



Texoma Area Paratransit System, Inc.

6104 Texoma Parkway, Sherman, TX. 75091-2008

REQUEST FOR PROPOSAL (RFP)

The enclosed REQUEST FOR PROPOSAL (RFP) and accompanying SPECIFICATIONS are for your convenience in submitting a proposal for the enclosed referenced services:

TEXOMA AREA PARATRANSIT SYSTEM, INC. (TAPS) COVERED PARKING STRUCTURE

CLOSING DAY AND TIME: Sealed proposals must be received no later than:

2:00 P.M. (CST) NOVEMBER 4, 2020

MARK ENVELOPE:

“TAPS COVERED PARKING STRUCTURE RFP”

RECEIPT OF EACH ADDENDUM SHALL BE CLEARLY MARKED ON THE EXTERIOR OF THE ENVELOPE

RETURN PROPOSAL TO:

**TEXOMA AREA PARATRANSIT SYSTEM, INC.
6104 TEXOMA PARKWAY
SHERMAN, TX 75090
ATTN: JOE PENSON**

Questions regarding this RFP should be directed to Joe Penson via email at joe.penson@transdev.com on or before 10:00 A.M. (CDT), October 28, 2020. Information in response to any inquiry may be published as an addendum. Addenda can be found on the Texoma Area Paratransit System, Inc. website: tapsbus.com.

Name of Contractor submitting proposal: _____



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PART 1 GENERAL INFORMATION

Proposals will be considered as specified herein or attached hereto under the terms and conditions of the proposal.

Proposal must be made in the official name of the contractor or individual under which business is conducted (showing official business address) and original copy must be signed in blue ink by a person duly authorized to legally bind the person, partnership, company or corporation submitting the proposal. It shall contain a statement that the proposal is firm for a period of sixty (60) days after submission. Proposals are to include all applicable requested information and are encouraged to include any additional information they wish to be considered.

One (1) Original (signed in blue ink) and Three (3) copies of your proposal are required.

Due to the possibility of negotiation with any proposer submitting a proposal which appears to be eligible for contract award pursuant to the selection criteria set forth in this Request for Proposal (RFP), prices will not be divulged at time of opening.

A pre-bid meeting will be held for all prospective proposers on October 22, 2020 at 10:00 am at 6104 Texoma Parkway, Sherman, TX 75090. All proposers planning on submitting bids for this project are encouraged to attend the meeting.

Proposals must be mailed, or hand delivered to the address above, and must be received by TAPS no later than 2:00 p.m. November 4, 2020. Proposals submitted via e-mail are unacceptable.

The submitting proposer is required to have printed on the envelope or wrapping containing the proposal, "TAPS Covered Parking Structure RFP" and the proposal due date.

PART II SCOPE OF PROPOSAL

It is the intent of TAPS to solicit proposals from contractors qualified in the construction of a covered parking structure.

All proposals must be complete and carefully worded and must convey all of the information requested (Proposal Contents) in order to be considered responsive. If the proposal fails to conform to the essential requirements of the RFP, TAPS alone will be the judge as to whether that variance is significant enough to consider the RFP non-responsive and therefore not considered for award.

Unless stated otherwise herein, the basic and governing language of the contract resulting from this solicitation shall be comprised of the RFP documents, including any attachments and amendments and the successful proposer's signed proposal. In the event of a conflict between the two documents, this RFP shall govern.



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PART III **SCOPE OF WORK**

Texoma Area Paratransit System, Inc. was established in 1987 as the primary para-transportation provider for Cooke, Fannin and Grayson counties. Transportation was provided to the elderly for commuting to various nutrition centers in the Region. Three additional counties were added to the TAPS Rural Transit District including Wise, Montague and Clay. Service was also expanded to include public transportation for all residents of the District, and for any purpose. TAPS Maintenance Facility is used to house and maintain vehicles used in transporting customers within the service area.

The goal of this project is to build a steel covered structure with at least 14 feet height clearance at front and a minimum of 12 feet height clearance at back. The total covered parking structure will be approximately 30 linear feet deep by 525 linear feet along the southern fence of the facility located at 6104 Texoma Pkwy Sherman, TX. The front support columns should be approximately 32 linear feet apart. The total approximate square footage of the project is 15,720 square feet. The proposer is responsible for permitting for the project, engineered structural plans and Geotech for terrain, soil, survey and drainage in accordance with city code. TAPS desires the project to be completed by the 90th day after the issuance of notice to proceed.

PART IV **PROPOSAL CONTENTS**

To be considered for award, all proposals must include, at a minimum, the following information. Proposers should restate each item listed below and provide their response immediately thereafter. All information should be presented in the listed order:

- A. Cover Letter. Proposers shall submit a cover letter which includes a summary of the proposer's ability to perform the services described herein and statement that the proposer is willing to perform those services and enter into a contract with TAPS. The cover letter must be signed by a person having the authority to commit the proposer to a contract.
- B. Proposal Narrative. Proposers shall explain their overall concept and approach to the project.
- C. Response to Tasks, Understanding and Method. Proposers shall provide a complete and detailed explanation of their understanding of the services and their proposed methods for accomplishing the tasks outlined in Part III, Scope of Work.
- D. Cost of providing scope of work as outlined in the request for proposal.
- E. Experience and Qualifications. Outline the Proposer's location, size, and history. Statements must include a description of the company's senior projects staff, company resources, and the application of those resources to the project's needs. The statements must include the professional résumé of each individual who would be designated as a project manager or technical support team member. If the proposer is a Disadvantaged Business Enterprise, this should be noted.
- F. References. Names, addresses, and telephone numbers of at least three (3) contact persons involved in other marketing projects produced by the company/individual. Proposers are strongly encouraged, but not



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required, to include samples of previous work. TAPS reserves the right to contact other persons not specifically listed as references but who may have direct knowledge of the project.

- G. Signed Certifications and Assurances. (Attachment 1)

PART V **AWARD CRITERIA**

TAPS will use the following criteria, listed in order of importance, in ranking and selecting a contractor to perform work under this proposal solicitation.

1. The experience of and special expertise and abilities of the contractor and key personnel with regard to similar projects (20%);
2. Scope of Work (20%);
4. Quality of references (20%);
5. Ability of the contractor to complete work on similar projects on time and within budget (15%);
6. Cost and pricing information (15%); and
7. Contractor's proposed start and end dates (10%).

PART VI. **PROTEST PROCEDURES**

Who May File the Protest. A proposer or prospective proposer who is aggrieved in connection with the request for proposals (RFP) or award of the contract may file a protest. No protest may be filed if the request for proposals (RFP) is cancelled or if all bids received in response to the RFP are rejected.

Place for Filing. A protest must be filed with the Issuing Office identified in the RFP.

Time for Filing.

- A. A prospective proposer who is considering filing a proposal must file the protest within seven (7) days after the prospective proposer knew or should have known of the facts giving rise to the protest, but in no event later than the proposal submission deadline specified in the RFP.
- B. A protest filed by a proposer who submits a bid must be filed within seven (7) days after the protesting proposer knew or should have known of the facts giving rise to the protest, but in no event may a proposer file a protest later than seven (7) days after the date the notice of award of the contract is posted on the TAPS website.
- C. The date of filing is the date of receipt of the protest.
- D. TAPS will disregard any protest received beyond the deadlines established in this Section.

Contents of Protest.

- A. A protest must be in writing.
- B. A protest shall state all grounds upon which the protesting party asserts the IFB or contractor selection was improper.
- C. The protesting party may submit with the protest any documents or information it deems relevant.



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Notice of Protest

- A. The Issuing Office will notify the successful proposer of the protest if contractor selection has already been made.
- B. If the Issuing Office receives the protest before selection, and it determines that substantial issues are raised by the protest, the Issuing Office will notify all proposers who appear to have a substantial and reasonable prospect of selection.
- C. Any proposer notified of a protest pursuant to this Section may file its agreement/disagreement with the Issuing Office within the time period specified in the acknowledgement of protest letter sent by the Issuing Office.

Stay of Procurement

- A. The Board of Directors or designee will promptly decide upon receipt of a timely protest whether or not the award of a contract shall be delayed, or if the protest is timely received after the award, whether the performance of the contract should be suspended.
- B. The Issuing Office shall not proceed further with the RFP unless the Board of Directors or designee makes a written determination that the protest is clearly without merit or that award of the contract without delay is necessary to protect the substantial interests of TAPS.

Response and Reply.

- A. Within 15 days of receipt of the protest, the Issuing Office may submit to the Board of Directors or designee and to the protesting party a response to the protest.
- B. The protesting party may file a reply to the Issuing Office's response within ten days of the date of the response.

Review.

- A. The Board of Directors or designee shall review the protest and any response or reply.
- B. The Board of Directors or designee may decide the merits of the protest on the written, submitted documentation; request and review any additional documents or information deemed necessary to render a determination; or, in his sole discretion, conduct a hearing.

Determination. The Board of Directors or designee shall promptly, but in no event later than 60 days from the filing of the protest unless both parties agree to an extension, issue a written determination. The determination shall:

- A. State the reason for the decision, and
- B. If the determination is a denial of the protest, inform the protesting party of its right to file an action in the Commonwealth Court within fifteen (15) days of the determination mailing date.
- C. The Board of Directors or designee shall send a copy of the determination to the protesting party and any other person determined by the Board of Directors or designee to be affected by the determination.



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PART VII INSTRUCTIONS TO PROPOSERS

Proposals, amendments thereto, or withdrawal request must be received by the time advertised for proposal opening to be timely filed. It is the proposer's sole responsibility to ensure that these documents are received by the person (or office) at the time indicated in the solicitation document. When specifications or descriptive literature are submitted with the proposal, the proposer's name must be entered thereon.

TAPS assumes no responsibility for unmarked or improperly marked envelopes. All envelopes received showing a proposal number are placed under locked security until the date and time of opening. If directing any other correspondence, address the envelope to the Issuing Office, but do not include the proposal name on this envelope since it does not include the actual proposal.

TAPS is subject to the Texas Public Information Act, Chapter 552, Texas Government Code. Proposals submitted to TAPS in response to this RFP are subject to release by TAPS as public information. If the Proposer believes that the proposal, or parts of it are confidential, as proprietary information, (s)he must specify that either all or part is excepted and provide specific and detailed justification for its claim of confidentiality. Vague and general claims to confidentiality are not acceptable. All proposals or parts of the proposal which are not marked as confidential will be considered public information after a contract has been awarded. The successful proposal may be considered public information even though parts are marked confidential. TAPS reserves the right to determine whether this information should be exempt from disclosure and no legal action may be brought against TAPS or its agents for its determination in this regard. Note: Marking your entire proposal confidential/proprietary is not in conformance with the Texas Freedom of Information Act.

By submission of a proposal, you are guaranteeing that all goods and/or services meet the requirements of the proposal during the contract period.

Proposal Rejection/Cancellation. This solicitation does not commit TAPS to award a contract, to pay any costs incurred in the preparation of a proposal, or to procure or contract for the articles of goods or services. TAPS reserves the right to reject any and all proposals and to cancel this solicitation in its entirety if it is in the best interest of TAPS to do so.

Questions. Every effort has been made to ensure that all information needed by the Contractor is included herein. If a contractor finds that it cannot complete a proposal without additional information, it may submit written questions to Issuing Office. All replies to questions will be in writing. When a question received by TAPS is found to be already sufficiently answered in the Request for Proposal, that question will be returned to the Contractor with a reference to the part of the Request for Proposal containing the answer. All questions and written replies will be distributed to all Proposers and will be regarded as a part hereof. No negotiations, decisions or actions shall be initiated by any Proposer or potential proposer as a result of any verbal discussion with any TAPS' representative or employee.

All questions in connection with the Request for Proposal shall be sent to Joe Penson, 6104 Texoma Parkway,



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Sherman, TX 75090 or e-mailed to joe.penson@transdev.com. If mailed, mark the envelope "Questions, RFP Covered Parking".

Proposers' Qualification. Proposers must, upon request of TAPS, furnish satisfactory evidence of their ability to furnish products or services in accordance with the terms and conditions of these specifications. TAPS reserves the right to make the final determination as to the proposer's ability to provide the products or services requested herein.

Solicitation Amendments. All amendments to and interpretations of the solicitation shall be in writing from the Issuing Office. The Issuing Office shall not be legally bound by any amendment or interpretation that is not in writing.

Proposers' Responsibility. Each proposer shall fully acquaint himself with conditions relating to the scope and restrictions attending the execution of the work under the conditions of this proposal. It is expected that this will sometimes require on-site observation. The failure or omission of a proposer to acquaint himself with existing conditions shall in no way relieve him of any obligation with respect to this proposal or to the contract.

Rejection. TAPS reserves the right to reject any proposal that contains prices for items or services that are unreasonable when compared to the same or other proposals if such action is in the best interest of TAPS.

Competition. This solicitation is intended to promote competition. If the language, specifications, terms and conditions or any combination thereof restricts or limits the requirements in this solicitation to a single source, it shall be the responsibility of the interested proposer to notify TAPS in writing so as to be received five (5) days prior to the opening date. The solicitation may or may not be changed but a review of such notification will be made prior to the award.

Indemnification. TAPS, its officers, and agents shall be held harmless from liability from any claims, damages, and actions of any nature arising from the use of any materials furnished by the contractor, provided that such liability is not attributable to negligence on the part of TAPS or failure of TAPS to use the materials in the manner outlined by the contractor in descriptive literature or specifications submitted with the contractor's proposal.

Non-Appropriations. Any contract entered into by TAPS resulting from this proposal invitation shall be subject to cancellation without damages or further obligation when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period or appropriated year.

Contract Administration. Questions or problems arising after award of this contract shall be directed to TAPS, 6104 Texoma Parkway, Sherman, TX 75090.

Ownership of Material. Ownership of all data, material and documentation originated and prepared for TAPS pursuant to this contract shall belong exclusively to TAPS.

Force Majure. The contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the contractor. Such causes may include but



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are not restricted to acts of God or of the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather but in every case the failure to perform must be beyond the control and without the fault or negligence of the contractor. If the failure to perform is caused by default of a subcontractor, and if such default arises out of the causes beyond the control of both the contractor and subcontractor, and without the fault or negligence of either of them, the contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the contractor to meet required delivery schedule.

Save Harmless. The successful proposer shall indemnify and save harmless TAPS and all officers, and agents from all suits or claims of any character brought by reason of infringing on any patent, trademark or copyright. Proposer shall have no liability to TAPS if such patent, trade mark or copyright infringement or claim is based upon the proposers use of material furnished to the proposer by the State.

Publicity Releases. The successful proposer shall not have the right to include TAPS name in its published list of customers without prior approval. With regard to news releases, only the name of the contractor, type and duration of contract may be used and then only with prior approval of TAPS. The contractor agrees not to publish or cite in any form any comments or quotes from TAPS Board members or staff. The contractor further agrees not to refer to award of this contract in commercial advertising in such a manner as to state or imply that the products or services provided are endorsed or preferred by TAPS.

Texas Law Clause. Upon award of a contract under this proposal, the person, partnership, association, or corporation to whom the award is made must comply with the Laws of Texas which require such person or entity to be authorized and/or licensed to do business with the State of Texas. By submission of this signed proposal, the proposer agrees to subject himself to the jurisdiction and process of the courts of the State of Texas as to all matters and disputes arising or to arise under the contract and the performance thereof, including any questions as to the liability for taxes, licenses, or fees levied by the State.

Termination. Subject to the conditions below, the contract may be terminated for any reason by TAPS providing a thirty (30) day advance notice in writing is given to the contractor.

For Convenience. In the event that this contract is terminated or canceled upon request and for the convenience of TAPS without the thirty (30) days advance written notice, then TAPS may negotiate reasonable termination costs, if applicable.

For Cause. Termination by TAPS for cause, default or negligence on the part of the contract shall be excluded from the foregoing conditions; termination costs, if any, shall not apply. The thirty (30) days advance notice requirement is waived and the default clause in this proposal shall apply.

TAPS in its sole discretion may, in the case of a termination for breach or default, allow the Contractor an appropriate 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 the Contractor fails to remedy to TAPS's satisfaction the breach



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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 TAPS setting forth the nature of said breach or default, TAPS 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 TAPS from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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 TAPS.

In the event TAPS elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by TAPS shall not limit TAPS's remedies for any succeeding breach of that or of any other term, covenant, or condition of this contract.

Assignment. No contract or its provisions may be assigned, sublet, or transferred without the written consent of TAPS.

Affirmative Action. The successful proposer will take affirmative action in complying with all federal and state requirements concerning fair employment and employment of the handicapped, and concerning the treatment of all employees, without regard or discrimination by reason of race, color, religion, sex, national origin or physical handicap.

Contract amendments, modification and change orders. Any change orders, alterations, amendments or other modification hereunder shall not be effective unless reduced to writing and approved by TAPS and the contractor.

Type of Contract. TAPS intends to sign a contract with one firm for the complete set of products and services included in this Request for Proposal. To the extent that firms choose to make joint proposals, one firm must be designated the lead firm to sign the contract and be the point of contact with TAPS.

Employment of Personnel. In all hiring or employment made possible by or resulting from the contract and in accordance with 45 CFR Parts 90 and 91 (1990), the contractor agrees that:

- (1) there shall be no discrimination against any employee or applicant for employment because of handicap, age, race, color, religion, sex, or national origin, and
- (2) affirmative action shall be taken to ensure that qualified applicants are employed, and that
- (3) employees are treated during employment without regard to their handicap, age, race, color, religion, sex, or national origin.

This requirement shall apply to, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The firm further agrees to give public notice in conspicuous places available to employees and applicants for employment setting forth the provisions of this section. All solicitations or advertisements for employees shall state that all qualified applicants shall receive consideration for employment



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without regard to handicap, age, race, color, religion, sex, or national origin. All inquiries made to the firm concerning employment shall be answered without regard to handicap, age, race, color, religion, sex or national origin. All responses to inquiries made to the firm concerning employment made possible as a result of the contract shall conform to Federal, State, and local regulations.

Compliance with Codes, Ordinances, Industry Standards. During the term of this contract, it shall be the firm's responsibility to ensure compliance with all applicable provisions of laws, codes, ordinances, rules and regulations, tariffs, and industry standards.

Safety Precautions. TAPS assumes no responsibility with respect to accidents, illness, or claims arising out of any work undertaken with the assistance of funds paid under the contract. The firm shall take necessary steps to insure or protect itself and its personnel. The firm agrees to comply with all applicable local, State, and Federal occupational and safety acts, rules, and regulations.

Audits and Reviews. The firm shall, throughout the life of the contract, participate in State and Federal audits. The firm shall provide support to TAPS during any and all audits. The support shall include, but shall not be limited to, producing documentation, gathering data, preparing reports or correspondence, and assisting TAPS in responding to questions.

Project Identification. The firm agrees that each tangible product resulting from the Contract shall be labeled with an appropriate sign or designation stating that the project has been financed with Federal/State assistance provided by the U. S. Department of Transportation, and Federal Transit Administration. This requirement applies to all equipment, hardware, construction, reports, data, or any similar items produced under the Agreement.

Compliance With Federal Regulations. State or Federal requirements that are more restrictive shall be followed.

PART VIII

GENERAL CONTRACT CLAUSES FOR ALL PROPOSALS

The undersigned contractor certifies to abide by these clauses and include the following clauses in each subcontract financed in whole or in part with Federal Transit Administration (FTA) funds. Contractors are certifying by reference the entire list of FTA FY 2020 Certifications and Assurances, and shall download the same at:

<https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/funding/grantee-resources/certifications-and-assurances/147956/fy20-certifications-and-assurances.pdf>.

A. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

The Contractor acknowledges and agrees 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 Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any



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matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the Contractor who will be subject to its provisions.

B. PROGRAM FRAUD, FALSE OR FRAUDULENT STATEMENTS, & RELATED ACTS

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.

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. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

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 Contractor who will be subject to the provisions.

C. ACCESS TO RECORDS AND REPORTS

a. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its Contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its Contractors access to the sites of performance under this contract as reasonably may be required.



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D. 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.

Respondent's failure to so comply shall constitute a material breach of contract.

E. CIVIL RIGHTS

Civil Rights and Equal Opportunity

TAPS is an Equal Opportunity Employer. As such, TAPS agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, TAPS agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with 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, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, 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. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. 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, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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.

3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, 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



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implementing requirements FTA may issue.

4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

F. 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 4220.1F, 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 TAPS requests which would cause TAPS to be in violation of the FTA terms and conditions.

G. 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.

H. TERMINATION

Termination for Convenience

TAPS may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in TAPS'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 TAPS to be paid the Contractor. If the Contractor has any property in its possession belonging to TAPS, the Contractor will account for the same, and dispose of it in the manner TAPS directs.

Termination for Cause

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, TAPS 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 be paid only 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 TAPS 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, TAPS, 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.



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Opportunity to Cure

TAPS, 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 Respondent fails to remedy to TAPS's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from TAPS setting forth the nature of said breach or default, TAPS 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 TAPS from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach

In the event that TAPS elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by TAPS shall not limit TAPS's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

I. DEBARMENT AND SUSPENSION

The Proposer shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Proposer shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and

are not presently declared by any Federal department or TAPS to be:

- a. Debarred from participation in any federally assisted Award;
- b. Suspended from participation in any federally assisted Award;
- c. Proposed for debarment from participation in any federally assisted Award;
- d. Declared ineligible to participate in any federally assisted Award;
- e. Voluntarily excluded from participation in any federally assisted Award; or
- f. Disqualified from participation in any federally assisted Award.

By signing and submitting its proposal, the proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by TAPS. If it is later determined by TAPS that the proposer knowingly rendered an erroneous certification, in addition to remedies available to TAPS, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this proposal. The proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

***** Signature required on Debarment Certification contained in Attachment 1.**



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J. DAVIS BACON ACT, COPELAND ANTI-KICKBACK ACT, AND SEISMIC SAFETY

***** Signature required on Davis-Bacon Act, Copeland Anti-Kickback Act, and Seismic Safety Certification contained in Addendum A.**

K. SPECIAL DOL, EEO CLAUSE FOR CONSTRUCTION PROJECTS

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(b). These regulations prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, or for inquiring about, discussing or disclosing compensation. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity or national origin.

L. DISADVANTAGED BUSINESS ENTERPRISES (DBEs)

It is the policy of TAPS and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of TAPS to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE's;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

This Contract is subject to 49 C.F.R. part 26. Therefore, the Proposer must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. TAPS shall make all determinations with regard to whether or not a Proposer is in compliance with the requirements stated herein. In assessing compliance, TAPS may consider during its review of the Proposer's submission package, the Proposer's documented history of non-compliance with DBE requirements on previous contracts with TAPS.

DBE Participation

For the purpose of this Contract, TAPS will accept only DBE's who are:

1. Certified, at the time of bid opening or proposal evaluation, by the [*certifying agency or the Unified Certification Program (UCP)*]; or
2. An out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an agency whose DBE certification process has received FTA approval; or
3. Certified by another agency approved by TAPS.



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DBE Participation Goal

The national DBE participation goal is 10%. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling **not less than 10%** of the total Contract price. Failure to meet the stated goal at the time of proposal submission **may** render the Proposer non-responsive.

Proposed Submission

Each Proposer, as part of its submission, shall supply the following information:

1. A completed **DBE Utilization Form** (see Attachment 2) that indicates the percentage and dollar value of the total proposal/contract amount to be supplied by Disadvantaged Business Enterprise under this Contract.
2. A list of those qualified DBE's with whom the Proposer intends to contract for the performance of portions of the work under the Contract, the agreed price to be paid to each DBE for work, the Contract items or parts to be performed by each DBE, a proposed timetable for the performance or delivery of the Contract item, and other information as required by the **DBE Participation Schedule** (see Attachment 2). No work shall be included in the Schedule that the Proposer has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE. If awarded the Contract, the Proposer may not deviate from the DBE Participation Schedule submitted in response to the proposal. Any subsequent changes and/or substitutions of DBE firms will require review and written approval by TAPS.
3. An original **DBE Letter of Intent** (see Attachment 2) from each DBE listed in the **DBE Participation Schedule**.
4. An original **DBE Affidavit** (see Attachment 2) from each DBE stating that there has not been any change in its status since the date of its last certification.

Good Faith Efforts

If the Proposer is unable to meet the goal set forth above (DBE Participation Goal), TAPS will consider the Proposer's documented good faith efforts to meet the goal in determining responsiveness. The types of actions that TAPS will consider as part of the Proposer's good faith efforts include, but are not limited to, the following:

1. Documented communication with TAPS (questions of RFP requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion);
2. Pre-bid meeting attendance. At the pre-bid meeting, TAPS generally informs potential Proposer's of DBE subcontracting opportunities;
3. The Proposer's own solicitations to obtain DBE involvement in general circulation media, trade association publication, minority-focus media and other reasonable and available means within sufficient time to allow DBEs to respond to the solicitation;
4. Written notification to DBE's encouraging participation in the proposed Contract; and
5. Efforts made to identify specific portions of the work that might be performed by DBE's.

The Proposer shall provide the following details, at a minimum, of the specific efforts it made to negotiate in good faith with DBE's for elements of the Contract:

1. The names, addresses, and telephone numbers of DBE's that were contacted;
2. A description of the information provided to targeted DBE's regarding the specifications and proposals for portions of the work;
3. Efforts made to assist DBE's contacted in obtaining bonding or insurance required by the Proposer or TAPS.



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Further, the documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted when a non-DBE subcontractor was selected over a DBE for work on the contract. 49 C.F.R. § 26.53(b) (2) (VI). In determining whether a Proposer has made good faith efforts, TAPS may take into account the performance of other Proposers in meeting the Contract goals. For example, if the apparent successful Proposer failed to meet the goal, but meets or exceeds the average DBE participation obtained by other Proposers, TAPS may view this as evidence of the Proposer having made good faith efforts.

***** Signature required on all DBE Certifications contained in Attachment 1.**

M. Prompt Payment Clause for Construction Projects

Notwithstanding any other payment terms in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in sections [2.101](#), [32.001](#), and [32.902](#) of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(3) concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments-

(1) *Types of invoice payments.* For purposes of this clause, there are several types of invoice payments that may occur under this contract, as follows:

(i) Progress payments, if provided for elsewhere in this contract, based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project.

(A) The due date for making such payments is 14 days after the designated billing office receives a proper payment request. If the designated billing office fails to annotate the payment request with the actual date of receipt at the time of receipt, the payment due date is the 14th day after the date of the Contractor's payment request, provided the designated billing office receives a proper payment request and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause at [52.232-5](#), Payments Under Fixed-Price Construction Contracts, is as specified in the contract or, if not specified, 30 days after approval by the Contracting Officer for release to the Contractor.

(ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the Government arising by virtue of the contract, and payments for partial deliveries that have been accepted by the Government (*e.g.*, each separate building, public work, or other division of the contract for which the price is stated separately in the contract).

(A) The due date for making such payments is the later of the following two events:

(1) The 30th day after the designated billing office receives a proper invoice from the Contractor.

(2) The 30th day after Government acceptance of the work or services completed by the Contractor.

For a final invoice when the payment amount is subject to contract settlement actions (*e.g.*, release of claims), acceptance is deemed to occur on the effective date of the contract settlement.

(B) If the designated billing office fails to annotate the invoice with the date of actual receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the



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designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) *Contractor's invoice.* The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(2)(i) through (a)(2)(xi) of this clause. If the invoice does not comply with these requirements, the designated billing office must return it within 7 days after receipt, with the reasons why it is not a proper invoice. When computing any interest penalty owed the Contractor, the Government will take into account if the Government notifies the Contractor of an improper invoice in an untimely manner.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of mailing or transmission.)

(iii) Contract number or other authorization for work or services performed (including order number and line item number).

(iv) Description of work or services performed.

(v) Delivery and payment terms (e.g., discount for prompt payment terms).

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event

of a defective invoice.

(viii) For payments described in paragraph (a)(1)(i) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause at [52.232-5](#), Payments Under Fixed-Price Construction Contracts.

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., [52.232-38](#), Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., [52.232-33](#), Payment by Electronic Funds Transfer-System for Award Management, or [52.232-34](#), Payment by Electronic Funds Transfer-Other Than System for Award Management), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(xi) Any other information or documentation required by the contract.

(3) *Interest penalty.* The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.



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(ii) The Government processed a receiving report or other Government documentation authorizing payment and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) *Computing penalty amount.* The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR Part 1315.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in paragraph (a)(1)(ii) of this clause, Government acceptance or approval is deemed to occur constructively on the 7 thday after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. If actual acceptance or approval occurs within the constructive acceptance or approval period, the Government will base the determination of an interest penalty on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The prompt payment regulations at 5 CFR1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes, and any interest that may be payable in accordance with the clause at FAR [52.233-1](#), Disputes.

(5) *Discounts for prompt payment.* The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR Part 1315.

(6) Additional interest penalty.

(i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR Part 1315 in addition to the interest penalty amount only if-

(A) The Government owes an interest penalty of \$1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

(C) The Contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(6)(ii) of this clause, postmarked not later than 40 days after the date the invoice amount is paid.

(ii)

(A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall-

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) If there is no postmark or the postmark is illegible-



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(1) The designated payment office that receives the demand will annotate it with the date of receipt provided the demand is received on or before the 40th day after payment was made; or

(2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.

(b) *Contract financing payments.* If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) *Subcontract clause requirements.* The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) *Prompt payment for subcontractors.* A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.

(2) *Interest for subcontractors.* An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause-

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the *Federal Register*, for interest payments under [41 U.S.C. 7109](#) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) *Subcontractor clause flowdown.* A clause requiring each subcontractor to-

(i) Include a payment clause and an interest penalty clause conforming to the standards set forth in paragraphs (c)(1) and (c)(2) of this clause in each of its subcontracts; and

(ii) Require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) *Subcontract clause interpretation.* The clauses required by paragraph (c) of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that-

(1) *Retainage permitted.* Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) *Withholding permitted.* Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) *Withholding requirements.* Permit such withholding without incurring any obligation to pay a late payment penalty if-

(i) A notice conforming to the standards of paragraph (g) of this clause previously has been furnished to the subcontractor; and

(ii) The Contractor furnishes to the Contracting Officer a copy of any notice issued by a Contractor pursuant to paragraph (d)(3)(i) of this clause.

(e) *Subcontractor withholding procedures.* If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment



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request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall-

(1) *Subcontractor notice.* Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) *Contracting Officer notice.* Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to paragraph (e)(1) of this clause;

(3) *Subcontractor progress payment reduction.* Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (e)(1) of this clause;

(4) *Subsequent subcontractor payment.* Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and-

(i) Make such payment within-

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under paragraph (e)(5)(i)) of this clause; or

(B) Seven days after the Contractor recovers such funds from the Government; or

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the *Federal Register*, for interest payments under [41 U.S.C. 7109](#) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) *Notice to Contracting Officer.* Notify the Contracting Officer upon-

(i) Reduction of the amount of any subsequent certified application for payment; or

(ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying-

(A) The amounts withheld under paragraph (e)(1) of this clause; and

(B) The dates that such withholding began and ended; and

(6) *Interest to Government.* Be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in [31 U.S.C.3903\(c\)\(1\)](#)), from the 8th day after receipt of the withheld amounts from the Government until-

(i) The day the identified subcontractor performance deficiency is corrected; or

(ii) The date that any subsequent payment is reduced under paragraph (e)(5)(i) of this clause.

(f) Third-party deficiency reports-

(1) *Withholding from subcontractor.* If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with [40 U.S.C. 3133](#), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under paragraph (e)(6) of this clause-

(i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and

(ii) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (f)(1)(i) of this clause.

(2) *Subsequent payment or interest charge.* As soon as practicable, but not later than 7 days after receipt of



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satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall-

(i) Pay the amount withheld under paragraph (f)(1)(ii) of this clause to such first-tier subcontractor; or

(ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the *Federal Register*, for interest payments under [41 U.S.C. 7109](#) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(g) *Written notice of subcontractor withholding.* The Contractor shall issue a written notice of any withholding to a subcontractor (with a copy furnished to the Contracting Officer), specifying-

(1) The amount to be withheld;

(2) The specific causes for the withholding under the terms of the subcontract; and

(3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) *Subcontractor payment entitlement.* The Contractor may not request payment from the Government of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

(i) *Prime-subcontractor disputes.* A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the Government is a party. The Government may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) *Preservation of prime-subcontractor rights.* Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) *Non-recourse for prime contractor interest penalty.* The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the Government for such interest penalty. A cost-reimbursement claim may not include any amount for reimbursement of such interest penalty.

(l) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall-

(1) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the-

(i) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(ii) Affected contract number and delivery order number if applicable;

(iii) Affected line item or subline item, if applicable; and

(iv) Contractor point of contact.

(2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.



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PART IX REQUIRED CLAUSES FOR PROPOSALS OVER \$100,000

The contractor agrees to include the following in subcontracts exceeding \$100,000 financed by the FTA.

A. PROVISIONS FOR RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION

- (a) FTA Interest. FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.
- (b) Notification to FTA; Flow Down Requirement. If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third-Party Agreements and must require each Third-Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.
 - (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
 - (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
 - (3) Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, 95 bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the Recipient. It also



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applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

- (c) Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Recipient may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Recipient receives FTA's prior written concurrence.
- (d) Enforcement. The Recipient must pursue its legal rights and remedies available under any Third-Party Agreement or any federal, state, or local law or regulation.

B. LOBBYING

In accordance with 31 U.S.C. 1352, funds received under this contract may not be expended to pay any person or influencing or attempting to influence an officer or employee of any agency, a member of Congress, 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 any of the following covered Federal actions: 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. This restriction is applicable to all subcontractors and must be included in all subcontracts.

***** Signature required on Lobbying Certification contained in Attachment 1.**

C. Clean Water & Air

The proposer 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 proposer 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 proposer 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 the FTA and the EPA.

D. Contract Work Hours

(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



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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 & any subcontractor responsible therefore shall be liable for unpaid wages and shall be liable to the United States for liquidated damages which shall be computed for each individual laborer, mechanic, watchman or guard employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day that an individual was required / permitted to work over 40 hours in a workweek without payment of overtime wages required by the clause in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** - The purchaser shall upon its own action or upon written request of the Department of Labor (DOL) withhold or cause to be withheld, from any money payable for work performed by the contractor or subcontractor under any contract or 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 to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as set-forth in paragraph (2) of this section.

(4) **Subcontracts** - The contractor or subcontractor shall include the clauses set forth in this section and require the same from 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 these clauses.

(5) **Payrolls and basic records** - Payrolls and related basic records shall be maintained by the contractor during the course of the work and preserved for three years thereafter for all laborers and mechanics working at the work site (or under the United States Housing Act of 1937 or 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 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 showing that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and records of the costs anticipated or actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of registration of apprenticeship programs, certification of trainee programs, registration of the apprentices and trainees, and ratios & wage rates prescribed in applicable programs.



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PART X REQUIRED CLAUSES FOR PROPOSALS OVER \$150,000

The contractor agrees to include the following in subcontracts exceeding \$150,000 financed by the FTA.

A. 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 70 percent domestic content.

*** Signature required on Buy America Certification contained in Attachment 1.



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Attachment 1

ALL FORMS REQUIRE SIGNATURE WITH SUBMITTAL OF PROPOSAL

FORM 1: CERTIFICATION TO PURCHASER:

- A. The undersigned contractor certifies that the manufactured good(s) furnished will meet or exceed the specifications, and/or that services rendered will comply with the terms of the solicitation or contract.
- B. The undersigned contractor certifies that it has read all of the bid, proposal, or contract documents and agrees to abide by the terms, certifications, and conditions thereof.

Date	SS# or Tax ID #	
Description of Commodity or Service		
Disadvantaged Business Enterprise Information	Type of Organization	
	<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> General Proprietorship
Is your firm a DBE? <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Corporation	<input type="checkbox"/> Limited Partnership
If yes, what type?	<input type="checkbox"/> Limited Proprietorship	
Signature	Name	Title



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FORM 2: FEDERAL TRANSIT AUTHORITY MASTER AGREEMENT

Proposer(s) agrees to acknowledge that TAPS has a grant agreement with the FTA, and Proposer(s) agrees to adhere to any and all terms and conditions of the grant agreement as they relate to obligations the Bidders would assume under this contract. The Proposer(s) assumes all responsibilities for compliance with the United States Department of Transportation, Federal Transit Administration (FTA) Master Agreement, a copy of which can be viewed at <http://www.fta.dot.gov/documents/21-Master.pdf>. This Master Agreement covers Federal financial assistance authorized by Federal transit laws codified at 49 U.S.C. 05301 et seq.; Title 23, United States Code (Highways); the Intermodal Surface Transportation Efficiency Act of 1991, as amended; or other Federal enabling laws administered by FTA. Any obligation of a Proposer or Proposer(s) to comply with governmental standards or regulations shall include the obligation to document such compliance. Any purchases made by Proposer(s) using federal funds shall be made in compliance with FTA third-party contracting requirements (Circular 4220.1F), a copy of which can be viewed at http://www.ft.dot.gov/legislation_law/12349_8641.html. Any Proposer(s) shall supply and/or execute such documents as the TAPS may reasonably need to affect the purposes of this contract or to comply with federal applicable regulations. All proposals shall contain all certifications, duly executed, contained herein which are applicable. Failure to do so may result in the TAPS's refusal to consider the bid.

We have read the above referenced Federal Transit Authority Master Agreement and are fully aware of the responsibilities and duties of the TAPS and its Proposers in complying with these requirements.

Signature

For: _____
(company name)

Title: _____

Date: _____



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FORM 3: CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

1. The prospective recipient of Federal assistance funds certifies, by submission of this RFP response, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective recipient of Federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this RFP response.

Debarment and Suspension Certification

Name of Company	Printed Name of Person Completing Form
Date	Signature



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FORM 4: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned proposer/proposer has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

_____ The proposer/proposer is committed to a minimum of _____ % DBE utilization on this contract.

_____ The proposer/proposer (if unable to meet the DBE goal of _____%) is committed to a minimum of _____% DBE utilization on this contract a submits documentation demonstrating good faith efforts.

Name of proposer/proposer's firm: _____

State Registration No. _____

By _____
(Signature) Title



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FORM 5: LETTER OF INTENT

Name of proposer/proposer's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

The proposer/proposer is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ _____.

Affirmation

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

By _____
(Signature)(Title)



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FORM 6: DBE UTILIZATION AND PARTICIPATION SCHEDULE

If the proposer/proposer 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.)

DBE Utilization Form

The undersigned Proposer has satisfied the requirements of the solicitation in the following manner (please check the appropriate space):

_____ The Proposer is committed to a minimum of 10% DBE utilization on this contract.

_____ The Proposer (if unable to meet the DBE goal of 10%) is committed to a minimum of _____ % DBE utilization on this contract and submits documentation demonstrating good faith efforts.

DBE Participation Schedule

The Proposer shall complete the following information for all DBE's participating in the contract that comprises the DBE Utilization percent stated in the DBE Utilization Form. The Proposer shall also furnish the name and telephone number of the appropriate contact person should TAPS have any questions in relation to the information furnished herein.

DBE IDENTIFICATION AND INFORMATION FORM

- Name and Address
- Contact Name and Telephone Number
- Participation Percent (Of Total Contract Value)
- Description Of Work To Be Performed
- Race and Gender of Firm



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FORM 7: LOBBYING CERTIFICATION

The undersigned 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 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 sub-awards at all tiers (including subcontracts, sub-grants, 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.

_____ Signature of Proposer's Authorized Official

_____ Name and Title of Proposer's Authorized Official

_____ Date



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FORM 8: BUY AMERICA

(Check where applicable):

- The contractor hereby certifies it will comply with the requirements of 49 USC 5323(j) and the applicable regulations in 49 CFR 661, providing Buy America compliant manufactured goods.

- The contractor cannot comply with the requirements 49 USC 5323(j), but may qualify for an exception to the requirement pursuant to the regulations in 49 CFR 661.

Buy America Certification

Name of Company	Printed Name of Person Completing Form
Date	Signature



Consolidated Certification Form Addendum A - Construction and A & E Projects

In this form, "recipient" means the transit agency Texoma Area Paratransit System, Inc.

I. Davis-Bacon and Copeland Anti-Kickback Acts (construction projects exceeding \$2,000)

(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 & wage rates conformed under para. (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and subcontractors at the work site in a prominent / accessible place where it can be easily seen by workers.
- (ii) (A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

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

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

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

(v) (A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met: (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

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

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

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

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

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

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

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

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

for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall conform 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.

II. 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.

Davis-Bacon Act, Copeland Anti-Kickback Act, and Seismic Safety Certification

Name of Company	Printed Name of Person Completing Form
Date	Signature

III. Bid Bond Requirements (Construction projects over \$100,000)

(a) Bid Security - A Bid Bond must be issued by a fully qualified surety company acceptable to the 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 the 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 the 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 the 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 the recipient damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefore. 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 the recipient as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense the recipient for the damages occasioned by default, then the undersigned bidder agrees to indemnify the recipient and pay over to the recipient the difference between the bid security and the recipient's total damages, so as to make the 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: 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 transit agency shall determine the amount of the patent indemnity to protect the transit agency.

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to the 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 the 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 [insert name of 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 the recipient and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to the 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 the 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).

Bid Bond Requirements (Construction projects over \$100,000) Certification

Name of Company	Printed Name of Person Completing Form
Date	Signature