

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

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

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

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

8. Bus Testing

49 U.S.C. 5318(e)

49 CFR Part 665

Applicability to Contracts

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

Applicability to Micro-Purchases

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

Flow Down

The Bus Testing requirements should not flow down, except to the turnkey contractor as stated in [Master Agreement](#).

Model Clause/Language

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

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

1. A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
2. A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
3. If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report,

which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

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

CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS

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

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

Date: _____

Signature: _____

Company Name: _____

Title: _____

9. Pre-award and Post Delivery Audits Requirements

49 U.S.C. 5323

49 CFR Part 663

Applicability to Contracts

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

Applicability to Micro-Purchases

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

Flow Down

These requirements should not flow down, except to the turnkey contractor as stated in [Master Agreement](#).

Model Clause/Language

- Clause and language therein are merely suggested. 49 C.F.R. Part 663 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors.
- Buy America certification is mandated under FTA regulation, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. 663.13.
- Specific language for the Buy America certification is mandated by FTA regulation,

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

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

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

rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

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

BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS

FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT

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

Certificate of Compliance

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

Date: _____

Signature: _____

Company Name: _____

Title: _____

Certificate of Non-Compliance

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

Date: _____

Signature: _____

Company Name: _____

Title: _____

10. Lobbying

31 U.S.C. 1352

49 CFR Part 19

49 CFR Part 20

Applicability to Contracts

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

Applicability to Micro-Purchases

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

Flow Down

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

Mandatory Clause/Language

- Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A. Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

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

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

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq .)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

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

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

11. Access to Records and Reports

49 U.S.C. 5325

18 CFR 18.36 (i)

49 CFR 633.17

Applicability to Contracts

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

Applicability to Micro-Purchases

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

Flow Down

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

Model Clause/Language

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

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

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

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subrecipient of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subrecipient of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subrecipient of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General

of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a subrecipient of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
7. FTA does not require the inclusion of these requirements in subcontracts.

Requirements for Access to Records and Reports by Types of Contract

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

	\$100,000/Capital Projects		on non-state Grantee pass thru to Contractor				
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Sources of Authority

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

12. Federal Changes

49 CFR Part 18

Applicability to Contracts

The Federal Changes requirement applies to all contracts.

Applicability to Micro-Purchases

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

Flow Down

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

Model Clause/Language

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

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

13. Bonding Requirements

Applicability to Contracts

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

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part of the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
 1. 50% of the contract price if the contract price is not more than \$1 million;
 2. 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

3. \$2.5 million if the contract price is more than \$5 million.
- d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

Flow Down

Bonding requirements flow down to the first tier contractors.

Model Clauses/Language

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

Bid Bond Requirements (Construction)

a. Bid Security

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

b. Rights Reserved

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

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

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

Performance and Payment Bonding Requirements (Construction)

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

a. Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

b. Payment bonds

1. The penal amount of the payment bonds shall equal:
 - i. Fifty percent of the contract price if the contract price is not more than \$1 million.

- ii. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - iii. Two and one half million if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

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

- a. The following situations may warrant a performance bond:
 1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
 2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
 3. Substantial progress payments are made before delivery of end items starts.
 4. Contracts are for dismantling, demolition, or removal of improvements.
- b. When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:
 1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
 2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- c. A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.
- d. When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:
 1. The penal amount of payment bonds shall equal:
 - i. Fifty percent of the contract price if the contract price is not more than \$1 million;
 - ii. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - iii. Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

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

Patent Infringement Bonding Requirements (Patent Indemnity)

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

Warranty of the Work and Maintenance Bonds

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

Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

14. CLEAN AIR

42 U.S.C. 7401 et seq

40 CFR 15.61

49 CFR Part 18

Applicability to Contracts

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

Flow Down

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

Model Clauses/Language

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

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

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

15. Recycled Products

42 U.S.C. 6962

40 CFR Part 247

Executive Order 12873

Applicability to Contracts

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

Applicability to Micro-Purchases

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

Flow Down

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

Model Clause/Language

No specific clause is mandated, but FTA has developed the following language.

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

16. Davis-Bacon and Copeland Anti-Kickback Acts

Background and Application

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

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

Clause Language

Davis-Bacon and Copeland Anti-Kickback Acts

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

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

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

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

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

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

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

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

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

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

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount

designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Group, 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 (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the [*insert name of grantee*] for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of

Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

1. (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
2. (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. (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

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

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

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

(4) Apprentices and trainees - (i) *Apprentices* - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the

Wage and Hour Group 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 Group determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

- (10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
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17. Contract Work Hours and Safety Standards Act

Background and Application

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

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

Clause Language

Contract Work Hours and Safety Standards

1. **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. **Withholding for unpaid wages and liquidated damages** - The (write in the name of the grantee) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

4. **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

18. [RESERVED]

19. No Government Obligation to Third Parties

Applicability to Contracts

Applicable to all contracts.

Applicability to Micro-Purchases

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

Flow Down

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

Model Clause/Language

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

No Obligation by the Federal Government.

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

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

31 U.S.C. 3801 et seq.

49 CFR Part 31 18 U.S.C. 1001

49 U.S.C. 5307

Applicability to Contracts

These requirements are applicable to all contracts.

Applicability to Micro-Purchases

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

Flow Down

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

Model Clause/Language

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

Program Fraud and False or Fraudulent Statements or Related Acts.

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

21. Termination

49 U.S.C. Part 18

[FTA Circular 4220.1E](#)

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

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

- a. **Termination for Convenience (General Provision)** The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.
- b. **Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply

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

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

- c. **Opportunity to Cure (General Provision)** The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- d. **Waiver of Remedies for any Breach** In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

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

- f. **Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

- g. **Termination for Default (Transportation Services)** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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

- h. **Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work. The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

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

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

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

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

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

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

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

possession paid for from funds received from the (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

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

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

22. Government-Wide Debarment and Suspension (Nonprocurement)

49 CFR Part 29

Executive Order 12549

Background and Applicability

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

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

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

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

Clause Language

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

Suspension and Debarment

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

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

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

The certification in this clause is a material representation of fact relied upon by **{insert agency name}**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **{insert agency name}**, the Federal Government may pursue available remedies,

including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

23. Privacy Act

5 U.S.C. 552

Applicability to Contracts

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

Applicability to Micro-Purchases

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

Flow Down

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

Model Clause/Language

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

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

1. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
2. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

24. Civil Rights Requirements

29 U.S.C. § 623, 42 U.S.C. § 2000

42 U.S.C. § 6102, 42 U.S.C. § 12112

42 U.S.C. § 12132, 49 U.S.C. § 5332

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

Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

Applicability to Micro-Purchases

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

Flow Down

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

Model Clause/Language

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

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

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

25. Breaches and Dispute Resolution

49 CFR Part 18

[FTA Circular 4220.1E](#)

Applicability to Contracts

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

Flow Down

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

Model Clauses/Language

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

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

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

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

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

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

26. Patent and Rights in Data

37 CFR Part 401

49 CFR Parts 18 and 19

Applicability to Contracts

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

Applicability to Micro-Purchases

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

Flow Down

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

Model Clause/Language

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

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

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

1. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
2. The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:
 - a. Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
 - b. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
 2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.
 - c. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any

reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

- d. Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
 - e. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
 - f. Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause , provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.
 - g. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
3. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (*i.e.* , a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
 4. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

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

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

2. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
3. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

27. Transit Employee Protective Agreements

49 U.S.C. § 5310, § 5311, and § 5333

29 CFR Part 215

Applicability to Contracts

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

Applicability to Micro-Purchases

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

Flow Down

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

Model Clause/Language

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

Transit Employee Protective Provisions.

1. The Contractor agrees to the comply with applicable transit employee protective requirements as follows:
 - a. *General Transit Employee Protective Requirements* - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.
 - b. *Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities* - If the contract involves transit operations financed in whole or in part with Federal assistance

authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

- c. *Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas* - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.
2. The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

28. Disadvantaged Business Enterprise(DBE)

49 CFR Part 26

Background and Applicability

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

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

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

Clause Language

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

Disadvantaged Business Enterprises

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

- b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as **{insert agency name}** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. ***{If a separate contract goal has been established, use the following}*** Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:
1. The names and addresses of DBE firms that will participate in this contract;
 2. A description of the work each DBE will perform;
 3. The dollar amount of the participation of each DBE firm participating;
 4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
 5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
 6. If the contract goal is not met, evidence of good faith efforts to do so.
- [Bidders][Offerors]** must present the information required above **[as a matter of responsiveness] [with initial proposals] [prior to contract award]** (see 49 CFR 26.53(3)).
- {If no separate contract goal has been established, use the following}*** The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the **{insert agency name}**. In addition, **[the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the {insert agency name} and contractor's receipt of the partial retainage payment related to the subcontractor's work.]**
- e. The contractor must promptly notify **{insert agency name}**, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of **{insert agency name}**.

29. [RESERVED]

30. Incorporation of Federal Transit Administration (FTA) Terms

[FTA Circular 4220.1E](#)

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Applicability to Micro-Purchases

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

Flow Down

The incorporation of FTA terms has unlimited flow down.

Model Clause/Language

FTA has developed the following incorporation of terms language:

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in [FTA Circular 4220.1E](#) are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

31. Drug and Alcohol Testing

49 U.S.C. §5331

49 CFR Parts 653 and 654

Applicability to Contracts

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

Applicability to Micro-Purchases

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

Flow Down Requirements

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

Model Clause/Language

Introduction

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

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules. Therefore, FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

Explanation of Model Contract Clauses

Under Option 1, the recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are

obvious: the recipient maintains total control over its compliance with 49 CFR 653 and 654. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option only for those recipients which have a testing program for their employees, and can add the contractor's safety-sensitive employees to that program. Under Option 2, the recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 CFR 653 and 654, but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that without adequate monitoring of the contractor's program, the recipient may find itself out of compliance with the rules.

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

Drug and Alcohol Testing

Option 1

The contractor agrees to:

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

Drug and Alcohol Testing

Option 2

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

Drug and Alcohol Testing

Option 3

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

its policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval before (insert date or upon request) a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to: (to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium.