

2021

LTFMI PURCHASING AND PROCUREMENT POLICY



Laredo Transit Management Inc. – (LTFMI)
Purchasing and Procurement Policy

May 14, 2015

Rev. 1 – December 14, 2017

Rev. 2 – June 27, 2018

Rev. 3 – October 2, 2018

Rev. 4 – October 28, 2021

TABLE OF CONTENTS

SECTION 1: POLICY

1. GENERAL.....	1
2. PAYMENT OF BILLS.....	3
3. INVOICING	3
4. CONTRACT ADMINISTRATION SYSTEM.....	4
5. ENSURING MOST EFFICIENT & ECONOMIC PURCHASE.....	4
6. WRITTEN CODE OF STANDARDS.....	4
7. NON-COLLUSIVE AFFIDAVIT.....	5
8. CONTRACTOR QUALIFICATION	6
9. AWARDS TO RESPONSIBLE CONTRACTORS.....	6
10. WRITTEN RECORD OF PROCUREMENT HISTORY	6
11. CONTRACT TERM LIMITATION	7
12. OPTIONS.....	7
13. EXERCISE OF OPTIONS.....	7
14. CARDINAL CHANGES	8
15. WRITTEN PROCUREMENT SELECTION PROCEDURES	8
16. GEOGRAPHIC PREFERENCES	8
17. FULL AND OPEN COMPETITION.....	8
18. SEALED BIDS/INVITATION FOR BID (IFB).....	9
19. COMPETITIVE PROPOSALS/REQUEST FOR PROPOSALS(RFP)	9
20. REVENUE CONTRACTS.....	9
21. WRITTEN PROTEST PROCEDURES	9
22. INTERGOVERNMENTAL PROCUREMENT AGREEMENTS.....	10
23. LEASE VS PURCHASE	11
24. E-COMMERCE.....	11
25. USE OF VALUE ENGINEERING IN CONSTRUCTION CONTRACTS	12
26. SOLICITATION PREQUALIFICATION CRITERIA.....	12
27. PREQUALIFICATION SYSTEM.....	12
28. ARCHITECTURAL ENGINEERING (A&E) SERVICES & OTHER.....	12
29. DESIGN-BID BUILD PROJECT	14
30. DESIGN-BUILD PROJECT	14
31. PROCUREMENT BY NONCOMPETITIVE PROPOSAL (SOLE-SOURCE)	14
32. INDEPENDENT COST ESTIMATES AND THE COST AND PRICE ANALYSIS.....	16
33. EVALUATIONS	19
34. SOUND AND COMPLETE AGREEMENT.....	19
35. CONTRACT PROVISIONS.....	19
36. PROHIBITED OR RESTRICTED CONTRACT TYPES	20
37. MICRO-PURCHASES.....	21
38. BONDING REQUIREMENTS	25
39. PAYMENT PROVISIONS IN THIRD PARTY CONTRACT	26
40. LIQUIDATED DAMAGES PROVISIONS	26

41. CONTRACT AWARD ANNOUNCEMENT	26
42. POST DELIVERY ACTIVITIES	26

SECTION 2: APPENDIX

APPENDIX 1: Contract Language for FTA Funded Contracts	28-29
APPENDIX 2: FTA Mandatory Provisions	30-68

SECTION 3: LTMI FORMS

LTMI Procurement Procedure Checklist.....	70
LTMI Form #1: Responsibility Determination Checklist.....	72
LTMI Form #2: Single Bid Analysis Checklist	73
LTMI Form #3: A&E Professional Services Procurement Checklist.....	74
LTMI Form #4: Micro-Purchase: Fair & Reasonable Price Determination	75
LTMI Form #5: A&E Evaluation/Selection Criteria	76
LTMI Form #6: Independent Cost Estimate (ICE) Summary Form	77

SECTION 4: EXHIBITS

EXHIBIT: 6.1 A. Required Third Party Contract Clauses (6-32,33,34)	79-81
EXHIBIT: 6.2 B. Required Certifications, Reports and Forms (6-35)	82
EXHIBIT: 6.3 C. Other Required Items (6-36, 37, 38, 39)	83-86

LAREDO TRANSIT MANAGEMENT INCORPORATED

PURCHASING AND PROCUREMENT POLICY

SECTION 1

1. GENERAL

A. Purpose. The Laredo Transit Management Incorporated (LTMI) is the recipient of Federal Transit Administration (FTA) funds. The Department of Transportation, Federal Transit Administration, issued Circular 4220.1F which sets out the requirements that must be adhered to in the solicitations, awards and administration of third party contracts under FTA assistance programs. This policy provides the policies and procedures related to the procurement of goods and services with funding from the FTA, other federal appropriations, the State of Texas and/or local sources. These guidelines ensure that LTMI obtains goods, and services in accord with federal, state and local requirements.

The oversight process described in this document outlines the steps that will be taken to ensure that LTMI meets FTA requirements in four areas: procurement threshold and solicitation processes, documentation of procurement history, the adherence to and inclusion of FTA clauses as required, and maintenance of procurement records. The following documents shall be incorporated into the LTMI's policies and procedures manual and used for determining additional regulations and guidelines to be used when needed:

- 1) FTA - Master Agreement;
- 2) FTA - Circular C 4220.1 Third Party Contracting Requirements;
- 3) FTA - Circular 5010.1 B Grant Management Guidelines;
- 4) FTA - Best Practices Procurement Manual and FTA Third Party Contracting FAQs;
- 5) 49 CFR Part 18 - Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

In the event of any conflict among any contract components compromising this Agreement, the order of precedence for resolving such conflict for federally funded procurements shall be as follows from highest (supersedes all others) to lowest (subordinate to all others):

- 1) U.S. Dot Orders;
- 2) FTA Master Agreement;
- 3) FTA Circulars and other Directives or Notices issued by FTA;
- 4) State of Texas Procurement Laws;
- 5) City of Laredo Procurement Policies and Procedures

B. LTMI Purchasing Policy. LTMI will utilize the procurement procedure checklist in Appendix 3 and maintain documentation in all procurement files. The checklist will be signed by the person filling it out, and also signed by a person reviewing the procurement package. All purchases over \$35 require an approved purchase order with the exception of items which are under lease such as rent and equipment, petty cash purchases (under \$35) and also payments on accounts such as telephone, insurance, payroll taxes, gasoline, professional services, and subscription or dues renewals. Materials and Supplies Requiring a Purchase Order are made only on the basis of the following:

- 1) The Purchase Requisition is properly completed at the LTMI department level and approved by the Department Head Director/General Manager or his/her designee.
- 2) All Purchase Requisitions will be checked by the Purchasing Accounting Division for budget availability and appropriate account usage. If budget funds are not available, the Purchasing Accounting Division will advise the requestor and additional funds must be made available by the requestor or the purchase will be denied.
- 3) Unit prices are obtained for items requisitioned on Purchase Requisitions based on the following competitive quotations guide:
 - (a) Orders under \$1,000.00 - Purchased at the best price based on the personal judgment of Purchasing.
 - (b) Orders \$1,000.00 - \$2,500.00 - Three telephone quotations are obtained and a written record is made of prices quoted.
 - (c) Orders over \$2,501.00 - \$50,000 - Written quotations must be obtained from at least three different suppliers. Specifications can be prepared and bids must be received by the Purchasing Division.
 - (d) Orders over \$50,000.00 - Formal bid process required; required advertisement for competitive sealed bids. Specifications shall be prepared and bids must be advertised in accordance with State requirements and the City Council/Laredo Mass Transit Board shall award the bid to the lowest responsive, responsible vendor(s) who provide the best value for the city, LTMI and whose proposed price and other factors have been considered in accordance to the provisions of Chapters 252 and 271 of the State of Texas - Local Government Code.
- 4) Materials and supplies may also be secured utilizing an approved cooperative purchasing contract (i.e. H-GAC, BuyBoard, TXMAS, etc.).
- 5) All purchase orders are approved using the following guide lines:
 - (a) Purchasing Agent - All purchases to \$2,500.00, with the exception of all capital outlay purchases.
 - (b) Finance Director - All purchases and change orders \$2,501.00 to \$7,000.00, including all approved capital outlay purchases.
 - (c) City Manager (or designee) - All purchases and change order between \$7,001.00 to the maximum allowed by State Statues. The current limit for the purchase of goods

or services without advertising for formal bids is \$50,000.00, including all capital outlay purchases.

- (d) City Council/Laredo Mass Transit Board – All purchases, contracts and change orders exceeding \$50,000.00.

2. PAYMENT OF BILLS

- A. Policy.** Invoices will not be approved for payment until all of the proper documentation has been prepared and received. The LTMI's General Manager or his/her designee will be responsible for verifying the accuracy of all invoices and documentation.
- B. Procedure.** Upon receipt of any invoices for payment, the General Manager or his/her designee will make a brief review, and if the invoice is acceptable, he/she will forward it to the accounting department, accounts payable division. The accounts payable division will compare the invoice with any documentation in his/her possession, i.e. purchase orders, receiving reports, packing slips, etc. Once the accuracy of the invoice is determined, the accounting department will code the invoice and prepare it for payment.

3. INVOICING

A. Policy (City of Laredo Accounts Payable)

Invoices: Invoices must be submitted to Accounts Payable for auditing and payments by vendors to:

City of Laredo - Accounts Payable Division
P.O. Box 210
Laredo, Texas 78042-0210

If LTMI received an invoice from the vendor, the invoice must be sent immediately to Accounts Payable for payment on a purchase order. Write the purchase order number on the invoice if it is not included. **Invoices received not referencing a purchase order number are returned to the vendors requesting this information before they can be processed.** It is of utmost importance that all departments submit all necessary paperwork to Accounts Payable on a timely basis so payments can be processed to all vendors by the due date. **Invoices shall not be held at the department level for any reason. This will only delay the payment of such invoice and distort the true picture of financial statements.**

Disbursements:

- A disbursement is prepared only after all proper supporting documents have been reviewed and approved for payment.
- All requests must be properly coded and checked for budget availability beforehand. A payment request cannot be processed if the line item does not have sufficient funds.

- Purchasing policy requires that a purchase order must be obtain before securing any goods or services.
- It is the Policy of Accounts Payable to not process for payment a purchase order without an invoice.
- Accounts Payable will process for payment only those purchase order items that were electronically received.
- All invoices must show the designated purchase order number. Vendors must be instructed to indicate the purchase order number on the invoice at all times to avoid delays in the payment process.
- Accounts Payable will allow for invoice variance up to %10 not to exceed \$ 50.00.

Payment Terms:

- The City of Laredo's payment terms to all vendors is **30 days** of the date of invoice unless specified by contract. The City of Laredo will honor all discount terms to reduce expenditures in negotiated to prior.

4. CONTRACT ADMINISTRATION SYSTEM

The LTMI administration shall maintain contract administration systems that insure contractors/firms perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. The accepted performance of contractors/ firms will be a factor in subsequent contract negotiations and award. Remedial action by the LTMI through legal processes shall be considered in instances of identified significant nonperformance.

5. ENSURING MOST EFFICIENT AND ECONOMIC PURCHASE

LTMI requires a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach.

6. WRITTEN CODE OF STANDARDS

LTMI is required to maintain written standards of conduct governing the performance of their employees engaged in the award and administration of contracts supported by Federal funds. The standards must:

- Preclude any employee officer, agent, or board member or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing from participating in the election, award, or previously listed has a financial or other interested in a firm considered for a contract.
- LTMI's officers, employees, or agents may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. LTMI may set minimum rules when the financial interest is not substantial or the gift is an unsolicited item of nominal value.

- Provide for disciplinary action for violation of such standards by LTMI's officers, employees, or agents, or by contractors or subrecipients or their agents to the extent permitted by state or local law or regulations.

No employee, officer, or agent of the LTMI shall participate in the selection or in the award or administration of a contract supported by any federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict could arise if the employee, officer or agent; any member of his/her immediate family; his/her partner; an organization which employs or is about to employ any of the above, has a financial or other interest in the firm selected for award.

A form disclosing potential conflicts of interest involving counties, cities, and other local government entities may be required to be filed by vendors or potential vendors to local government entities. These requirements are set forth in Chapter 176 of the Texas Local Government Code added by H.B. No. 914 of the last Texas Legislature.

Companies and individuals who contract, or seek to contract, with the City of Laredo/Laredo Transit Management Inc. and its agents may be required to file with the **City Secretary's Office, 1110 Houston Street, Laredo, Texas 78040**, a Conflict of Interest Questionnaire that describes affiliations or business relationships with the City of Laredo officers, or certain family members or business relationships of the City of Laredo officer, with which such persons do business, or any gifts in an amount of \$250.00 or more to the listed City of Laredo officer (s) or certain family members. These requirements are in addition to any other disclosures required by law. The dates for filing disclosure statements. A violation of the filing requirements is a Class C misdemeanor. The Conflict of Interest Questionnaire (Form CIQ) may be downloaded from the City of Laredo Website.

Vendors doing business with the City of Laredo shall comply with all provisions of the City of Laredo's Code of Ethics. Section 4.03 Prohibited Contacts during Contract Solicitation Period. A person or entity who seeks or applies for a city contract or any other person acting on behalf of such person or entity, is prohibited from contacting city officials and employees regarding such a contract after a Request for Proposal (RFP), Request for Qualification (RFQ) or other solicitation has been released, if such contact could be construed as an attempt to influence a decision regarding said contract. This no-contact provision shall conclude when the contract is awarded. If contact is required, such contact will be done in accordance with procedures incorporated into the solicitation document. Violation of this provision by respondents or their agents may lead to disqualification of their offer from consideration.

7. NON-COLLUSIVE AFFIDAVIT

The City may require that vendors submit a Non-Collusive Affidavit. The vendor will be required to state that the party submitting a proposal or bid, that such proposal or bid is genuine and not collusive or sham; that said Bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any Bidder or Person, to put in a sham bid or to refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid price or affiant or of any other Bidder, or to fix any overhead, profit or cost element of said bid price, or of that of any other Bidder, or to secure any advantage against the City of Laredo or any person interested in the proposed contract; and that all statements in said proposal or bid are true.

Any alleged violations of these standards of conduct shall be referred to the appropriate District Attorney and as appropriate to the Texas Ethics Administration. Where violations appear to have occurred, the offending employee, officer or agent shall be subject to disciplinary action, including but not limited to dismissal or transfer; where violations or infractions appear to be substantial in nature, the matter may be referred to the appropriate officials for criminal investigation and possible prosecution.

8. CONTRACTOR QUALIFICATIONS

The following Federal laws and regulations may affect contractor selection:

- (1) “Responsibility” Requirements. In addition to the Common Grant Rules that require contract awards be made only to responsible contractors, Federal transit law at 49 U.S.C. Section 5325(j) limits third party contractor awards to those contractors capable of successfully performing under the terms and conditions of the proposed contract. Before selecting a contractor for award, LTMI must consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- (2) Debarment and Suspension. Debarment and suspension regulations and guidance include the following:
 - (a) DOT Debarment and Suspension Regulations. Department of Transportation (DOT) regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Part 1200 apply to each third party contract at any tier of \$25,000 or more, to each third party contract at any tier for a federally required audit (irrespective of the contract amount), and to each third party contract at any tier that must be approved by an FTA official irrespective of the contract amount. *See*, 2 CFR Part 1200. Thus, LTMI must apply DOT’s debarment and suspension requirements to itself and each third party contractor at every tier to the extent required by DOT’s regulations that incorporate the requirements of Office of Management and Budget (OMB), “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR Part 180.

9. AWARDS TO RESPONSIBLE CONTRACTORS

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

10. WRITTEN RECORD OF PROCUREMENT HISTORY

In order to maintain records sufficient to detail the significant history of a procurement, LTMI will at a minimum provide the following for each procurement.

- Rationale for the method of procurement (i.e., request for proposals, invitation for bids, sole source)

- Sole source justification for any purchase that is not competitive
- Selection of contract type (i.e., fixed price, cost reimbursement)
- Reason for contractor selection or rejection
- Written Responsibility Determination for the successful contractor (*complete LTMI Form #1, Responsibility Determination Checklist and place in procurement file*).
- Basis for the contract price (i.e., cost/price analysis)

The LTMI will perform a cost or price analysis in connection with every procurement action regardless of dollar amount, including contract modifications. To facilitate this, the LTMI will develop an independent cost estimate prior to receipt of bids or proposals. These documents will become part of the procurement file which LTMI will create for every procurement action it undertakes. Procurement records shall be kept for a period of time as defined in the grant contract and/or state public records laws, whichever is longer.

11. CONTRACT TERM LIMITATION

The LTMI shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options. All other types of contracts (supply, service, leases of real property, revenue and construction, etcetera) should be based on sound business judgment. The LTMI is expected to be judicious in establishing and extending contract terms no longer than minimally necessary to accomplish the purpose of the contract. Additional factors to be considered include competition, pricing, fairness and public perception. Once a contract has been awarded, an extension of the contract term length that amounts to an out of scope change will require a sole source justification.

12. OPTIONS

LTMI's contracts may include options to ensure the future availability of property or services, so long as LTMI is able to justify those options as needed for its public transportation or project purposes. An option is a unilateral right in a contract by which, for a specified time, LTMI may acquire additional equipment, supplies, or services than originally procured. An option may also extend the term of the contract.

13. EXERCISE OF OPTIONS

LTMI may use contract options held by another recipient with the following limitations:

- LTMI will ensure that the terms and conditions of the option it seeks to exercise are substantially similar to the terms and conditions of the option as stated in the original contract at the time it was awarded.
- LTMI may not exercise an option unless it has determined that the option price is better than prices available in the market, or that when it intends to exercise the option, the option is more advantageous.

14. CARDINAL CHANGES

A significant change in contract work (property or services) that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract, is a cardinal change. Such practices are sometimes informally referred to as “tag-ons.” A change within the scope of the contract (sometimes referred to as an “in-scope” change) is not a “tag-on” or cardinal change.

15. WRITTEN PROCUREMENT SELECTION PROCEDURES

LTMI shall provide a written selection procedure for all procurement transactions. Each and every solicitation shall provide a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or approved equal” description may be used as a means to define the performance or other salient characteristics of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.

Each procurement shall provide all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.

16. GEOGRAPHIC PREFERENCES

Except where applicable Federal statutes expressly mandate or encourage geographic preference, the LTMI shall not impose geographical preferences in the evaluation of bids or proposals. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

17. FULL AND OPEN COMPETITION

LTMI will conduct procurement transactions in a manner that provides full and open competition. LTMI will refrain from restricting competition by any of the following means:

- unreasonable qualification requirements
- unnecessary experience requirements
- excessive bonding
- noncompetitive pricing practices between firms
- noncompetitive awards to firms on retainer
- organizational conflicts of interest, “brand name” only specifications
- or by means of any other arbitrary action in the procurement process

When using intergovernmental contracts as a procurement method, LTMI will request all documentation regarding the state's procurement of said contract. LTMI will conduct an

internal review to make sure that the State did not unduly restrict full and open competition. All documentation will be saved in LTMI's procurement files.

Methods of procurement will be followed as previously detailed on page 2 – LTMI Purchasing Policy Steps 1-5.

18. SEALED BIDS/INVITATION FOR BID (IFB)

For items exceeding the State's limit of \$50,000 sealed bids or competitive proposals generally are required. Bids are publicly solicited and the award is made to the lowest (best price), responsive (meets all specifications), and responsible (is qualified to perform the work) bidder.

19. COMPETITIVE PROPOSALS/REQUEST FOR PROPOSALS (RFP)

Competitive Proposals/RFP – Proposals are publicly solicited from an adequate number of sources and the award is made to the firm whose offer is most advantageous to the grantee, with price and other factors considered. Grantees must identify their evaluation factors and indicate the relative importance that each has towards the award.

20. REVENUE CONTRACTS

Revenue contracts are those in which the grantee or subrecipient provides access to public transportation assets for the primary purpose of either producing revenue in connection with an activity related to public transportation, or creating business opportunities with the use of FTA assisted property. If there are several potential competitors for a limited opportunity (such as advertising space on the exterior and interior of buses), then the grantee should use a competitive process to permit interested parties an equal chance to obtain that limited opportunity. If, however, one party seeks access to a public transportation asset and the grantee is willing and able to provide contracts or licenses to other parties similarly situated, then competition would not be necessary because the opportunity to obtain contracts or licenses is open to all similar parties. In the case of joint development, FTA will work with the grantee to determine appropriate procedures, as necessary.

21. WRITTEN PROTEST PROCEDURES

A protest is a potential bidder's or contractor's remedy for correcting a perceived wrong in the procurement process. The LTMI has devised a written protest procedure to handle and resolve disputes relating to procurements.

If any person contemplating submitting a Proposal for this contract is in doubt as to the true meaning of the specifications, or other proposal documents or any part thereof, they may submit to the City Purchasing Agent on or before seven days prior to the scheduled opening date a request for clarification. All requests for information shall be made in writing, and the person submitting the request will be responsible for its prompt delivery. Any interpretation of the proposal, if made, will be made only by an addendum duly issued by the Purchasing Agent. A copy of such addendum will be mailed or delivered to each vendor having receiving a set of proposal documents. The City will not be responsible for any other explanations or

interpretations of the proposed proposal made or given prior to the proposal opening or award of contract. Protest Procedures: The purpose of this procedure is to establish procedures whereby a vendor may protest specific procurement actions by the City of Laredo.

The following sequence of activities must take place in filing a protest:

To be performed by protesting vendor: Within ten (10) days prior to the time that the City Council considers the recommendation of the City's Purchasing Officer, the protesting vendor must provide written protest to the City Purchasing Officer. Such protest must include specific reasons for the protest.

To be performed by City's Purchasing Officer: Shall review the records of procurement and determine legitimacy and procedural correctness. Within ten (10) working days, the City Purchasing Officer shall provide written response to the protesting vendor of the decision.

If the protesting vendor is not satisfied with the decision of the City Purchasing Officer, such protesting vendor may appeal to the City Manager of the City of Laredo. If the protesting vendor cannot resolve the issue with the City Manager, he shall be entitled to address his concerns when the City Council of the City of Laredo/Laredo Mass Transit Board considers the awarding of the contract. Such appeal may be made only after exhausting all administrative procedures through the City Manager.

All protests must be duly submitted via Certified Mail to:

City of Laredo - Purchasing Agent
5512 Thomas Ave.
Laredo, Texas 78041

A. Review of Protest By FTA

- 1) Where applicable, review of protests by FTA will be limited to the LTMI's failure to have or follow its protest procedures, or its failure to review a complaint or protest. An appeal to FTA must be received by the cognizant FTA Regional or Headquarters Office within five (5) working days of the date the protestor knew or should have known of the violation and/or five (5) days after the protestor knows or has reason to know that the LTMI has failed to render a final decision. Such appeal must be filed in accordance with all FTA rules and regulations, and the most current version of FTA Circular 4220.1F. The FTA may allow a request for reconsideration if data becomes available that was not previously known, or if there has been an error of law or regulation. Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of state or local or regulations will be under the jurisdiction of state or local authorities.
- 2) Post-determination protests may include allegations that the LTMI failed to have or follow written protest procedures.

22. INTERGOVERNMENTAL PROCUREMENT AGREEMENTS

- 1) LTMI will use available state and local intergovernmental agreements for procurement or use of common goods and services as possible. When obtaining goods or services in this manner, grantees must ensure all federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental contract or in the LTMI's purchase document. LTMI will use the checklist of required clauses provided annually in the Workbook for the Triennial Review

Program Workshop to properly determine that all applicable clauses have been included when drafting contracts for procurements. General reference to FTA regulations is not sufficient to meet this requirement.

- 2) When evaluating whether a state or local intergovernmental agreement for procurement can be used, LTMI will request all documentation from the original contracting agency to conduct an internal compliance review. LTMI will examine the original procurement documentation to ensure full and open competition, award to responsible contractor, adequate competition, adequate number of sources solicited, and responsiveness. Further, LTMI will conduct a cost or price analysis prior to utilizing an intergovernmental agreement for procurement.
- 3) LTMI may jointly procure goods and services with other grantees. When obtaining goods or services in this manner, the LTMI will ensure all federal requirements, required clauses, and certifications are properly followed and included in the resulting joint solicitation and contract documents. LTMI will use the checklist of required clauses provided annually in the Workbook for the Triennial Review Program Workshop to properly determine that all applicable clauses have been included when drafting contracts for procurements. General reference to FTA regulations is not sufficient to meet this requirement.
- 4) LTMI may assign contractual rights to purchase goods and services to other federal grantees if the original contract contains appropriate assignability provisions. Entities who obtain these contractual rights (commonly known as '*piggybacking*') may exercise them after first determining the contract price remains fair and reasonable.
- 5) *Piggybacking* is permissible when the solicitation is with other Texas entities and the document and resultant contract contain an assignability clause that provides for the assignment of all or a portion of the specified deliverables as originally advertised, competed, evaluated, and awarded. If the supplies were solicited, competed and awarded through the use of an indefinite-delivery-indefinite-quantity (IDIQ) contract, then both the solicitation and contract award must contain both a minimum and maximum quantity that represent the reasonably foreseeable needs of the party(s) to the solicitation and contract. If two or more parties jointly solicit and award an IDIQ contract, then there must be a total minimum and maximum.

23. LEASE VERSUS PURCHASE

To obtain the best value, LTMI should review lease versus purchase alternatives for acquiring property and, if necessary, should obtain an analysis to determine the more economical alternative. LTMI may use FTA capital assistance to finance the costs of leasing eligible property if leasing is more cost effective than full ownership. Before LTMI may lease an asset, FTA regulations, "Capital Leases," 49 CFR Part 639, Subpart C, require LTMI to make a written comparison of the cost of leasing the asset compared with the cost of purchasing or constructing the asset. Costs used in the comparison must be reasonable, based on realistic current market conditions, and based on the expected useful service life of the as asset.

24. E-COMMERCE

E-Commerce is an allowable means to conduct procurements. LTMI will develop written procedures prior to solicitation via E-Commerce and all requirements for full and open competition must be met in accordance with federal and state laws and regulations.

25. USE OF VALUE ENGINEERING IN CONSTRUCTION CONTRACTS

LTMI may use value engineering clauses in contracts for construction projects.

26. SOLICITATION PREQUALIFICATION CRITERIA

LTMI may prequalify people, firms, or products for participation in its procurements provided that:

- 1) LTMI ensures that all its prequalification lists used in acquiring property and services are current.
- 2) LTMI ensures that all its prequalification lists include enough qualified sources to ensure maximum full and open competition.
- 3) LTMI permits potential bidders or proposers to qualify during the solicitation period from the issuance of the solicitation to its closing date.

27. PREQUALIFICATION SYSTEM

From time to time LTMI uses prequalification lists to acquire goods. Prequalification lists are most common in recurring requirements for goods that take some period of time to evaluate to determine if they satisfy the LTMI's standards. In such cases, LTMI accepts submissions for evaluation, even during ongoing procurement actions. When such submissions are received during a particular solicitation, its evaluation does not have to be accelerated or shortened and the solicitation does not have to be held open to accommodate a potential bidder who submits a person, firm, or product for approval before or during that solicitation. LTMI ensures that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. LTMI will not preclude potential bidders from qualifying during the solicitation period, which is from the issuance of the solicitation to its closing date.

28. ARCHITECTURAL ENGINEERING (A&E) SERVICES AND OTHER SERVICES

FTA's enabling legislation at 49 U.S.C. Section 5325(b)(1) requires the use of the qualifications-based procurement procedures contained in the "Brooks Act," 40 U.S.C. Sections 1101 through 1104, to acquire A&E services, but also for program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping and related services. The nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determine whether qualifications-based procurement procedures may be used as described below.

- (1) Qualifications-Based Procurement Procedures Required. LTMI will use qualifications-based procurement procedures not only when contracting for A&E services, but also for other services listed in 49 U.S.C. Section 5325(b)(1) that are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property. For example, a contractor performing program management, project design, construction management, or engineering services in which that contractor would

select the finished products to be acquired for an FTA assisted construction project must be selected through qualifications-based procurement procedures.

- (2) Qualifications-Based Procurement Procedures Prohibited. Unless FTA determines otherwise in writing, LTMI may not use qualifications-based procurement procedures to acquire other types of services if those services are not directly in support of, directly connected to, directly related to, or do not lead to construction, alteration, or repair of real property. Even if a contractor has performed services listed herein in support of a construction, alteration, or repair project involving real property, selection of that contractor to perform similar services not relating to construction may not be made through the use of qualifications-based procurement procedures.

A project involving construction does not always require that qualifications-based procurement procedures be used. Whether or not qualifications-based procurement procedures may be used depends on the actual services to be performed in connection with the construction project. For example, the design or fabrication of message signs, signals, movable barriers, and similar property that will become off-the-shelf items or will be fabricated and delivered as final end products for installation in an FTA assisted construction project are not services for which qualifications-based procurement procedures may be used. Nor is actual construction, alteration, or repair to real property the type of services for which qualifications-based procurement procedures may be used.

- (3) Qualifications-Based Procurement Procedures. The following procedures apply to qualifications-based procurements:
- (a) Qualifications. Unlike other two-step procurement procedures in which price is an evaluation factor, an offeror's qualifications are evaluated to determine contract award. Qualifications and recent experience of the firm and key personnel relative to the performance of similar services comparable to the proposed project with dates of project, and information regarding cost over-runs on previous projects.
 - (b) Evaluation/Selection Criteria. A weighted method will be used for the selection criteria using *LTMI Form #5 A&E Evaluation/Selection Criteria Form*.
 - (c) Price. Price is excluded as an evaluation factor.
 - (d) Most Qualified. Negotiations are first conducted with only the most qualified offeror.
 - (e) Next Most Qualified. Only after failing to agree on a fair and reasonable price may negotiations be conducted with the next most qualified offeror. Then, if necessary, negotiations with successive offerors in descending order may be conducted until contract award can be made to the offeror whose price LTMI believes is fair and reasonable.
 - (f) Negotiation Results Documentation. A summary of total cost and fee/profit objectives will be kept in the procurement file. The summary will consist of the following information:

- Offeror’s Proposal Amount.
- LTMI’s Negotiation Objective.
- LTMI’s Maximum Position.
- Difference between Offeror’s/LTMI’s Objective.

(g) Effect of State Laws. To the extent that a State has, before August 10, 2005, adopted by law, an equivalent State qualifications-based-procurement requirement for acquiring architectural, engineering, and design services, State procedures, rather than Federal “Brooks Act” procedures (40 U.S.C. Sections 1101 through 1104), may be used.

- (4) LTMI will complete an A&E Professional Services Procurement Checklist (*reference to LTMI Form #3*), and will be placed in procurement file. This checklist will outline the basic requirements for this type of procurement.

29. DESIGN-BID BUILD PROJECT

Design-Bid-Build Project means a construction project under which LMTI commissions an architect or engineer to prepare drawings and specifications under a design services contract, and separately contracts for construction, by engaging the services of a contractor through sealed bidding or competitive negotiations to complete delivery of the project.

30. DESIGN-BUILD PROJECT

Design-Build Project, as defined in 49 U.S.C. Section 5325(d)(1), means (1) a project under which LTMI enters into a contract with a seller, firm, or consortium of firms to design and build a public transportation system, or an operable segment of such system, that conforms to specific performance criteria; and (2) may include an option to finance, or operate for a period of time, the system or segment or any combination of designing, building, operating, or maintaining such system or segment. Apart from the definition at 49 U.S.C. Section 5325(d)(1), a “design-build project” also means a construction project under which LMTI enters into a contract with a seller, firm, or consortium of firms both to design and construct a public transportation facility that is the subject of the project.

31. PROCUREMENT BY NONCOMPETITIVE PROPOSALS (SOLE SOURCE)

Sole Source procurements are accomplished through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. A contract change that is not within the scope of the original contract is considered a sole source procurement that must comply with this subparagraph.

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

- a. The item is available only from a single source;
- b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

- c. After solicitation of a number of sources, competition is determined inadequate after receiving a single bid; or
- d. LTMI receives permission from FTA to pursue a noncompetitive proposal for a reason listed in Circular 4220.1F, Chapter VI, 3.i.(2)(e)
- e. A cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.
- f. Sole Source: When LTMI requires supplies or services available from only one responsible source, and no other supplies or services will satisfy its requirements, LTMI will make a sole source award. When LTMI requires an existing contractor to make a change to its contract that is beyond the scope of that contract, LTMI has made a sole source award that must be justified.

When supplies or services are available from only one responsible source, and no other supplies or services will satisfy its requirements, the LTMI understands that it will make a sole source award. In the event of such a case, the LTMI will ensure that any sole source, single bid, or brand name or equal awards procurements are properly documented and the procurement file contains the appropriate justification and/or documentation. Furthermore, in the event that an existing contractor is required to make a change to its contract that is beyond the scope of that contract, the LTMI understands that it has made a sole source award that must be justified.

The property or services are available from one source if one of the conditions described below is present:

- Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to LTMI only from one source and has not in the past been available to LTMI from another source.
- Patent or data rights restrictions preclude competition.
- In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components hereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
- In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the grantee's needs.

In the case of a sole-source award, the documentation should be a written sole-source justification, which includes a cost analysis. **In case of a single-bid**, the documentation will include a cost analysis, as well as an explanation as to why a single bid was obtained. Upon receiving a single bid or proposal in response to a solicitation, LTMI will **conduct a Single-Bid Analysis (complete LTMI Form #2, Single Bid Analysis Checklist and place in procurement file)** to determine if competition was adequate. This will include a review of the specifications for undue restrictiveness and will include a survey of potential sources that chose not to submit a bid or proposal.

When it is impractical or uneconomical to provide a clear and accurate description of the technical requirements of the property to be acquired, a “brand name or equal” description may be used to define the performance or other salient characteristics of a specific type of property. LTMI must identify the salient characteristics of the named brand that offerors must provide. When using a “brand name” specification, LTMI does not need to reverse-engineer a complicated part to identify precise measurements or specifications in order to describe its salient characteristics.

Professional services can be procured on a sole-source basis if justified, in general, a competitive environment does exist for professional services and LTMI will follow the requirements of FTA C 4220.1F when Federal funds are used to pay for these services.

Although LTMI is not required to obtain prior FTA approval for a non-competitive award, LTMI’s files will contain an appropriate level of justification for such awards.

32. INDEPENDENT COST ESTIMATES AND THE COST AND PRICE ANALYSIS

FTA Circular 4220.1F, Ch. VI, Para. 6, advises grantees to "perform a cost or price analysis in connection with every procurement action, including contract modifications . . . the starting point for these cost/price analyses is an independent cost estimate which is made before receiving bids or proposals."

LTMI will perform a cost or price analysis in connection with every procurement action regardless of dollar amount, including contract modifications. LTMI will also request a cost and price analysis documents for any procurements off of the State contract list. LTMI will examine the original procurement documentation to ensure full and open competition, award to a responsible contractor, adequate competition, adequate number of sources solicited, and responsiveness. To facilitate this, LTMI will develop an independent cost estimate prior to receipt of bids or proposals. **LTMI will complete an Independent Cost Estimate (ICE) Summary Form (reference to LTMI Form #6).** The word “independent” does not imply that it is performed by someone other than LTMI. This could be the case, however, if the LTMI does not have the expertise for a large complex procurement. This analysis will be made part of the procurement file for every procurement action.

LTMI will develop the independent cost estimate prior to developing bid specifications or other procurement documents. LTMI must complete documentation of the cost or price analysis, methodology, conclusion, and name of the analyst who completed the analysis and the date the analysis was completed. All documentation is to remain in LTMI procurement files.

Independent Cost Estimate Procedures:

The extent of the cost estimate will depend on the type of procurement being pursued. The cost estimate for a micro purchase can only involve phone calls to obtain price quotes; while a cost estimate for the procurement of a larger capital item would require a more involved process to assess the market and to develop a reasonably accurate estimate. Sources of information for putting together an ICE are: prior bids or contracts for similar scopes of services; published price lists; hourly rates from similar service providers; prior

bids or rates received from other agencies; and industry standards such as design as a percentage of construction.

The independent estimates for purchases other than micro purchases must be prepared in the same format and level of detail as Bidders are to use in submitting their pricing schedules and is intended to serve as an effective tool in evaluating price and cost reasonableness. The estimator should maintain the supporting documentation used in preparing the estimates for reference as part of the evaluation process. Should a solicitation amendment materially affect the anticipated price, the estimate should be revised to address the changed requirement(s). A copy of the independent estimate (and any subsequent revised estimates) will be retained in the contract file.

Cost and Price Analysis Procedures:

The method and degree of analysis will be dependent on the facts surrounding the particular procurement situation.

- 1) A cost analysis must be performed when the offeror is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost, (e.g., under professional consulting and architectural and engineering services contracts, etc.). A cost analysis will be necessary when adequate price competition is lacking and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.
- 2) A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price and is done by examining and evaluating a prospective price without evaluation of the separate cost elements or proposed profit of the prospective supplier.

Price analysis may be accomplished through one or more of the following activities:

- a) The comparison of prior quotations and contract prices with current quotations for the same or similar end items (to provide a suitable basis for comparison appropriate allowances must be made for differences in such factors as specifications, quantities ordered, time for delivery, etc.).
- b) The use of "yardsticks" (such as dollars per pound, per horsepower, or other units) to point out apparent gross inconsistencies.
- c) The comparison of prices set forth in published price lists issued on a competitive basis, published market prices of commodities, and similar indicators, to LTMI with discount or rebate arrangements.
- d) The comparison of proposed prices with estimates of cost independently developed by personnel within LTMI.

- e) The comparison of prices paid by other users (government or commercial) of the same or similar items to the proposed prices.
- 3) The LTMI will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- 4) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles. The LTMI may reference its own cost principles that comply with applicable Federal cost principles.
- 5) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

Post analysis may be accomplished through the following:

- a) Verify the Contractor's cost data.
- b) Evaluate specific elements of costs and project these elements to determine the effect on prices:
 - (1) The necessity for certain costs;
 - (2) The reasonableness of amounts estimated for the necessary costs;
 - (3) Allowances for contingencies; and
 - (4) The basis used for allocations of particular overhead costs to the proposed contract.
- c) When the necessary data is available, compare the Contractor's estimated cost with:
 - (1) Actual costs previously incurred by the Contractor;
 - (2) The Contractor's last prior cost estimate for the same or similar estimates;
 - (3) Current cost estimates from other possible sources; and
 - (4) Prior estimates or historical costs of other contractors manufacturing the same or similar items.
- d) Forecasting future trends in costs from historical experience:

- (1) In periods of either rising or declining costs, an adequate cost analysis must include some evaluation of the trends.
- (2) In cases involving recently developed, complex equipment, even in periods of relative price stability, trend analysis of basic labor and materials costs should be undertaken.

If only one bid is received, the sole bidder must cooperate with LTMI as necessary in order for its bid to be considered for award. A new solicitation of bids may be made if the single bid price appears unreasonable or if no determination is made as to the reasonableness of the single bid.

33. EVALUATIONS

- a. When evaluating bids or proposals submitted, LTMI will consider all evaluation factors specified in its solicitation documents, and evaluate the bids or offers only on the evaluation factors included in those solicitation documents. LTMI may not modify its evaluation factors after bids or proposals have been submitted without re-opening the solicitation.
- b. In awarding the contract that will include options, the following standards apply:
 - (1) LTMI will evaluate bids or offers for any option quantities or periods contained in a solicitation if it intends to exercise those options after the contract is awarded.
 - (2) LTMI does not evaluate bids or offers for any option quantities when LTMI determines that evaluation would not be in its best interests. An example of a circumstance that may support LTMI's determination not to evaluate bids or offers for option quantities is when LTMI is reasonably certain that funds will not be available to permit it to exercise the option.

34. SOUND AND COMPLETE AGREEMENT

- a) The Common Grant Rules require that all third party contracts include provisions adequate to form a sound and complete agreement.
- b) Third party contracts exceeding \$100,000 must include administrative, contractual, or legal remedies for violations or breach of the contract by the third party contractor.
- c) For contracts exceeding \$10,000, there must be termination for cause and termination for convenience provisions.

35. CONTRACT PROVISIONS

All contracts will include provisions to define a sound and complete agreement. In addition, contracts and subcontracts will contain contractual provisions or conditions that allow for:

- 1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, including sanctions and penalties as may be appropriate. (All contracts in excess of the small purchase threshold.)

- 2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of the small purchase threshold)
- 3) All applicable FTA clauses will be included in contracts LTMI enters into for any procurement situation, including but not limited to:
 - FTA funded procurements exceeding the micro-purchase limit of \$10,000 and in intergovernmental agreements and subrecipient agreements as applicable.
 - FTA funded small purchases as part of the solicitation, purchase order, or contract.
 - FTA funded procurements over \$150,000 applicable to the particular type of procurement being undertaken (e.g., professional services, A&E, construction, rolling stock purchase, etc.).
- 4) LTMI will use the checklist of required clauses provided annually in in the TRIENNIAL REVIEW PROGRAM WORKSHOP WORKBOOK to properly determine that all applicable clauses have been included when drafting contracts for procurements. (Reference to Exhibit 6.1 A. Required Third Party Contract Clauses, Exhibit 6.2 B. Required Certifications, Reports, and Forms, Exhibit 6.3 C. Other Required Items). General reference to FTA regulations is not sufficient to meet this requirement. A complete list of appropriate FTA clauses is included in this document as Appendix 2: FTA Mandatory Provisions and are provided as part of the procurement process checklist in Appendix 3: LTMI Procurement Procedure Checklist.
- 5) LTMI will assure that no purchase, subgrant or contract is awarded to any party at any tier that is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs. LTMI will do this by (a) Adding a clause or condition to the contract or subcontract, and (b) Checking the Excluded Parties List System (EPLS) and documenting the results of that search.
- 6) Copies of the solicitation, purchase order, or contract will be included in the procurement file created for every procurement action undertaken.

LTMI will use the contract clauses in Exhibits 6.1A thru 6.3.C as part of the procurement process to determine proper clauses for each contract.

36. PROHIBITED OR RESTRICTED CONTRACT TYPES

The Common Grant Rule for governmental recipients provides more guidance on contract type than does the Common Grant Rule for non-governmental recipients, which merely authorizes LTMI to select the type of contract it will use (for example, fixed price, cost reimbursement, purchase order, or incentive contract) if it is appropriate for the particular procurement and promotes the best interests of the program or project involved.

The following contract types are restricted or prohibited:

1. Cost Plus a Percentage of Cost—Prohibited. The Common Grant Rules expressly prohibits the use of the cost plus a percentage of cost method of contracting.

2. Percentage of Construction Cost—Prohibited. The Common Grant Rules expressly prohibits the use of the percentage of construction cost method of contracting.
3. Time and Materials—Restricted. The Common Grant Rule for governmental recipients permits the use of time and material contracts only:
 - a. When to Use. After determining that no other contract type is suitable; and
 - b. Firm Ceiling Price. If the contract specifies a ceiling price that the contractor may not exceed except at its own risk.

37. MICRO-PURCHASES

- A. Consistent with the Federal Acquisition Regulation, effective June 20, 2018, The National Defense Authorization Acts (NDAA), memorandum M-18-18 raises the threshold for micro purchases under federal assistance awards to 10,000 and raises the threshold for simplified acquisitions to \$250,000.
 - (1) If permitted by State and local law, LTMI may acquire property and services valued at \$10,000 or less without obtaining competitive quotations. These purchases are exempt from FTA’s Buy America requirements Davis-Bacon prevailing wage requirements, however, will apply to construction contracts exceeding \$2,000, even though LTMI uses micro-purchase procurement procedures. FTA does not intend to imply that LTMI must treat any purchase of 10,000 or less as a micro-purchase. LTMI may set lower thresholds for micro-purchases in compliance with State and local law, or otherwise as it considers appropriate.
 - (2) The following procedures apply to micro-purchases:
 - (a) LTMI will distribute micro-purchases equitably among qualified suppliers.
 - (b) LTMI will not divide or reduce the size of its procurement merely to come within the micro-purchase limit.
 - (c) FTA’s only documentation requirement for micro-purchases is a determination that the price is fair and reasonable and a description of how LTMI made its determination. (*Complete LTMI Form #4, Micro-Purchase: Fair and Reasonable Price Determination Form and place in procurement file*). FTA does not require LTMI to provide its rationale for the procurement method used, selection of contract type, or reasons for contractor selection or rejection.
- B. The Common Grant Rule for governmental recipients authorizes governmental recipients to use relatively simple and informal small purchase procedures as follows:
 - (1) Small purchase procedures may be used to acquire services, supplies, or other property valued at more than the micro-purchase threshold (currently, \$10,000) but less than the Federal simplified acquisition threshold at 41 U.S.C. Section 403(11), NDAA FY2018 currently \$250,000. (FTA recognizes the small purchase threshold to be the same as the simplified acquisition threshold.) These purchases are also

exempt from FTA's Buy America requirements. FTA does not intend to imply that any purchase of \$250,000 or less must be treated as a small purchase. LTMI may set lower thresholds for small purchases in compliance with State and local law, or otherwise as it considers appropriate.

(2) Procedures (When using small purchase procedures):

- (a) LTMI must obtain price or rate quotations from an adequate number of qualified sources.
- (b) LTMI may not divide or reduce the size of its procurement to avoid the additional procurement requirements applicable to larger acquisitions.

C. Sealed Bids (Formal Advertising). LTMI acknowledges sealed bidding to be a generally accepted procurement method in which bids are publicly solicited, and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is lowest in price.

- (1) LTMI states a preference for the sealed bids procurement method for acquiring property, construction, and other services. Sealed bid procurements should be used when the following circumstances are present:
 - (a) A complete, adequate, precise, and realistic specification or purchase description is available.
 - (b) Two or more responsible bidders are willing and able to compete effectively for the business.
 - (c) The procurement generally lends itself to a firm fixed price contract.
 - (d) The successful bidder can be selected on the basis of price and those price-related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken. Apart from responsibility determinations discussed in later sections of this Chapter, contractor selection may not be determined on the basis of other factors whose costs cannot be measured at the time of award.
 - (e) Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made based on price and price-related factors alone. This contrasts with Competitive Proposal procedures in which discussions with individual offerors are expected to be necessary and may take place at any time after receipt of proposals. However, a pre-bid conference with prospective bidders before bids have been received can be useful.
- (2) The following procedures apply to sealed bid procurements:

- (a) The invitation for bids is publicly advertised.
- (b) Bids are solicited from an adequate number of known suppliers.
- (c) The invitation for bids, including any specifications and pertinent attachments, describes the property or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid.
- (d) Bidders are allowed sufficient time to prepare bids before the date of bid opening.
- (e) All bids are publicly opened at the time and place prescribed in the invitation for bids.
- (f) A firm fixed price contract is usually awarded in writing to the lowest responsive and responsible bidder, but a fixed price incentive contract or inclusion of an economic price adjustment provision can sometimes be appropriate. When specified in the bidding documents, factors such as transportation costs and life cycle costs affect the determination of the lowest bid; payment discounts are used to determine the low bid only when prior experience indicates that such discounts are typically taken.
- (g) Any or all bids may be rejected if there is a sound, documented business reason.

D. Competitive Proposals (Request for Proposals). LTMI acknowledges the use of competitive proposals to be a generally accepted procurement method when the nature of the procurement does not lend itself to sealed bidding and LTMI expects that more than one source will be willing and able to submit an offer or proposal.

- (1) Competitive proposals should be used when any of the following circumstances are present:
 - (a) Type of Specifications. The property or services to be acquired are described in a performance or functional specification; or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing the contract award on factors other than price alone are present.
 - (b) Uncertain Number of Sources. Uncertainty about whether more than one bid will be submitted in response to an invitation for bids and LTMI lacks the authority or flexibility under State or local law to negotiate the contract price if it receives only a single bid.
 - (c) Price Alone Not Determinative. Due to the nature of the procurement, contract award need not be based exclusively on price or price-related factors. In different types of negotiated acquisitions, the relative importance of cost or price may vary. When LTMI's material requirements are clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection. The less definitive the requirements, the

more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection and supersede low price.

(d) Discussions Expected. Separate discussions with individual offeror(s) are expected to be necessary after they have submitted their proposals. This contrasts with Sealed Bids (Formal Advertising) procedures in which discussions with individual bidders are not likely to be necessary, as award of the contract will be made based on price and price-related factors alone.

(2) Procurement Procedures. The following procedures apply to procurements by competitive proposals:

(a) The request for proposals is publicly advertised.

(b) All evaluation factors and their relative importance are specified in the solicitation; but numerical or percentage ratings or weights need not be disclosed.

(c) Proposals are solicited from an adequate number of qualified sources.

(d) A specific method is established and used to conduct technical evaluations of the proposals received and to determine the most qualified offeror.

(e) An award is made to the responsible offeror whose proposal is most advantageous to LTMI's program with price and other factors considered.

(f) If permitted under its State or local law, the LTMI may award the contract to the offeror whose proposal provides the greatest value to LTMI. To do so, the LTMI's solicitation must inform potential offerors that the award will be made on a "best value" basis and identify what factors will form the basis for award. The evaluation factors for a specific procurement should reflect the subject matter and the elements that are most important to LTMI. Those evaluation factors may include, but need not be limited to, technical design, technical approach, length of delivery schedules, quality of proposed personnel, past performance, and management plan. LMTI should base its determination of which proposal represents the "best value" on an analysis of the tradeoff of qualitative technical factors and price or cost factors. Apart from the statutory requirement that the contract must support LTMI's public transportation project consistent with applicable Federal laws and regulations, FTA does not require any specific factors or analytic process.

E. Two-Step Procurement Procedures. If permitted by State and local law, LMTI may use two-step procurement procedures in both sealed bid and competitively negotiated procurements, provided the opportunity for full and open competition is retained.

(1) Review of Technical Qualifications and Approach. The first step is a review of the prospective contractors' technical approach to the LTMI's request and technical qualifications to carry out that approach. LTMI then may narrow the competitive

range to prospective contractors that demonstrate a technically satisfactory approach and have satisfactory qualifications.

- (2) **Review of Bids and Proposals Submitted by Qualified Prospective Contractors.** The second step consists of soliciting and reviewing complete bids (sometimes referred to as “two-step sealed bidding”) or proposals (as in “competitive negotiations”), including price, submitted by each prospective contractor determined to be qualified. Absent exceptional circumstances, LTMI should attempt to solicit bids or proposals from at least three qualified prospective contractors. Unlike qualifications-based procurement procedures required for A&E services, and other contracts covered by 49 U.S.C. Section 5325(b) discussed in subsection 3.f of this Chapter, FTA expects LTMI to consider all bid or proposal prices submitted as well as other technical factors, rather than limiting reviews to the most qualified bidder or offeror.

- F. **Sole Source.** When LTMI requires supplies or services available from only one responsible source, and no other supplies or services will satisfy its requirements, LTMI may make a sole source award. When LTMI requires an existing contractor to make a change to its contract that is beyond the scope of that contract, LTMI has made a sole source award that must be justified.

38. BONDING REQUIREMENTS

For those construction or facility improvement contracts or subcontracts exceeding \$100,000 amount, the LTMI shall require the following minimum bonding amounts.

- 1) A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified;
- 2) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract; and
- 3) A payment bond on the part of the contractor. A payment bond is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment amounts determined to adequately protect the federal interest are as follows:
 - 4) Fifty percent(50%) of the contract price if the contract price is not more than \$1 million;
 - 5) Forty percent (40%) of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - 6) Two and a half million dollars (\$2,500,000) if the contract price is more than \$5 million.
 - 7) Other bonds in an amount designed to comply with the requirements of federal or state funding sources.

39. PAYMENT PROVISIONS IN THIRD PARTY CONTRACTS

- A. Advance Payments generally, it is not the practice of the LTMI to provide advance payments prior to the incurrence of costs by the contractor. However it is recognized that some purchases such as vehicles may require an advance payment. In such instances, the LTMI will confer with the granting agency to determine the requirements for down payments with local funds for such items. LTMI will obtain prior written concurrence from a granting agency for use of federal or state funds. LTMI will not make advance payments with local funds before a grant has been awarded, or before the issuance of a letter of no prejudice or other pre-award authority.
- B. Progress Payments Grantees may use progress payments provided the following requirements are followed:
 - 1) Progress payments are only made to the contractor for costs incurred in the performance of the contract.
 - 2) The LTMI must obtain adequate security for progress payments. Adequate security may include taking title, letter of credit or equivalent means to protect the grantee's interest in the progress payment.

40. LIQUIDATED DAMAGES PROVISIONS

LTMI may require liquidated damages clauses in contracts if it may reasonably expect to suffer damages and the extent or amount of such damages would be difficult or impossible to determine. The assessment for damages shall be at a specific rate per day for each day of overrun in contract time; and the rate must be specified in the third party contract. Any liquidated damages recovered shall be credited to the project account unless otherwise permitted by the granting agency.

41. CONTRACT AWARD ANNOUNCEMENT

With regard to any FTA contract, should LTMI announce any contract awards with respect to any procurement for goods and services (including construction services) having an aggregate value of \$500,000 or more, LTMI will specify the amount of Federal funds that will be used to finance the acquisition in any announcement of the contract award for such goods or services expressed as a percentage of the total costs of the planned acquisition.

42. POST-DELIVERY ACTIVITIES

Inspection, Acceptance and Payment – Inspection is the final action taken by LTMI to determine if the product or service delivered meets the specifications or the statement of work. All specifications in the solicitation package should be met before accepting the product or service. Failure to enforce the terms of the procurement can result in legal liability and can interfere with other LTMI's ability to enforce similar provisions.

Acceptance refers to the actions of LTMI that signify that the product or service is acceptable and the supplier has performed the required tasks. Such acceptance may be accomplished through issuance of a written statement or by use of the product without advance written notification to the vendor of any deficiencies.

At least partial payment must be made to vendor before any revenue use of the vehicle occurs. Full payment should not be made until deficiencies are corrected and LTMI is satisfied with the vehicle/purchase. If deficiencies are noted, a portion of the bid price up to 10 percent of the total cost or the estimated cost of correction whichever is larger, may be withheld. LTMI will work with the vendor in good faith to resolve any delivery defects.

Post Delivery Audit – A transit system purchasing revenue service rolling stock with FTA funds will ensure that a post-delivery audit is completed before application is made for a title to the vehicle or the vehicle is used by LTMI. The Assistant General Manager of Maintenance certifies that the vehicle meets requirements and the post-delivery audit is completed by signing a Post-Delivery Audit Certification. The certifications are retained by LTMI for three years after the project close out.

The post-delivery audit requires the purchaser to make three certifications similar to the pre-audit certifications, but now based on the buses that have been delivered:

1. Buy America certification;
2. The purchaser's requirements certification that includes a complete visual inspection and road tests to demonstrate that the buses meet the contract specifications; and
3. The FMVSS Certification.

Procurement Records – Bid specifications and all related correspondence, including correspondence with potential bidders, should be kept for a minimum of three years after the joint participation agreement has been closed.

SECTION 2: APPENDIX

APPENDIX 1: Contract Language for FTA Funded Contracts

Selection of Subcontractors

If it is necessary for a contractor to engage a subcontractor, the contractor shall provide the LTMI with the scope and projected cost of same prior to solicitation to ensure that the appropriate solicitation process is implemented. The following provision is to be included in all FTA funded contracts:

“Contractor agrees to provide the LTMI a written description of the scope and projected cost of any subcontract it seeks to enter into prior to solicitation. It is necessary to conduct an analysis as to whether the proposed contract meets the applicable solicitation processes prior to any subcontract. Only after the LTMI and the contractor have conducted an analysis on whether the proper solicitation process was followed will the contractor be authorized to proceed with selection of a subcontractor. The LTMI reserves the right to withhold any payment sought under this contract for failure to adhere to this provision.”

FTA Clauses in Contracts

Every FTA funded contract must contain the FTA Clauses, including primary contracts and subcontracts. The scope and cost of each contract and subcontract will be evaluated prior to contract execution to determine if the appropriate FTA clauses are included. The procurement checklist will be signed by the person filling it out, and also signed by a person reviewing the procurement package. The LTMI’s contracts with primary contractors will include language requiring that the LTMI be provided the actual proposed contract with the subcontractor to determine if the appropriate FTA clauses were included. The following provision is to be included in all FTA funded contracts:

“It is mandatory that any and all contracts entered into by contractor with subcontractors include the appropriate FTA clauses, a complete list is attached as Appendix 2”. Prior to execution of the subcontract, Contractor shall provide the LTMI with a copy of the proposed contract with the subcontractor so that the LTMI can review same for compliance with this section.”

Non-compliance with FTA Clauses

Every FTA funded contract will include a provision requiring contractors to submit annual certifications indicating their compliance with FTA clauses for the term of the contract. These certifications are to be submitted at the end of the calendar year prior to the LTMI submitting its annual Certifications and Assurances to FTA. Should the LTMI find that a contractor has failed to adhere to any FTA requirements; the LTMI will seek reimbursement for any fund returned to FTA due to the contractor’s non-compliance. The following provision is to be included in all FTA funded contracts:

“Upon thirty (30) days of written request by the LTMI, Contractor shall provide a signed certification statement that it has complied with any and all FTA requirements included but not limited to the FTA Clauses. Should there be any claims made by FTA for reimbursement of funds due to the negligence, whether intentional or not, fault or inaction of Contractor or its employees, agents, subcontractors or assigns, Contractor shall be liable to the LTMI for any and all damages it sustains, including, but, not limited to, the amount of the reimbursement claim, the inability to obtain future grant funds and any and all other damages sustained by the LTMI.”

APPENDIX 2: FTA Mandatory Provisions

**FEDERAL TRANSIT ADMINISTRATION
CONTRACT CLAUSES**

TABLE OF CONTENTS

1. Fly America Requirements
2. Buy America Requirements
3. Charter Bus and School Bus Requirements
4. Cargo Preference Requirements
5. Seismic Safety Requirements
6. Energy Conservation Requirements
7. Clean Water Requirements
8. Bus Testing
9. Pre-Award and Post Delivery Audit Requirements
10. Lobbying
11. Access to Records and Reports
12. Federal Changes
13. Bonding Requirements
14. Clean Air
15. Recycled Products
16. Davis-Bacon and Copeland Anti-Kickback Acts
17. Contract Work Hours and Safety Standards Act
18. [Reserved]
19. No Government Obligation to Third Parties
20. Program Fraud and False or Fraudulent Statements and Related Acts
21. Termination
22. Government-Wide Debarment and Suspension (Nonprocurement)
23. Privacy Act
24. Civil Rights Requirements
25. Breaches and Dispute Resolution
26. Patent and Rights in Data
27. Transit Employee Protective Agreements
28. Disadvantaged Business Enterprises (DBE)
29. [Reserved]
30. Incorporation of Federal Transit Administration (FTA) Terms
31. Drug and Alcohol Testing

Example Third-Party Federal Contract Clauses

Required by Federal Transit Administration (FTA)

1. Fly America Requirements

49 U.S.C. §40118

41 CFR Part 301-10

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

2. Buy America Requirements

49 U.S.C. 5323(j)

49 CFR Part 661

The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA funded contracts, but does not specify the language to be used. The following language has been developed by FTA. The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

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

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

If steel, iron, or manufactured products (as defined in 661.3 and 661.5 of this part) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in 661.13(b) of this part.

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

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

Date _____
Signature _____
Company _____
Name _____
Title _____

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

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 4 C.F.R. 661.7.

Date _____
Signature _____
Company _____
Name _____
Title _____

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

If buses or other rolling stock (including train control, communication, and traction power equipment) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder in accordance with the requirement contained in 661.13(b) of this part.

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

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

Date _____

Signature _____

Company _____

Name _____

Title _____

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

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

Date _____

Signature _____

Company _____

Name _____

Title _____

3. Charter Bus Requirements

49 U.S.C. 5323(d)

49 CFR Part 604

The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA. The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

School Bus Requirements

49 U.S.C. 5323(F)

49 CFR Part 605

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

4. Cargo Preference Requirements

46 U.S.C. 1241

46 CFR Part 381

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

5. Seismic Safety Requirements

42 U.S.C. 7701 et seq. 49 CFR Part 41

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

6. Energy Conservation Requirements

42 U.S.C. 6321 et seq. 49 CFR Part 18

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

7. Clean Water Requirements

33 U.S.C. 1251

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

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

8. Bus Testing

49 U.S.C. 5318(e)

49 CFR Part 665

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

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the Laredo Transit Management Inc./City of Laredo at a point in the procurement process specified by the Laredo Transit Management Inc./City of Laredo which will be prior to the Laredo Transit Management Inc./City of Laredo's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the LTMI prior to final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- 4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS

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

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

Date: _____

Signature: _____

Company Name: _____

Title: _____

9. Pre-Award and Post Delivery Audits Requirements

49 U.S.C. 5323

49 CFR Part 663

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

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

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

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

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

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

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

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

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

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

Certificate of Compliance

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

Date: _____

Signature: _____

Company Name: _____

Title: _____

Certificate of Non-Compliance

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

Date: _____

Signature: _____

Company Name: _____

Title: _____

10. Lobbying

31 U.S.C. 1352

49 CFR Part 19

49 CFR Part 20

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

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

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

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

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

11. Access to Records and Reports

49 U.S.C. 5325

18 CFR 18.36 (i)

49 CFR 633.17

The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the Laredo Transit Management Inc./City of Laredo or a subgrantee of the Laredo Transit Management Inc./City of Laredo in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the Laredo Transit Management Inc./City of Laredo or a subgrantee of the Laredo Transit Management Inc./City of Laredo in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the Laredo Transit Management Inc./City of Laredo or a subgrantee of the Laredo Transit Management Inc./City of Laredo in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the Laredo Transit Management Inc./City of Laredo or a subgrantee of the Laredo Transit Management Inc./ City of Laredo in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

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

Requirements for Access to Records and Reports by Types of Contract

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

12. Federal Changes

49 CFR Part 18

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

13. Bonding Requirements

Bid Bond Requirements (Construction)

a) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to LTMI 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 Laredo Transit Management Inc., 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 Laredo Transit Management Inc.,.

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 LTMI, 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 LTMI's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

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

2. The Laredo Transit Management Inc./City of Laredo 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 Laredo Transit Management Inc./City of Laredo 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 Laredo Transit Management Inc./City of Laredo 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 LTMI's interest.

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

1. The Laredo Transit Management Inc./City of Laredo 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 LTMI, 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 Laredo Transit Management Inc./City of Laredo determines that a lesser amount would be adequate for the protection of the Laredo Transit Management Inc./City of Laredo.

2. The Laredo Transit Management Inc./City of Laredo 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 Laredo Transit Management Inc./City of Laredo 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 LTMI's interest.

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

1. The penal amount of payment bonds shall equal:

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

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

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

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The Laredo Transit Management Inc./City of Laredo shall determine the amount of the advance payment bond necessary to protect the LTMI/City of Laredo.

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 Laredo Transit Management Inc./City of Laredo shall determine the amount of the patent indemnity to protect the LTMI.

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to the LTMI, 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 LTMI, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by the Laredo Transit Management Inc./City of Laredo and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to the Laredo Transit Management Inc./City of Laredo. 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 Laredo Transit Management Inc./City of Laredo written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

14. Clean Air

42 U.S.C. 7401 et seq

40 CFR 15.61

49 CFR Part 18

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

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

15. Recycled Products

42 U.S.C. 6962

40 CFR Part 247

Executive Order 12873

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

16. Davis-Bacon and Copeland Anti-Kickback Acts

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

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

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

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

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

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

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

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

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

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

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

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

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional

classification and wage rate and fringe benefits therefor only when the following criteria have been met:

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

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

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

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

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

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

(2) **Withholding** - The Laredo Transit Management Inc./City of Laredo 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 Laredo Transit Management Inc./City of Laredo 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 Laredo Transit Management Inc./City of Laredo 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- 47 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph(a)(3)(ii)(B) of this section.

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

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

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

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the

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

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

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

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

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

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

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

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

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

17. Contract Work Hours and Safety Standards Act

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** - The Laredo Transit Management Inc./City of Laredo shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses Laredo Transit Management Inc./City of Laredo- Purchasing and Procurement Policy Page 39 of 56 in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

18. [RESERVED]

19. No Government to Third Parties

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

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

31 U.S.C. 3801 et seq.
49 CFR Part 31 18 U.S.C. 1001
49 U.S.C. 5307

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

21. Termination

49 U.S.C.Part 18

FTA Circular 4220.1E

Termination for Convenience (General Provision) The Laredo Transit Management Inc./City of Laredo may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Laredo Transit Management Inc./City of Laredo to be paid the Contractor. If the Contractor has any property in its possession belonging to the LTMI, the Contractor will account for the same, and dispose of it in the manner the Laredo Transit Management Inc./City of Laredo directs.

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Laredo Transit Management Inc./City of Laredo may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be Laredo Transit Management Inc./City of Laredo- Purchasing and Procurement Policy Page 40 of 56 paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

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

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

If Contractor fails to remedy to the LTMI's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from the Laredo Transit Management Inc./City of Laredo setting forth the nature of said breach or default, the LTMI 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 the Laredo Transit Management Inc./City of Laredo from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

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

f. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the Laredo Transit Management Inc./City of Laredo may terminate this contract for default. The Laredo Transit Management Inc./City of Laredo shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

g. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the Laredo Transit Management Inc./City of Laredo may terminate this contract for default. The Laredo Transit Management Inc./City of Laredo shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and the Laredo Transit Management Inc./City of Laredo shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the (Recipient).

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

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts

of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. The contractor, within [10] days from the beginning of any delay, notifies the Laredo Transit Management Inc./City of Laredo in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the Laredo Transit Management Inc./City of Laredo shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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

i. Termination for Convenience or Default (Architect and Engineering) The Laredo Transit Management Inc./City of Laredo may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Laredo Transit Management Inc./City of Laredo shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

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

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

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

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

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

22. Government-Wide Debarment and Suspension (Nonprocurement)

49 CFR Part 29 Executive Order 12549

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

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

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

The certification in this clause is a material representation of fact relied upon by **{insert agency name}**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **{insert agency name}**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

23. Privacy Act

5 U.S.C. 552

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

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

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

24. Civil Rights Requirements

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

The following requirements apply to the underlying contract:

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

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

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

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

25. Breaches and Dispute Resolution

49 CFR Part 18 FTA Circular 4220.1E

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

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

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

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

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by

the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

26. Patent and Rights in Data

37 CFR Part 401

49 CFR Parts 18 and 19

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27. Transit Employee Protective Agreements

49 U.S.C. § 5310, § 5311, and § 5333 29 CFR Part 215

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

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.

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

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

(2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

28. Disadvantaged Business Enterprise (DBE)

49 CFR Part 26

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 5 %.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as City of Laredo/Laredo Transit Management, Inc., (LTMI) deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

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

1. The names and addresses of DBE firms that will participate in this contract;

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

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

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the {insert agency name}. In addition, **[the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the {insert agency name} and contractor's receipt of the partial retainage payment related to the subcontractor's work.]**

e. The contractor must promptly notify the City of Laredo/Laredo Transit Management Inc., (LTMI) whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the City of Laredo/Laredo Transit Management Inc., (LTMI).

29. [RESERVE]

30. Incorporation of Federal Transit Administration (FTA) Terms

FTA Circular 4220.1 E

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 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 Laredo Transit Management Inc./City of Laredo

requests which would cause the Laredo Transit Management Inc./City of Laredo to be in violation of the FTA terms and conditions.

31. Drug and Alcohol Testing

49 U.S.C. §5331

49 CFR Part 655

The contractor agrees to:

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR compliance with Parts 655 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before (insert date or upon request) a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt (insert title of the Policy Statement the recipient wishes the contractor to use) as its policy statement as required under 49 CFR 655; OR (c) submit for review and approval before (insert date or upon request) a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to: (to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

END OF SECTION

APPENDIX 3: LTMi Procurement Procedure Checklist

Ltmi Procurement Procedure Checklist

TO DO BEFORE THE PROCUREMENT PROCESS

- _____ Review procurement process and policies
- _____ Implement procurement process and policies if necessary
- _____ Determine scope of procurement
- _____ Prepare a written Independent Cost Estimate and place in the procurement file
- _____ Identify who needs to be involved
- _____ Plan the procurement process
- _____ Decide on the method of procurement: RFQ, IFB, or RFP

PROCUREMENT PACKAGE PREPARATION

- _____ Convene Review Committee
- _____ Develop draft RFQ, IFB, or RFP
- _____ Insert required FTA clauses and certifications into the procurement package (*Refer to Exhibits 6.1A-6.2B*)
- _____ Develop technical specifications and/or Scope of Work
- _____ Identify potential bidders/proposers
- _____ Develop evaluation process and criteria for RFQ and RFP procurements
- _____ Review protest procedures (these should be a part of the procurement package)
- _____ Finalize draft of procurement package (i.e., IFB, RFP, or RFQ)
- _____ Procurement Department review and approval of procurement package

CONDUCTING THE PROCUREMENT

- _____ Finalize RFQ/IFB/RFP Package
- _____ Advertising and Notifying of potential bidders/proposers and place documentation in the procurement file
- _____ Conduct pre-bid or pre-proposal conference (optional)
- _____ Procedures for Review/Acceptance of Approved Equals (if applicable)
- _____ Pre-bid/pre-proposal approved equals protests procedures (if applicable)
- _____ Bid/proposal deadline and acceptance

PRE-AWARD REVIEW AND CONCURRENCE PROCESS

- _____ Conduct bid opening or receive proposals
- _____ Prepare tabulation of bids (place documentation in the procurement file)
- _____ Reconvene review committee for RFPs or RFQs
- _____ Conduct evaluation process for RFPs or RFQs (place documentation in the procurement file)
- _____ For A&E Professional Services, Use *Ltmi Form #3/A&E Prof.Svcs. Procurement Checklist* and place in procurement file
- _____ Evaluate bids/proposals for required elements/responsiveness (place documentation in the procurement file)
- _____ Single Bid Analysis (if Applicable, use form *Ltmi Form #2/Single Bid Analysis Checklist*)
- _____ Conduct cost or price analysis on responsive bids/proposals (place documentation in the procurement file)
- _____ Check federal suspended or debarred contractor list (**SAM**, place documentation in the procurement file)
- _____ Conduct responsibility determination (Use *Ltmi Form #1/C.R.D. Checklist* and place in the procurement file)
- _____ Conduct all pre-award activities and place signed certifications in the procurement file
- _____ Procurement Department review and approval
- _____ Review and approval of intent to award
- _____ Notify selected and rejected bidders/proposers
- _____ Handle intent to award protests using the local process

POST – AWARD AND POST-DELIVERY ACTIVITIES

- _____ Issue purchase order or service contract to selected bidder/proposer
- _____ Monitor contractor activities (if applicable)
- _____ Post-delivery inspection of capital equipment purchases (if applicable)
- _____ Complete required post-delivery audit forms (if applicable)
- _____ Acceptance, warranty and service arrangements made with contractor (if applicable)
- _____ Vehicle Title/Registration – Title must show grantee as lien holder (if applicable)
- _____ Contractor submission of required forms and certifications
- _____ Obtain verification of acceptance of the goods or services procured
- _____ Obtain approval for payment of the contractor invoice
- _____ Procurement Department review and approval
- _____ Verify payment to contractor
- _____ Submit ECHO form for reimbursement of federal share

SECTION 3: LTMI FORMS



LTM Form #1

Responsibility Determination Checklist

Bid/RFP No:	
Supplier:	
Date:	

For each of the areas described below, check that the appropriate research has been accomplished and provide a short description of the research and the results.

	Acceptable		Comment
1. Appropriate financial, equipment, facility, and personnel.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	<hr/> <hr/>
2. Ability to meet the delivery schedule.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	<hr/> <hr/>
3. Satisfactory period of performance.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	<hr/> <hr/>
4. Satisfactory record of integrity, not on debarred or suspended listings.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	<hr/> <hr/>
5. Receipt of all necessary data from supplier.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	<hr/> <hr/>

Name of Agency Rep (Print)

Signature



Ltmi Form #2

Single Bid Analysis Checklist

Solicitation		Action to Plan
Solicitation: Solicitation No:		Number of Solicitations Requested:
Product/Service to be procured:		Number of Bids Received:
Bid or Proposal Due Date:		
<p>Single Bid: After Solicitation and only a Single Bid is received, the following must be documented, checked and attach to that Procurement File:</p>		
Determination if competition was adequate		
<input type="checkbox"/> Review Specifications for undue restrictiveness. Notes from review of specifications: <hr/>		
<input type="checkbox"/> Survey potential Bidders (Reason why they did not submit Bid). Notes from survey of potential sources that chose not to submit a bid (note who was contacted, and feedback provided): <hr/>		
Reasons for Lack of Competition		Describe reasons:
<input type="checkbox"/> Lack competency <input type="checkbox"/> Lack available resources <input type="checkbox"/> Poor timing <input type="checkbox"/> Short response due date <input type="checkbox"/> Other		
<input type="checkbox"/> Price Analysis / Cost Analysis. <input type="checkbox"/> Review and Attach Cit-E-Bid Participation List.		
<p>Note: New solicitation of Bids must be made if the "Single Bid Price" appears unreasonable or if no determination is made as to the reasonableness of the Single Bid.</p>		
Action Plan (provide description of next steps)		
<input type="checkbox"/> Award Contract Basis: <hr/>		
<input type="checkbox"/> Extended Deadline (modify solicitation): <hr/>		
<input type="checkbox"/> Reprocure: <hr/>		
<input type="checkbox"/> New Solicitation Due to be Completed: <hr/>		
Name of Agency Representative	Signature	Date



LTMI Form #3

A&E Professional Services Procurement Checklist

Solicitation:	Number of Solicitations Requested:	
Solicitation No:		
Product/Service to be procured:	Bid or Proposal Due Date:	
	Number of Bids Received:	
Project Manager	Grant No.	
A&E Professional Services: <ul style="list-style-type: none"> <input type="checkbox"/> Independent Cost Estimate (ICE) <input type="checkbox"/> RFQ / Scope of Work. <input type="checkbox"/> Advertisement. <input type="checkbox"/> Submittals of Qualifications (SOQ). <input type="checkbox"/> Evaluation / Selection Form. (LTMI Form #5). <input type="checkbox"/> Cost Analysis <input type="checkbox"/> Documentation of Negotiated of Profit/Fee. <input type="checkbox"/> System for Award Management (SAM). <input type="checkbox"/> Responsibility Determination Checklist (LTMI Form #1) <input type="checkbox"/> Mass Transit Board Agenda Item Approval. 		
Comments:		
Name of Agency Representative	Signature	Date



LTM Form #4
Micro-Purchase: Fair and Reasonable Price
Determination Form

I hereby determine the price to be fair and reasonable based on at least one of the following:

Check one or more:

- Found reasonable on recent purchase.
- Obtained from current price list.
- Obtained from current catalog.
- Commercial market sales price from advertisements.
- Similar in related industry.
- Personal Knowledge of item procured.
- Regulated rate (utility).
- Other

Comments:

- Copy of purchase order, quotes, catalog page, price list, etc. is attached.

Assistant General Mgr. of Maintenance
Joe Jackson

Date

Vendor:

Purchase Order:



LTFMI Form #5
A&E Evaluation/Selection Criteria

Solicitation:	Solicitation No:
----------------------	-------------------------

Project/Service to be procured:

Evaluation Criteria	Weight	Offeror #1	Offeror #2	Offeror #3	Offeror #4	Offeror #5
1) Capability to perform	10					
2) Recent experience	14					
3) Professional background and caliber	10					
4) Dollar amount award in past year	10					
5) Ability to meet schedules & deadlines	9					
6) Without cost escalation and overruns	9					
7) Quality of projects	15					
8) Familiar with geographic location	6					
9) Capability of branch office	6					
10) Consideration factors in accomplishing project	6					
11) Affirmative Action Program	5					
TOTAL	100					

Additional Comments: _____

Name of Agency Rep.	Signature	Date



Ltmi Form #6
Independent Cost Estimate (ICE) Summary Form

Date of Estimate: _____

Description of goods/Services:

_____ New Procurement _____ Contract Modification (Change order)

_____ Exercise of Option

Method of Obtaining Estimate:

(Attach additional documentation such as previous pricing documentation, emails, internet screen shots, estimates on letterhead, etc.)

_____ Published Price List (attach source and date)

_____ Historical Pricing (Attach copy of documentation from previous PO/Contract)

_____ Comparable Purchases by Other Agencies (attach email correspondence)

_____ Engineering or Technical Estimate (attach)

_____ Other (specify) _____ (attach documentation)

_____ Pre-established pricing resulting from competition (Contract Modification only)

Through the method(s) stated above, it has been determined the estimated total cost of the goods/services is \$_____.

The preceding independent cost estimate was prepared by:

Print Name

Signature

Date

SECTION 4: EXHIBITS

Exhibit 6.1
A. REQUIRED THIRD PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over \$2,000)

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE***
All FTA-Assisted Third Party Contracts and Subcontracts		
No Federal government obligations to third parties by use of a disclaimer		§2.m
Program fraud and false or fraudulent statements and related acts		§3.f
Access to Records		§10.a
Federal changes		§2.g
Civil Rights (EEO, Title VI & ADA)		§13
Incorporation of FTA Terms	Per FTA C. 4220.1F	§17.a
Energy Conservation		§30
Awards Exceeding \$10,000		
Termination provisions	49 CFR Part 18 Not required of states	§12
Awards Exceeding \$25,000		
Debarment and Suspension	2 CFR Parts 180 and 1200	§3.b
Awards Exceeding the Simplified Acquisition Threshold (\$100,000 – see Note)		
Buy America	When tangible property or construction will be acquired	§16.a
Provisions for resolution of disputes, breaches, or other litigation		§44
Awards Exceeding \$100,000 by Statute		
Lobbying		§3.d
Clean Air		§17.n
Clean Water		§17.n
Transport of Property or Persons		
Cargo Preference	When acquiring property suitable for shipment by ocean vessel	§16.b
Fly America	When property or persons transported by air between U.S. and foreign destinations, or between foreign locations	§16.c
Construction Activities		
Davis Bacon Act	Except for contracts <\$2,000 or third party contracts for supplies, materials, or articles ordinarily available on the open market	§28.a

Exhibit 6.1

**A. REQUIRED THIRD PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over \$2,000)**

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE***
Copeland Anti-Kickback Act Section 1 Section 2	All Contracts >\$2,000	§28.a
Contract Work Hours & Safety Standards Act	Contracts >\$100,000	§28.a
Bonding for construction activities exceeding \$100,000	5% bid guarantee; 100% performance bond; and Payment bond equal to: • 50% for contracts < \$1 M • 40% for contracts > \$1 M, but < \$5 M • \$2.5 M for contracts > \$5 M Not required of states	§17.q
Seismic Safety	Contracts for construction of new buildings or additions to existing buildings	§26.b
Special DOL Clause	Contracts >\$10,000	§13.c(3)
Nonconstruction Activities		
Nonconstruction Employee Protection (Contract Work Hours and Safety Standards Act)	Applicable to all turnkey, rolling stock and operational contracts (excluding contracts for transportation services) > \$100,000	§28.b
Transit Operations		
Transit Employee Protective Arrangements	Applies to Section 5307, 5309, 5311 and 5316 projects	§28.d
Charter Service Operations		§32
School Bus Operations		§33
Drug and Alcohol Testing	Safety sensitive functions. Applies to Section 5307, 5309 and 5311 projects	§40.b
Planning, Research, Development, and Documentation Projects		
Patent Rights		§19
Rights in Data and Copyrights		§20

Miscellaneous Special Requirements		
Disadvantaged Business Enterprises (DBEs)	Contracts awarded on the basis of a bid or proposal offering to use DBEs	§13.d
Prompt Payment and Return of Retainage	Per 49 CFR Part 26, if grantee meets the threshold for a DBE program	§13.d
Recycled Products	Contracts for items designated by EPA, when procuring \$10,000 or more per year	§17.m
ADA Access	Contracts for rolling stock or facilities construction/ renovation	§13.g
Assignability Clause	Piggyback procurements	§17.a
State Requirements		
Special Notification Requirements for States		§42

Note: On December 19, 2014, a joint interim final rule was published, implementing for all Federal award-making agencies the final guidance "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (commonly referred to as the "Super Circular"), which was published by the Office of Management and Budget (OMB) on December 26, 2013. The Super Circular consolidates eight existing grant-related circulars into one set of uniform regulations located in Title 2 of the CFR.

2 CFR Part 200 applies to the administration of all Federal grants, cooperative agreements, and amendments as of December 26, 2014. Procurements under grants and cooperative agreements executed prior to December 26, 2014 continue to be subject to 49 CFR Parts 18 and 19 as in effect on the date of such grants or agreements.

2 CFR Part 200 contains certain notable changes to FTA grants management. The Super Circular increases the simplified acquisition threshold to \$150,000 (per 2 CFR 200.88) to bring it in alignment with the FAR. This new threshold applies to procurements funded by grants issued on or after December 26, 2014. Procurements funded by grants issued on or before December 25, 2014, are subject to the previous simplified acquisition threshold of \$100,000 (per 18 CFR 36(d)).

Similarly, the Buy America public interest waiver exempts "small purchases" from Buy America regulations, which incorporated by reference a provision from US DOT's Common Grant Rule (49 CFR 18.36(d)) that set that threshold at \$100,000 or less. This threshold continues to apply for all grants obligated on or before December 25, 2014. On December 26, 2014, however, US DOT's Common Grant Rule in 49 CFR Part 18 was replaced with a new regulation, 2 CFR Part 1201, which incorporates by reference OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200), and contains a higher threshold for simplified acquisitions.

Therefore, for grants obligated on or after December 26, 2014, the threshold is raised to match the simplified acquisition threshold set by 2 CFR 200.88, which incorporates by reference the Federal Acquisition Regulation at 48 CFR 2.1 (definitions), and currently is set at \$150,000. This amount will be adjusted periodically for inflation. FTA will continue to base the exemption on the total amount of the project and not on the individual price of items being purchased. For example, if a recipient purchases ten items costing \$20,000 each under a single purchase order, the \$200,000 contract would make the procurement subject to Buy America Requirements, 49 CFR 661.7.

Exhibit 6.2
B. REQUIRED CERTIFICATIONS, REPORTS, AND FORMS
(excluding micro-purchases, except for construction contracts over \$2,000)

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE***
Bus Testing Certification and Report	Procurements of buses and modified mass produced vans	§17.p(4)
Transit Vehicle Manufacturer Certification	Procurements of railcars or buses and modified mass produced vans	§13.d(3)
Buy America Certification	Projects >\$100,000 that contain steel, iron or manufactured products (see note)	§16.a
Pre-Award Audit	Rolling stock procurements	§17.p(3)
Pre-Award Buy America Certification	Rolling stock procurements>\$100,000 (see note)	§17.p(3)
Pre-Award Purchaser's Requirement Certification	Rolling stock procurements	§17.p(3)
Post-Delivery Audit	Rolling stock procurements	§17.p(3)
Post-Delivery Buy America Certification	Rolling stock procurements >\$100,000 (see note)	§17.p(3)
Post-Delivery Purchaser's Requirement Certification	Rolling stock procurements	§17.p(3)
On-Site Inspector's Report	Rolling stock procurements for more than 10 vehicles for areas >200,000 in population and 20 for areas <200,000 in population	§17.p(3)
Federal Motor Vehicles Safety Standards Pre-Award and Post-Delivery Certification	Non-rail rolling stock procurements	§17.p(3)
Excluded Parties Listing System search	Procurements > \$25,000	§3.b
Lobbying Certification	Procurements > \$100,000	§3.d
Standard Form LLL and Quarterly Updates (when required)	Procurements > \$100,000 where contractor engages in lobbying activities	§3.d

**Exhibit 6.3
C. OTHER REQUIRED ITEMS**

REQUIREMENT	COMMENTS	FTA C. 4220.1F REFERENCES
Contract Administration System		Ch. III, §3
Record of Procurement History		Ch. III, §3.d(1)
Protest Procedures		Ch. VII, §1
Selection Procedures		Ch. III, §3d(1)(c)
Independent Cost Estimate		Ch. VI, §6
Cost/Price Analysis		Ch. VI, §6
Responsibility Determination		Ch. VI, §8.b
Justification for Noncompetitive Awards	If applicable	Ch. VI, §3.i(1)(b)
No excessive bonding requirements		Ch. VI, §2.h(1)(f)
No exclusionary specifications		Ch. VI, §2.a(4)
No geographic preferences	Except for A&E services	Ch. VI, §2.a(4)(g)
Evaluation of Options	If applicable	Ch. VI, §7.b
Exercise of Options		Ch. V, §7.a

CLAUSE	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management/ Subrecipients	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal government obligations to third parties by use of a disclaimer	All	All	All	All	All
Program fraud and false or fraudulent statements and related acts	All	All	All	All	All
Access to Records	All	All	All	All	All
Federal changes	All	All	All	All	All
Civil Rights (EEO, Title VI & ADA)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Energy Conservation	All	All	All	All	All
Termination Provisions (not required of states)	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$100,000 (see Note)	>\$100,000 (see Note)	>\$100,000 (for steel, iron, manufactured products)
Provisions for resolution of disputes, breaches, or other litigation	>\$100,000 (see Note)	>\$100,000 (see Note)	>\$100,000 (see Note)	>\$100,000 (see Note)	>\$100,000 (see Note)
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel
Fly America	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air
Davis Bacon Act				>\$2,000 (including ferry vessels)	

CLAUSE	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management/ Subrecipients	Rolling Stock Purchase	Construction	Materials & Supplies
Copeland Anti-Kickback Act Section 1 Section 2				All >\$2,000 (including ferry vessels)	
Contract Work Hours & Safety Standards Act		>\$100,000	>\$100,000	>\$100,000 (including ferry vessels)	
Bonding (not required of states)				>\$100,000 (including ferry vessels)	
Seismic Safety	A&E for new buildings & additions			New buildings & additions	
Transit Employee Protective Arrangements		Transit operations funded with Section 5307, 5309, 5311 or 5316 funds			
Charter Service Operations		All			
School Bus Operations		All			
Drug and Alcohol Testing		Transit operations funded with Section 5307, 5309 or 5311 funds			
Patent Rights	Research & development				
Rights in Data and Copyrights requirements	Research & development				
Special DOL EEO clause for construction projects				>\$10,000	
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Prompt Payment	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met

CLAUSE	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management/ Subrecipients	Rolling Stock Purchase	Construction	Materials & Supplies
Recycled Products		Contracts for items designated by EPA, when procuring \$10,000 or more per year		Contracts for items designated by EPA, when procuring \$10,000 or more per year	Contracts for items designated by EPA, when procuring \$10,000 or more per year
ADA Access	A&E	All	All	All	
Special Notification Requirements for States	Limited to states	Limited to states	Limited to states	Limited to states	Limited to states

***FTA MASTER AGREEMENT: The fiscal year 2016 FTA Master Agreement is under development. Pending transportation legislation may result in additional changes to the agreement. The anticipated release date is late calendar year 2015. Once it is finalized and released, FTA will update the relevant citations and provide grantees with revised sections through their respective regional FTA office and triennial reviewer.