

City of Yakima



Bid Documents & Specifications for
Bid 10405

Landscape Maintenance – Public Works Complex & Transit Transfer Center

CONTENTS

Bid Documents

Notice to Bidders

Bid Form

Bid Signature Sheet

Non-Collusion Declaration

Contractors Qualification Statement

Nondiscrimination Provision

Federal Regulations

Bidders Check List

Contract Documents

Contract Form

Minimum Wage Affidavit Form

Prevailing Wage Rates

Specifications

Proposal Requirements/General Conditions

Special Conditions

Certificate of Insurance Sample

City of Yakima Purchasing Division

129 No. 2nd St.

Yakima, Washington 98901

(509) 575-6093

February 6, 2004

**NOTICE TO BIDDERS
Bid Call 10405**

Notice is hereby given by the undersigned that sealed bids will be accepted in the office of the Yakima City Clerk, Yakima City Hall, 129 N. 2nd Street, Yakima, Washington 98901 until the hour of 2:00 pm, February 19, 2004, and publicly opened and read for:

**Landscape Maintenance at the Public Works Complex and
Transit Transfer Center**

Prevailing wages shall apply to all phases of this project. Above per specifications or approved equal.

Bid forms and Specifications are available in the office of the Purchasing Manager, City Hall, Yakima, Washington. 509-575-6093.

The City of Yakima reserves the right to reject any and all bids. Minority vendors are encouraged to apply.

Dated this 5th day of February, 2004.

(Seal)

Sue Ownby, CPPB
Purchasing Manager

**Publish on February 8 and 9, 2004
Account # 13594**

*To the Purchasing Manager
City of Yakima, Washington:*

BID NO. 10405
BID FORM

The undersigned hereby certifies that they have thoroughly examined the sites, located at 2301 Fruitvale Blvd. and 4th Street and Walnut Ave., Yakima, Washington, and has read and understands the specifications governing the work embraced in this project and propose to undertake and complete the work for the following:

The City reserves the right to award both schedules to one vendor, or different vendors.

SCHEDULE I

PUBLIC WORKS COMPLEX:

LUMP SUM PER 9 MONTH SEASON \$ _____

SCHEDULE II

TRANSIT TRANSFER CENTER:

LUMP SUM PER 9 MONTH SEASON \$ _____

BOTH SCHEDULES SUB-TOTAL \$ _____

SALES TAX: \$ _____

TOTAL WITH TAX \$ _____

BID SIGNATURE SHEET

BID NO. 10405

LANDSCAPE MAINTENANCE Public Works Complex & Transit Transfer Center

Receipt is here acknowledged of addendum(s) No. ____, ____, and ____.

(Bidder)

BID MUST BE SIGNED

By: _____
(Authorized Official)

_____, 2004
(Date)

(Address)

(Telephone No.)

(Fax No.)

(Washington State Registration No.)

NON-COLLUSION DECLARATION

I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:

1. That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive quoting in connection with the project for which this proposal is submitted.
2. That by signing the signature page of this proposal, I am deemed to have signed and have agreed to the provisions of this declaration.

CONTRACTOR QUALIFICATION STATEMENT

Contractor must complete all portions of this statement before bid will be considered. The following statements as to experience and general qualifications of the bidder as submitted in conjunction with the proposal, as part thereof and truthfulness and accuracy of information is guaranteed by the bidder and included in bid evaluation.

1. Name and address of principal business office, which Contract will be administered from:

Telephone: _____

2. Number of years Contractor has been engaged in business: _____

3. The contractor has never failed to satisfactorily perform a contract awarded to him except as follows: (Name of any and all exceptions and reasons thereof)

4. Contractor must have at least five (5) years experience as a contractor in this field of work and have satisfactorily completed three (3) projects of this nature in the last five (5) years:

1. Location and for whom performed:

Phone _____ Contact Person _____

2. Location and for whom performed:

Phone _____ Contact Person _____

3. Location and for whom performed:

Phone _____ Contact Person _____

NONDISCRIMINATION PROVISION

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

“(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

“(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

“(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers’ representative of the contractor’s commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

“(4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor.

“(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

“(6) In the event of the contractor’s noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies involved as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

“(7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

FEDERAL REGULATIONS

A. Compliance with Laws:

The successful bidder shall comply with applicable federal, state and local laws, regulations, and executive orders, which are incorporated by reference herein. This bid is being used by the City of Yakima Transit Division, which receives Federal funding and, therefore, must adhere to the following federal regulations:

FEDERAL TRANSIT ADMINISTRATION

TABLE OF CONTENTS

Federally Required Clauses

1. Fly American 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 Act
17. Contract Work Hours and Safety Standards Act
18. Copeland Anti-Kickback Act
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. State and Local Law Disclaimer
30. Incorporation of Federal Transit Administration (FTA) Terms
31. Drug and Alcohol Testing

1. FLY AMERICA REQUIREMENTS

49 U.S.C. 40118

41 CFR Part 301-10

Applicability to Contracts

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

Flow Down Requirements

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

Clause/Language

Fly American Requirements – The Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carriers a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, and 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 the section in all subcontracts that may involve international air transportation.

2.BUY AMERICA REQUIREMENTS
49 U.S.C. 5323(j)
49 CFR Part 661

Applicability to Contracts

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

Flow Down

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

Clause/Language

Buy America – The contractor agrees to comply with 49 U.S.C.5323 (j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 523(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a complete Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier subcontractors.

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

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

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

Date:

Signature:

Company Name:
.....

Title:

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

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

Date:

Signature:

Company Name:
.....

Title:

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

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

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 CFR Part 661.

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

Date:

Signature:

Company Name:
.....

Title:



2. CHARTER BUS REQUIREMENTS

49 U.S.C. 5323(d)

49 CFR Part 604

Applicability to Contracts

The Charter Bus requirements apply to Operational Service Contracts.

Flow Down Requirements

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

Clause/Language

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

3. SCHOOL BUS REQUIREMENTS

49 U.S.C. 5323 (F)

49 CFR Part 605

Applicability to Contracts

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

Flow Down Requirements

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

Clause/Language

School Bus Operations – Pursuant to 69 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 operation unless qualified under specified exemptions. When operation exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

4. CARGO PREFERENCE REQUIREMENTS

46 U.S.C. 1241

46 CFR Part 381

Applicability to Contracts

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

Flow Down

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

Clause/language

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

5. SEISMIC SAFETY REQUIREMENTS

Applicability to Contracts

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

Flow Down

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

Clause/Language

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

6. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

Applicability to Contracts

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

Flow Down

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

Clause/Language

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

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

8. BUS TESTING

49 U.S.C. 5323(c)

49 CFR Part 665

Applicability to Contracts

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

Flow Down

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

Clause/Language

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

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

CERTIFICATION OF COMPLIANCE WITH FTA’S BUS TESTING REQUIREMENTS

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

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

Date:

Signature:

Company Name:
.....

Title:

9. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS

49 U.S.C. 5323

49 CFR Part 663

Applicability to Contracts

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

Flow Down

These requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

Clause/Language

Pre-Award and Post-Delivery Audit Requirements – The Contractor agrees to comply with 49 U.S.C. § 5323(1) and FTA’s implementing regulation at 49 C.F.R. Part 663 and to submit the following certification:

(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 part of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

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

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

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

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

Certificate of Compliance

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

Date:

Signature:

Company Name:
.....

Title:

Certificate of Non-Compliance

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

(j)(2)(D), Sections 165 (b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.

Date:

Signature:

Company Name:
.....

Title:

10. LOBBYING

31 U.S.C. 1352

49 CFR Part 19

49 CFR Part 20

Applicability to Contracts

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

Flow Down

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

Clause/Language

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

APPENDIX A, 49 CFR PART20—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 contract 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 that \$10,000 and not more that \$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 that \$10,000 and not more that \$100,000 for each such expenditure or failure.

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

Signature of Contractor’s Authorized Official

Name and Title of Contractor’s Authorized Official

Date

11. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

18 CFR 18.36 (i)

49 CFR 633.17

Applicability to Contracts

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

Flow Down

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

Clause/Language

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

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

to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examination, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325 (a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302 (a) 1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting and 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
I State Grantees						
a. Contracts below SAT (\$100,000)	None	Those imposed on State pass thru to Contractor	None	None	None	None
b. Contracts above \$100,000/ Capital Projects	None unless* noncompetitive award		Yes, if non-competitive award or if funded thru** 5307/5309/5311	None unless noncompetitive award	None unless noncompetitive award	None unless noncompetitive award
II Non State Grantees						
a. Contracts below SAT	Yes***	Those imposed on non-state Grantee	Yes	Yes	Yes	Yes

(\$100,000)		pass thru to Contractor				
b. Contracts above \$100,000/ Capital Projects	Yes***		Yes	Yes	Yes	Yes

Sources of Authority:

* 49 USC 5325 (a)

** 49 CFR 633.17

*** 18 CFR 18.36 (l)

12. FEDERAL CHANGES

49 CFR Part 18

Applicability to Contracts

The Federal Changes requirement applies to all contracts.

Flow Down

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

Clause/Language

Federal Changes – Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (7) dated October, 2000) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor’s failure to so comply shall constitute a material breach of this contract.

13. BONDING REQUIREMENTS

Applicability to contracts

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

a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The “bid guarantees” shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

b. A performance bond on the part to the Contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.

c. A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for the contract. Payment bond amounts required from Contractors are as follows:

(1) 50% of the contract price if the contract price is not more than \$1 million;

(2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(3) \$2.5 million if the contract price is more than \$5 million.

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

Flow Down

Bonding requirements flow down to the first tier contractors.

Clauses/Language

Bid Bond Requirements (Construction)

(a) Bid Security

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

(b) Rights Reserved

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

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

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

The undersigned understands that any material alteration of any of the above or any of then 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 follow:

(a) Performance bonds

1.The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).

2.The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by direction the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:

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

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

(iii) Two and one half million if the contract price is more than \$5 million.

2. If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

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

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

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).

2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

3. Substantial progress payments are made before delivery of end items starts.

4. Contracts are for dismantling, demolition, or removal of improvements.

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

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).

2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by direction the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.

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

1. The penal amount of payment bonds shall equal:

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

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

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

Advance Payment Bonding Requirements

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

Patent Infringement Bonding Requirements (Patent indemnity)

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

Warranty of the Work and Maintenance Bonds

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

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

14. CLEAN AIR

49 U.S.C. 7401 et seq

40 CFR 15.61

49 CFR Part 18

Applicability to Contracts

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

Flow Down

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

Clauses/Language

Clean Air – (1) The Contractor agrees to comply with all applicable standards, order or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance by FTA.

15. RECYCLED PRODUCTS

42 U.S.C.6962

40 CFR Part 247

Executive Order 12873

Applicability to Contracts

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

Flow Down

These requirements flow down to all contractor and subcontractor tiers.

Clause/Language

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

16. DAVIS-BACON ACT

40 USC & 167; 276a – 276a-5 (1998)

29 CFR§ 5 (1999)

Applicability to Contract

Construction contracts over \$2,000.00

Flow Down

Applies to third party contractors and subcontractors

Clause/Language

(The language in this clause is mandated under the DOL regulations at 29 C.F.R. § 5.5.)

(1) **Minimum wage** – (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! (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 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 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 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 wage 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 had 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 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 and additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

(3) He 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 a 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 or 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 or receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

(3) **Payrolls and basic records** – (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1 (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made

and actual wages paid. Whenever the Secretary of labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable program.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the **[insert name of grantee]** for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 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 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 wage earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

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

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements 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 the 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 as an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate in 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 subcontractors 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 journeyman 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 or 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 participation 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 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 part 5,6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractor's agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certifications 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

40 U.S.C. § 327 –333 (1999)

29 C.F.R. § 5 (1999)

29 C.F.R. § 1926 (1998)

Applicability to Contracts

Section 102 of the Act, Which deals with overtime requirements, applies to:

-All construction contracts in excess of \$2,000 and;

-All turnkey, rolling stock and operational contracts (excluding contracts for transportation services) in excess of \$2,500.

(The dollar threshold for this requirement is contained in the current regulation 29 C.F.R. § 5.5(a),)

Section 107 of the Act which deals with OSHA requirements applies to construction contracts in excess of \$2,000 only. The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

Flow Down

Applies to third party contractors and subcontractors.

Clauses/Language

Pursuant to Section 102 (overtime):

(These clauses are specifically mandated under DOL regulations 29 C.F.R. § 5.5 and when preparing a construction contract in excess of \$2,000 these clauses should be used in conjunction with the

Davis-Bacon Act clauses as discussed previously. For non-construction contracts, this is the only section required along with the payroll section.)

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

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

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

(Section 102 non-construction contracts should also have the following provision:)

(5) **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 sit 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 application program.

Section 107 (OSHA)

(This section is applicable to construction contracts only)

Contracts Work Hours and Safety Standards Act – (i) The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations, “Safety and Health Regulations for Construction” 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

(ii) **Subcontracts** – The Contractor also agrees to include the requirements of this section in each subcontract. The term “subcontract” under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a “subcontractor” under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a “subcontractor” if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not “subcontractor.” The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

18. COPELAND ANTI-KICKBACK ACT

40 U.S.C. § 276c (1999)

29 C.F.R. § 3 (1999)

29 C.F.R. § 5 (1999)

Applicability to Contracts

All construction contracts in excess of \$2,000.

Flow Down

Applicable to all third party contractors and subcontractors.

Clauses/Language

3.1 of the Copeland Act makes it clear that the purpose of the Act is to assist in “the enforcement of the minimum wage provisions of the Davis-Bacon Act.” In keeping with this intent DOL has included a section on the Copeland Act in the mandatory language of the Davis-Bacon provisions. The language can be found at § 5.5 (a)(5) of the Davis-Bacon model clauses and reads as follows:

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.

19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

Applicable to all contracts.

Flow Down

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

Clause/Language

No Obligation by the Federal Government.

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

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

20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C. 3801 et seq.

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

49 U.S.C. 5307

Applicability to Contracts

These requirements are applicable to all contracts.

Flow Down

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

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq. and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false fictitious, or fraudulent claim, statement, submission, or certification 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 § 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 4220.1D

Application to Contracts

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

Flow Down

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

Clause/Language

a. Termination for Convenience (General Provision) The (Recipient) may terminate⁴ this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.

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

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

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

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

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

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

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

g. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this

contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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

h. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

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

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

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

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

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

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

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

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

22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

49 CFR Part 29

Executive Order 12549

Applicability to Contracts

Executive Order 12549, as implemented by 49 CFR Part 29, prohibits FTA recipients and sub-recipients from contracting for goods and services from organizations that have been suspended or debarred from receiving Federally-assisted contracts. As part of their applications each year, recipients are required to submit a certification to the effect that they will not enter into contracts over \$100,000 with suspended or debarred contractors and that they will require their contractors (and their subcontractors) to make the same certification to them.

Flow Down

Contractors are required to pass this requirement on to subcontractors seeking subcontractors over \$100,000. Thus, the terms “lower tier covered participant” and “lower tier covered transaction” include both contractors and subcontractors and contracts and subcontracts over \$100,000.

Clause/Language

Certification Regarding Debarment, Suspension, and Other Responsibility Matters

Lower Tier Covered Transactions (Third Party Contracts over \$100,000).

Instruction for Certification

- 1. By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.**
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, (Recipient) may pursue available remedies, including suspension and /or debarment.
3. The prospective lower tier participant shall provide immediate written notice to (Recipient) if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “persons,” “lower tier covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and

Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact (Recipient) for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by (Recipient).

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and voluntary Exclusion – Lower Tier Covered Transaction”, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transaction.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to check the Nonprocurement List issued by U.S. General Service Administration.

8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, (Recipient) may pursue available remedies including suspension and/or debarment.

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

(1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its “principals” [as defined at 49 C.F.R. § 29.102(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

23. PRIVACY ACT

5 U.S.C. 552

Applicability to Contracts

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

Flow Down

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

Clause/Language

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

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

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

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

24. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000

42 U.S.C. § 6102, 42 U.S.C. § 12112

42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Part 60 et seq.

Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

Flow Down

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

Clause/Language

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

(1) Nondiscrimination – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not be discriminated 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,” 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive order, 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 4220.1D (also see Change 1)

Applicability to Contracts

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

Flow Down

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

Clauses/Language

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

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

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

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

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

26. PATENT AND RIGHTS IN DATA

37 CFR Part 401

49 CFR Parts 18 and 19

Applicability to Contracts

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

Flow Down

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

Clause/Language

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

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

(1) The term “subject data” used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type document; 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 any have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contact with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for “Federal Government purposes,” any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the pervious 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 the contract, whether or not a copyright had 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 form 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 had 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 Contactor’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 subsection (b), (c), and (d) of the 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 or 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 action 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 their clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

49 U.S.C. § 5310, § 5311, and § 5333

29 CFR Part 215

Applicability to Contract

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

Flow Down

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

Clause/Language

Transit Employee Protective Provisions. (1) The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

(1) 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 form 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 fourth 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

This section is being developed to reflect the new rule in 49 CFR Part 26.

29. STATE AND LOCAL LAW DISCLAIMER

Applicability to Contract

This disclaimer applies to all contacts.

Flow Down

The Disclaimer has unlimited flow down.

Clause/Language

State and Local Law Disclaimer – The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the grantees procurement documents, the grantees should consult with their local attorney.

30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1D

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Flow Down

The incorporation of FTA terms has unlimited flow down.

Clause/Language

Incorporation of Federal Transit Administration (FTA) Terms – The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, dated April 15, 1996, 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 their Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with (name or grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

Applicability to Contract

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

Flow Down Requirements

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

Clause/Language

Introduction

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

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operation administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with rules.

Therefore, FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

Explanation of Model Contract Clause

Under Option 1, the recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 CFR 653 and 654. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option only for those recipients which have a testing program for their employees, and can add the contractor's safety-sensitive employees to that program.

Under Option 2, the recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 CFR 653 and 654, but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that without adequate monitoring of the contractor's program, the recipient may find itself out of compliance with the rules.

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

Drug and Alcohol Testing

Option 1

The contractor agrees to:

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

Drug and Alcohol Testing

Option 2

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

the “Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements,” which is published annually in the Federal Register.

Drug and Alcohol Testing

Option 3

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

BIDDER'S CHECK LIST

The bidder's attention is especially called to the following forms which must be executed as required, and submitted with their bid:

- A. **Bid Form**
The unit prices, extensions and total amounts bid must be shown in the spaces provided (Page 3).
- B. **Bid Signature Sheet**
To be filled out and signed by the bidder (Page 4).
- C. **Contractor Qualification Statement**
To be filled out by the bidder (Page 6).
- D. **Federal Regulations Certifications**
 - 1) Buy America Requirements (Pages 10 – 12).
 - 2) Lobbying (Pages 20-21).
- E. **Minimum Wage Affidavit**
To be signed by the bidder (Page 62).
- F. **Individual Prices**
To be filled out by the bidder (Pages 72 – 73)

The following forms are to be executed after the contract is awarded:

- A. **Contract**
This agreement to be executed by the successful bidder.
- B. **Certificate of insurance**
Refer to attached Informational Certificate of Insurance and Additional Insured Endorsement.

CONTRACT

THIS AGREEMENT, made and entered into in triplicate, this _____ day of _____, 2004 by and between the City of Yakima, hereinafter called the Owner, and _____, a _____ Corporation, hereinafter called the Contractor.

WITNESSETH:

That in consideration of the terms and conditions contained herein and attached and made a part of this agreement, the parties hereto covenant and agree as follows:

I. The Contractor shall do all work and furnish all tools, materials, and equipment for THE BID AMOUNT OF: \$ _____ for _____

_____ City Bid No. 10405, all in accordance with and as described in the attached plans and specifications, and shall perform any alterations in or additions to the work provided under this contract and every part thereof.

Work shall start within _____ Days after Notice to Proceed and be completed in _____ working days. the first chargeable working day shall be the 11th working day after the date on which the City issues the Notice to Proceed. If said work is not completed within the time specified, the Contractor agrees to pay to the Owner the sum specified in the Standard Specifications for each and every day said work remains uncompleted after expiration of the specified time, as liquidated damages.

The Contractors shall provide and bear the expense of all equipment, work and labor of any sort whatsoever they may be required for the transfer of materials and for constructing and completing the work provided for in this contract and every part thereof, except such as are mentioned in the specifications to be furnished by the City of Yakima.

II. The City of Yakima hereby promises and agrees with the Contractor to employ, and does employ the Contractor to provide the materials and to do and cause to be done the above described work and to complete and finish the same according to the attached plans and specifications and the terms and conditions herein contained and hereby contracts to pay for the same according to the attached specifications and the schedule of unit or itemized prices hereto attached, at the time and in the manner and upon the conditions provided for in the contract.

III. The contractor for himself, and for his heirs, executors, administrators, successors, and assigns, does hereby agree to the full performance of all the covenants herein contained upon the part of the Contractor.

IV. It is further provided that no liability shall attach to the City of Yakima by reason of entering into this contract, except as expressly provided herein.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed the day and year first herein above written.

Countersigned: CITY OF YAKIMA
this _____ day of _____, 2004.

City Manager

Contractor

By: _____

ATTEST:
City Clerk

Its _____
(President, Owner, etc.)

(Address)

PREVAILING WAGE RATES

The prevailing rate of wages to be paid to all workmen, laborers, or mechanics employed in the performance of any part of this contract shall be in accordance with the provisions of Chapter 39.12 RCW, as amended. The rules and regulations of the Department of Labor and Industries and the schedule of prevailing wage rates for the locality or localities where this contract will be performed as determined by the Industrial Statistician of the Department of Labor and Industries, are by reference made a part of this contract as though fully set forth herein.

Inasmuch as the contractor will be held responsible for paying the prevailing wages it is imperative that all contractors familiarize themselves with the current wage rates before submitting bids based on these specifications.

In case any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the Director of the Department of Labor and Industries of the State and his decision therein shall be final and conclusive and binding on all parties involved in the dispute as provided for by RCW 39.12.060 as amended.

Current prevailing wage rules and data can be furnished by the Industrial Statistician upon request. You may submit your request to:

Department of Labor and Industries
ESAC Division
P.O. Box 45540
Olympia, Washington 98504-4540

Telephone: (360) 902-5335

Washington State Prevailing Wage Rates for Public Works Contracts

The PREVAILING WAGES listed here include both the hourly wage rate and the hourly rate of fringe benefits. On public works projects, workers' wage and benefit rates must add to not less than this total. A brief description of overtime calculation requirements is provided by clicking on the benefit code.

YAKIMA County -- Effective 3/3/2004 -- [Benefit Code Key](#)

Classification	Prevailing Wage	Overtime Code	Holiday Code	Note Code
ASBESTOS ABATEMENT WORKERS				
JOURNEY LEVEL	\$25.78	1N	5D	
BOILERMAKERS				
JOURNEY LEVEL	\$43.47	1B	5N	
BRICK AND MARBLE MASONS				
JOURNEY LEVEL	\$32.77	1M	5A	
CABINET MAKERS (IN SHOP)				
JOURNEY LEVEL	\$19.24	1		
CARPENTERS				
ACOUSTICAL WORKER	\$30.20	1M	5D	
BRIDGE, DOCK AND WARF CARPENTERS	\$37.62	1M	5D	
CARPENTER	\$29.94	1M	5D	
CREOSOTED MATERIAL	\$30.04	1M	5D	
DRYWALL APPLICATOR	\$29.94	1M	5D	
FLOOR FINISHER	\$30.07	1M	5D	
FLOOR LAYER	\$30.07	1M	5D	
FLOOR SANDER	\$30.07	1M	5D	
MILLWRIGHT	\$38.62	1M	5D	
PILEDRIVERS, DRIVING, PULLING, PLACING COLLARS AND WELDING	\$37.82	1M	5D	
SAWFILER	\$30.07	1M	5D	
SHINGLER	\$30.07	1M	5D	
STATIONARY POWER SAW OPERATOR	\$30.07	1M	5D	
STATIONARY WOODWORKING TOOLS	\$30.07	1M	5D	
CEMENT MASONS				
JOURNEY LEVEL	\$29.36	1N	5D	
DIVERS & TENDERS				
DIVER	\$79.57	1M	5D	8A
DIVER TENDER	\$40.67	1M	5D	
DREDGE WORKERS				
ASSISTANT ENGINEER	\$38.37	1B	5D	8L
ASSISTANT MATE (DECKHAND)	\$37.91	1B	5D	8L
BOATMEN	\$38.37	1B	5D	8L
ENGINEER WELDER	\$38.42	1B	5D	8L

LEVERMAN, HYDRAULIC	\$39.85	1B	5D	8L
MAINTENANCE	\$37.91	1B	5D	8L
MATES	\$38.37	1B	5D	8L
OILER	\$38.02	1B	5D	8L
DRYWALL TAPERS				
JOURNEY LEVEL	\$27.03	1P	5A	
ELECTRICAL FIXTURE MAINTENANCE WORKERS				
JOURNEY LEVEL	\$20.99	1		
ELECTRICIANS - INSIDE				
JOURNEY LEVEL	\$41.11	1J	5A	
ELECTRICIANS - MOTOR SHOP				
CRAFTSMAN	\$15.37	2A	6C	
JOURNEY LEVEL	\$14.69	2A	6C	
ELECTRICIANS - POWERLINE CONSTRUCTION				
CABLE SPLICER	\$48.96	4A	5A	
CERTIFIED LINE WELDER	\$44.65	4A	5A	
GROUNDPERSON	\$32.13	4A	5A	
HEAD GROUNDPERSON	\$33.93	4A	5A	
HEAVY LINE EQUIPMENT OPERATOR	\$44.65	4A	5A	
JACKHAMMER OPERATOR	\$33.93	4A	5A	
JOURNEY LEVEL LINEPERSON	\$44.65	4A	5A	
LINE EQUIPMENT OPERATOR	\$37.87	4A	5A	
POLE SPRAYER	\$44.65	4A	5A	
POWDERPERSON	\$33.93	4A	5A	
ELECTRONIC & TELECOMMUNICATION TECHNICIANS				
JOURNEY LEVEL	\$12.07	1		
ELEVATOR CONSTRUCTORS				
MECHANIC	\$49.28	4A	6Q	
MECHANIC IN CHARGE	\$54.18	4A	6Q	
FABRICATED PRECAST CONCRETE PRODUCTS				
CRAFTSMAN	\$8.65	1		
LABORER	\$7.16	1		
FENCE ERECTORS				
FENCE ERECTOR	\$21.64	1		
FLAGGERS				
JOURNEY LEVEL	\$24.06	1N	5D	
GLAZIERS				
JOURNEY LEVEL	\$19.51	1B	6I	
HEAT & FROST INSULATORS AND ASBESTOS WORKERS				
MECHANIC	\$23.18	1		
HEATING EQUIPMENT MECHANICS				
MECHANIC	\$13.91	1		
HOD CARRIERS & MASON TENDERS				
JOURNEY LEVEL	\$26.26	1N	5D	
INDUSTRIAL ENGINE AND MACHINE MECHANICS				
MECHANIC	\$15.65	1		
INDUSTRIAL POWER VACUUM CLEANER				
JOURNEY LEVEL	\$9.07	1		
INSPECTION/CLEANING/SEALING OF SEWER & WATER SYSTEMS BY REMOTE CONTROL				
CLEANER OPERATOR, FOAMER OPERATOR	\$9.73	1		
GROUT TRUCK OPERATOR	\$11.48	1		

HEAD OPERATOR	\$12.78	<u>1</u>		
TECHNICIAN	\$7.16	<u>1</u>		
TV TRUCK OPERATOR	\$10.53	<u>1</u>		
INSULATION APPLICATORS				
JOURNEY LEVEL	\$32.91	<u>1</u>		
IRONWORKERS				
JOURNEY LEVEL	\$39.92	<u>1B</u>	<u>5A</u>	
LABORERS				
ALL CLASSIFICATIONS	\$18.12	<u>1</u>		
LABORERS - UNDERGROUND SEWER & WATER				
GENERAL LABORER	\$25.78	<u>1N</u>	<u>5D</u>	
PIPE LAYER	\$26.26	<u>1N</u>	<u>5D</u>	
LANDSCAPE CONSTRUCTION				
IRRIGATION OR LAWN SPRINKLER INSTALLERS	\$7.38	<u>1</u>		
LANDSCAPE EQUIPMENT OPERATORS OR TRUCK DRIVERS	\$15.45	<u>1</u>		
LANDSCAPING OR PLANTING LABORERS	\$7.63	<u>1</u>		
LATHERS				
JOURNEY LEVEL	\$29.94	<u>1M</u>	<u>5D</u>	
MACHINISTS (HYDROELECTRIC SITE WORK)				
MACHINIST	\$16.84	<u>1</u>		
METAL FABRICATION (IN SHOP)				
FITTER	\$12.00	<u>1</u>		
LABORER	\$10.31	<u>1</u>		
MACHINE OPERATOR	\$11.32	<u>1</u>		
PAINTER	\$12.00	<u>1</u>		
WELDER	\$11.32	<u>1</u>		
MODULAR BUILDINGS				
JOURNEY LEVEL	\$14.11	<u>1</u>		
PAINTERS				
JOURNEY LEVEL	\$20.05	<u>1</u>		
PLASTERERS				
JOURNEY LEVEL	\$39.33	<u>1R</u>	<u>5A</u>	
PLAYGROUND & PARK EQUIPMENT INSTALLERS				
JOURNEY LEVEL	\$7.63	<u>1</u>		
PLUMBERS & PIPEFITTERS				
JOURNEY LEVEL	\$44.58	<u>1Q</u>	<u>5A</u>	
POWER EQUIPMENT OPERATORS				
ASSISTANT ENGINEERS	\$36.41	<u>1T</u>	<u>5D</u>	<u>8L</u>
BACKHOE, EXCAVATOR, SHOVEL (3 YD & UNDER)	\$39.03	<u>1T</u>	<u>5D</u>	<u>8L</u>
BACKHOE, EXCAVATOR, SHOVEL (OVER 3 YD & UNDER 6 YD)	\$39.49	<u>1T</u>	<u>5D</u>	<u>8L</u>
BACKHOE, EXCAVATOR, SHOVEL (6 YD AND OVER WITH ATTACHMENTS)	\$40.01	<u>1T</u>	<u>5D</u>	<u>8L</u>
BACKHOES, (75 HP & UNDER)	\$38.64	<u>1T</u>	<u>5D</u>	<u>8L</u>
BACKHOES, (OVER 75 HP)	\$39.03	<u>1T</u>	<u>5D</u>	<u>8L</u>
BARRIER MACHINE (ZIPPER)	\$39.03	<u>1T</u>	<u>5D</u>	<u>8L</u>
BATCH PLANT OPERATOR, CONCRETE	\$39.03	<u>1T</u>	<u>5D</u>	<u>8L</u>
BELT LOADERS (ELEVATING TYPE)	\$38.64	<u>1T</u>	<u>5D</u>	<u>8L</u>
BOBCAT	\$36.41	<u>1T</u>	<u>5D</u>	<u>8L</u>
BROOMS	\$36.41	<u>1T</u>	<u>5D</u>	<u>8L</u>

BUMP CUTTER	\$39.03	1T	5D	8L
CABLEWAYS	\$39.49	1T	5D	8L
CHIPPER	\$39.03	1T	5D	8L
COMPRESSORS	\$36.41	1T	5D	8L
CONCRETE FINISH MACHINE - LASER SCREED	\$36.41	1T	5D	8L
CONCRETE PUMPS	\$38.64	1T	5D	8L
CONCRETE PUMP-TRUCK MOUNT WITH BOOM ATTACHMENT	\$39.03	1T	5D	8L
CONVEYORS	\$38.64	1T	5D	8L
CRANES, THRU 19 TONS, WITH ATTACHMENTS	\$38.64	1T	5D	8L
CRANES, 20 - 44 TONS, WITH ATTACHMENTS	\$39.03	1T	5D	8L
CRANES, 45 TONS - 99 TONS, UNDER 150 FT OF BOOM (INCLUDING JIB WITH ATACHMENTS)	\$39.49	1T	5D	8L
CRANES, 100 TONS - 199 TONS, OR 150 FT OF BOOM (INCLUDING JIB WITH ATTACHMENTS)	\$40.01	1T	5D	8L
CRANES, 200 TONS TO 300 TONS, OR 250 FT OF BOOM (INCLUDING JIB WITH ATTACHMENTS)	\$40.55	1T	5D	8L
CRANES, A-FRAME, 10 TON AND UNDER	\$36.41	1T	5D	8L
CRANES, A-FRAME, OVER 10 TON	\$38.64	1T	5D	8L
CRANES, OVER 300 TONS, OR 300' OF BOOM INCLUDING JIB WITH ATTACHMENTS	\$41.07	1T	5D	8L
CRANES, OVERHEAD, BRIDGE TYPE (20 - 44 TONS)	\$39.03	1T	5D	8L
CRANES, OVERHEAD, BRIDGE TYPE (45 - 99 TONS)	\$39.49	1T	5D	8L
CRANES, OVERHEAD, BRIDGE TYPE (100 TONS & OVER)	\$40.01	1T	5D	8L
CRANES, TOWER CRANE UP TO 175' IN HEIGHT, BASE TO BOOM	\$40.01	1T	5D	8L
CRANES, TOWER CRANE OVER 175' IN HEIGHT, BASE TO BOOM	\$40.55	1T	5D	8L
CRUSHERS	\$39.03	1T	5D	8L
DECK ENGINEER/DECK WINCHES (POWER)	\$39.03	1T	5D	8L
DERRICK, BUILDING	\$39.49	1T	5D	8L
DOZERS, D-9 & UNDER	\$38.64	1T	5D	8L
DRILL OILERS - AUGER TYPE, TRUCK OR CRANE MOUNT	\$38.64	1T	5D	8L
DRILLING MACHINE	\$39.03	1T	5D	8L
ELEVATOR AND MANLIFT, PERMANENT AND SHAFT-TYPE	\$36.41	1T	5D	8L
EQUIPMENT SERVICE ENGINEER (OILER)	\$38.64	1T	5D	8L
FINISHING MACHINE/BIDWELL GAMACO AND SIMILAR EQUIP	\$39.03	1T	5D	8L
FORK LIFTS, (3000 LBS AND OVER)	\$38.64	1T	5D	8L
FORK LIFTS, (UNDER 3000 LBS)	\$36.41	1T	5D	8L
GRADE ENGINEER	\$38.64	1T	5D	8L
GRADECHECKER AND STAKEMAN	\$36.41	1T	5D	8L
GUARDRAIL PUNCH	\$39.03	1T	5D	8L
HOISTS, OUTSIDE (ELEVATORS AND MANLIFTS), AIR TUGGERS	\$38.64	1T	5D	8L
HORIZONTAL/DIRECTIONAL DRILL LOCATOR	\$38.64	1T	5D	8L
HORIZONTAL/DIRECTIONAL DRILL OPERATOR	\$39.03	1T	5D	8L

HYDRALIFTS/BOOM TRUCKS (10 TON & UNDER)	\$36.41	1T	5D	8L
HYDRALIFTS/BOOM TRUCKS (OVER 10 TON)	\$38.64	1T	5D	8L
LOADERS, OVERHEAD (6 YD UP TO 8 YD)	\$39.49	1T	5D	8L
LOADERS, OVERHEAD (8 YD & OVER)	\$40.01	1T	5D	8L
LOADERS, OVERHEAD (UNDER 6 YD), PLANT FEED	\$39.03	1T	5D	8L
LOCOMOTIVES, ALL	\$39.03	1T	5D	8L
MECHANICS, ALL	\$39.49	1T	5D	8L
MIXERS, ASPHALT PLANT	\$39.03	1T	5D	8L
MOTOR PATROL GRADER (FINISHING)	\$39.03	1T	5D	8L
MOTOR PATROL GRADER (NON-FINISHING)	\$38.64	1T	5D	8L
MUCKING MACHINE, MOLE, TUNNEL DRILL AND/OR SHIELD	\$39.49	1T	5D	8L
OIL DISTRIBUTORS, BLOWER DISTRIBUTION AND MULCH SEEDING OPERATOR	\$36.41	1T	5D	8L
PAVEMENT BREAKER	\$36.41	1T	5D	8L
PILEDRIVER (OTHER THAN CRANE MOUNT)	\$39.03	1T	5D	8L
PLANT OILER (ASPHALT, CRUSHER)	\$38.64	1T	5D	8L
POSTHOLE DIGGER, MECHANICAL	\$36.41	1T	5D	8L
POWER PLANT	\$36.41	1T	5D	8L
PUMPS, WATER	\$36.41	1T	5D	8L
QUAD 9, D-10, AND HD-41	\$39.49	1T	5D	8L
REMOTE CONTROL OPERATOR ON RUBBER TIRED EARTH MOVING EQUIP	\$39.49	1T	5D	8L
RIGGER AND BELLMAN	\$36.41	1T	5D	8L
ROLLAGON	\$39.49	1T	5D	8L
ROLLER, OTHER THAN PLANT ROAD MIX	\$36.41	1T	5D	8L
ROLLERS, PLANTMIX OR MULTILIFT MATERIALS	\$38.64	1T	5D	8L
ROTO-MILL, ROTO-GRINDER	\$39.03	1T	5D	8L
SAWS, CONCRETE	\$38.64	1T	5D	8L
SCRAPERS - SELF PROPELLED, HARD TAIL END DUMP, ARTICULATING OFF-ROAD EQUIPMENT (UNDER 45 YD)	\$39.03	1T	5D	8L
SCRAPERS - SELF PROPELLED, HARD TAIL END DUMP, ARTICULATING OFF-ROAD EQUIPMENT (45 YD AND OVER)	\$39.49	1T	5D	8L
SCRAPERS, CONCRETE AND CARRY ALL	\$38.64	1T	5D	8L
SCREED MAN	\$39.03	1T	5D	8L
SHOTCRETE GUNITE	\$36.41	1T	5D	8L
SLIPFORM PAVERS	\$39.49	1T	5D	8L
SPREADER, TOPSIDE OPERATOR - BLAW KNOX	\$39.03	1T	5D	8L
SUBGRADE TRIMMER	\$39.03	1T	5D	8L
TOWER BUCKET ELEVATORS	\$38.64	1T	5D	8L
TRACTORS, (75 HP & UNDER)	\$38.64	1T	5D	8L
TRACTORS, (OVER 75 HP)	\$39.03	1T	5D	8L
TRANSFER MATERIAL SERVICE MACHINE	\$39.03	1T	5D	8L
TRANSPORTERS, ALL TRACK OR TRUCK TYPE	\$39.49	1T	5D	8L
TRENCHING MACHINES	\$38.64	1T	5D	8L
TRUCK CRANE OILER/DRIVER (UNDER 100 TON)	\$38.64	1T	5D	8L
TRUCK CRANE OILER/DRIVER (100 TON & OVER)	\$39.03	1T	5D	8L
TRUCK MOUNT PORTABLE CONVEYER	\$39.03	1T	5D	8L
WHEEL TRACTORS, FARMALL TYPE	\$36.41	1T	5D	8L

YO YO PAY DOZER	\$39.03	1T	5D	8L
POWER EQUIPMENT OPERATORS- UNDERGROUND SEWER & WATER				
(SEE POWER EQUIPMENT OPERATORS)	\$0.00			
POWER LINE CLEARANCE TREE TRIMMERS				
JOURNEY LEVEL IN CHARGE	\$32.01	4A	5A	
SPRAY PERSON	\$30.29	4A	5A	
TREE EQUIPMENT OPERATOR	\$30.71	4A	5A	
TREE TRIMMER	\$28.43	4A	5A	
TREE TRIMMER GROUNDPERSON	\$20.89	4A	5A	
REFRIGERATION & AIR CONDITIONING MECHANICS				
MECHANIC	\$44.58	1Q	5A	
RESIDENTIAL BRICK & MARBLE MASONS				
JOURNEY LEVEL	\$29.00	1		
RESIDENTIAL CARPENTERS				
JOURNEY LEVEL	\$14.58	1		
RESIDENTIAL CEMENT MASONS				
JOURNEY LEVEL	\$11.86	1		
RESIDENTIAL DRYWALL TAPERS				
JOURNEY LEVEL	\$19.08	1		
RESIDENTIAL ELECTRICIANS				
JOURNEY LEVEL	\$21.98	1		
RESIDENTIAL GLAZIERS				
JOURNEY LEVEL	\$19.51	1B	6I	
RESIDENTIAL INSULATION APPLICATORS				
JOURNEY LEVEL	\$10.00	1		
RESIDENTIAL LABORERS				
JOURNEY LEVEL	\$8.00	1		
RESIDENTIAL PAINTERS				
JOURNEY LEVEL	\$13.89	1		
RESIDENTIAL PLUMBERS & PIPEFITTERS				
JOURNEY LEVEL	\$15.56	1		
RESIDENTIAL SHEET METAL WORKERS				
JOURNEY LEVEL (FIELD OR SHOP)	\$25.34	1B	5A	
RESIDENTIAL SOFT FLOOR LAYERS				
JOURNEY LEVEL	\$17.55	1		
RESIDENTIAL TERRAZZO/TILE FINISHERS				
JOURNEY LEVEL	\$17.00	1		
ROOFERS				
JOURNEY LEVEL	\$27.03	1J	5I	
USING IRRITABLE BITUMINOUS MATERIALS	\$30.03	1J	5I	
SHEET METAL WORKERS				
JOURNEY LEVEL (FIELD OR SHOP)	\$36.34	1B	5A	
SIGN MAKERS & INSTALLERS (NON-ELECTRICAL)				
JOURNEY LEVEL	\$14.65	1		
SOFT FLOOR LAYERS				
JOURNEY LEVEL	\$21.76	1N	5A	
SOLAR CONTROLS FOR WINDOWS				
JOURNEY LEVEL	\$7.16	1		
SPRINKLER FITTERS (FIRE PROTECTION)				
JOURNEY LEVEL	\$34.95	1R	5I	
STAGE RIGGING MECHANICS (NON STRUCTURAL)				
JOURNEY LEVEL	\$13.23	1		

SURVEYORS

CHAIN PERSON	\$9.25	<u>1</u>	
INSTRUMENT PERSON	\$12.05	<u>1</u>	
PARTY CHIEF	\$15.05	<u>1</u>	

TELEPHONE LINE CONSTRUCTION - OUTSIDE

CABLE SPLICER	\$27.84	<u>2B</u>	<u>5A</u>
HOLE DIGGER/GROUND PERSON	\$15.69	<u>2B</u>	<u>5A</u>
INSTALLER (REPAIRER)	\$26.70	<u>2B</u>	<u>5A</u>
JOURNEY LEVEL TELEPHONE LINEPERSON	\$25.91	<u>2B</u>	<u>5A</u>
SPECIAL APPARATUS INSTALLER I	\$27.84	<u>2B</u>	<u>5A</u>
SPECIAL APPARATUS INSTALLER II	\$27.28	<u>2B</u>	<u>5A</u>
TELEPHONE EQUIPMENT OPERATOR (HEAVY)	\$27.84	<u>2B</u>	<u>5A</u>
TELEPHONE EQUIPMENT OPERATOR (LIGHT)	\$25.91	<u>2B</u>	<u>5A</u>
TELEVISION GROUND PERSON	\$14.89	<u>2B</u>	<u>5A</u>
TELEVISION LINEPERSON/INSTALLER	\$19.81	<u>2B</u>	<u>5A</u>
TELEVISION SYSTEM TECHNICIAN	\$23.43	<u>2B</u>	<u>5A</u>
TELEVISION TECHNICIAN	\$21.11	<u>2B</u>	<u>5A</u>
TREE TRIMMER	\$25.91	<u>2B</u>	<u>5A</u>

TERRAZZO WORKERS & TILE SETTERS

JOURNEY LEVEL	\$25.66	<u>2M</u>	<u>5A</u>
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TILE, MARBLE & TERRAZZO FINISHERS

FINISHER	\$21.86	<u>2M</u>	<u>5A</u>
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TRAFFIC CONTROL STRIPERS

JOURNEY LEVEL	\$30.40	<u>1K</u>	<u>5A</u>
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TRUCK DRIVERS

ASPHALT MIX	\$14.19	<u>1</u>	
DUMP TRUCK	\$27.09	<u>2G</u>	<u>6I</u>
DUMP TRUCK & TRAILER	\$27.09	<u>2G</u>	<u>6I</u>
OTHER TRUCKS	\$27.09	<u>2G</u>	<u>6I</u>
TRANSIT MIXER	\$27.09	<u>2G</u>	<u>6I</u>

WELL DRILLERS & IRRIGATION PUMP INSTALLERS

IRRIGATION PUMP INSTALLER	\$11.15	<u>1</u>	
OILER	\$9.20	<u>1</u>	
WELL DRILLER	\$17.68	<u>1</u>	

PROPOSAL REQUIREMENTS/GENERAL CONDITIONS

I. General:

SUMMARY OF WORK

The work under this Contract shall include the furnishing of all labor, materials and equipment necessary for or incidental to landscape maintenance located as indicated in these specifications and the completion of all work indicated in the Contract Documents.

INDIVIDUAL PRICES:

Bidders shall fill out the individual prices listed below, however, a lump some per season total shall be listed on the bid form.

PUBLIC WORKS COMPLEX, 2301 FRUITVALE BLVD.:

1. Weekly Lawn Maintenance. Mow, trim, edge, and blow off sidewalks approximately 34 times per season. \$ _____ (per week)
2. Lawn Fertilizer/Weed Control. 5 applications per season to keep lawn green, healthy, and weed free. (Approx. 61,700 sq. ft.) \$ _____ (per application)
3. Lawn Aeration. 1 time per season. \$ _____ (per aeration)
4. Tree/Shrub Insect and Disease Control. 4 applications throughout the season. \$ _____ (per application)
5. Deep Root Feed Fertilizer. 1 aeration per season on all trees and shrubs. \$ _____ (per aeration)
6. Tree/Shrub Trimming. Trim trees and shrubs as needed throughout the season. \$ _____ (per season)
7. Shrub Bed Weed Control. Apply preventative pre-emergent herbicides and apply touch up sprays as needed throughout the season to maintain a weed free appearance. (Approx. 25,000 sq. ft.) \$ _____ (per season)
8. Weekly Litter Clean Up. Remove debris on a weekly basis (approximately 34 times per season) in lawn, walkways and shrub beds. \$ _____ (per week)
9. Sprinkler System Maintenance. Check sprinkler system on a monthly basis for any problems. Additional repairs or additions are to be executed by request of owner on a materials and labor basis. Labor is to be billed per man hour. \$ _____ (per man hour)

- 10. Spring and Fall Cleanup – Cleaning of all shrub and flower beds. \$ _____
(per man hour)
- 11. Other Work - other work as requested, \$ _____
to be billed per man hour. (per man hour)

During the life of the contract, the contact at the Public Works Complex will be Larry Jaquins, Building Superintendent, 575-6005.

TRANSIT TRANSFER CENTER, 105 SO. 4th STREET:

- 1. Weekly Lawn Maintenance. Mow, trim, edge, and blow off sidewalks approximately 34 times per season. \$ _____
(per week)
- 2. Lawn Fertilizer/Weed Control. 5 applications per season to keep lawn green, healthy, and weed free. \$ _____
(per application)
- 3. Lawn Aeration. 1 time per season \$ _____
(per aeration)
- 4. Tree/Shrub Insect and Disease Control. 4 applications throughout the season. \$ _____
(per application)
- 5. Deep Root Feed Fertilizer. 1 aeration per season on all trees and shrubs. \$ _____
(per aeration)
- 6. Tree/Shrub Trimming. Trim trees and shrubs as needed throughout the season. \$ _____
(per season)
- 7. Weekly Litter Clean Up. Remove debris on a weekly basis (approximately 34 times per season) on lawn, walkways and shrub beds. \$ _____
(per week)
- 8. Sprinkler System Maintenance. Check sprinkler system on a monthly basis for any problems. Additional repairs or additions are to be executed by request of owner on a materials and labor basis. Labor is to be billed per man hour. \$ _____
(per man hour)
- 9. Planting Beds. Planting, weeding, fertilizing, and mulching as needed to maintain pleasant, attractive appearance. Beds may need planting more than once during the season. Beds will need to be cleared of all vegetation at the end of the season, or by November 30th of each year. \$ _____
(per man hour)

10. Other Work - other work as requested,
to be billed per man hour.

\$ _____
(per man hour)

During the life of the contract, the contact at the Transit Transfer Center will be Wayne Parsley, Route Supervisor, 576-6463.

Any additional work found necessary shall be listed on a separate sheet of paper, titled "additional work".

II. *Special Conditions:*

A. All proposals must be made upon forms to be obtained from the City Purchasing Office, City Hall, 129 North 2nd Street, Yakima, Washington, 98901.

B. Proposal shall be submitted to the City Clerks Office, Yakima City Hall, 129 North 2nd Street, by 2:00 p.m. on February 19, 2004 in a sealed envelope labeled Bid No. 10405 with the date and time of bid opening written on it. If you plan on attending the bid opening, **DO NOT BRING YOUR BID WITH YOU INTO THE OPENING ROOM.** All bids must be submitted to the Clerks Office.

C. Term:

The period of this contract shall be for a period of one year from its effective date. The City may, at it's option, extend the contract on a year to year basis for up to four additional years provided, however, that either party may at any time during the life of this contract, or any extension thereof, terminate this contract by giving thirty (30) days notice in writing to the other party of its intention to cancel. Prices shall remain firm for the first twelve month period of the contract unless an exception is stated in the bid.

D. PRICE ADJUSTMENT – In order to protect the interest of the City and to give the contractor a reasonable basis for quoting, a price adjustment feature is hereby incorporated into the specifications and contract documents and shall be binding on the contractor and the City.

In submitting bids, each contractor shall set forth the amount they will accept for the first year in payment for services and materials in accordance with the contract.

If contractor requests the City to do so, payment under this contract may be adjusted each succeeding year effective on the contract anniversary date, should the Consumer Price Index show a change from the base index. The increase/decrease shall be tied to the previous twelve (12) months annualized Consumer Price Index for the West Coast All Urban Consumers. The yearly increase shall not exceed 3.5%.

E. The contractor shall comply with all applicable laws and regulations pertaining to this contract. In addition, the contractor shall ensure that any subcontractor performing this contract shall comply with all applicable laws and regulations pertaining to this contract.

F. Reference to "Owner" herein shall be interpreted as the City of Yakima.

- G. The contractor shall warrant to the Owner and guarantee the work under this contract against defective workmanship and materials for a period of one year commencing on the date of final acceptance of the work.
- H. The final bid amount shall include cost of all materials, labor, and any and all permits required, and cost of applicable inspections.
- I. Answers to all questions, inquiries or requests for additional information or for substitution of proposed materials will be issued in the form of Addenda, and copies of each Addendum will be issued to all prospective bidders. During the quoting period, prospective bidders will be advised by Addendum of addition to, deletions from or changes in the requirements of the Contract authenticity or correctness of oral interpretations of Contract Documents or information obtained in any other manner than through the media of Addenda. Receipt of each Addendum must be acknowledged by bidders in their proposals and each Addendum shall be considered a part of the Contract Documents.
- J. Insurance:
1. Contractor's Liability Insurance:

The contractor shall obtain and maintain in full force and effect during the term of the contract, commercial general liability coverage and automobile coverage with insurance carriers admitted to do business in the State of Washington. The insurance companies must carry a Best's Rating of A- VII or better. The minimum limits of liability shall be as shown on the "Informational Copy" of the Certificate of Insurance included at the end of this section.

A commercial general liability deductible of \$5,000 or less is acceptable. The contractor will be responsible for the payment of that deductible for any losses which occur. Higher retention or deductible limits may be acceptable on prior approval by the City.

Providing coverage in these stated amounts shall not be construed to relieve the Contractor from liability in excess of such limits.

The City of Yakima, its agents, elected and appointed officials and employees are to be listed as additional insured under the policies.

The contractor will provide a Certificate of Insurance to the City as evidence of coverage. The certificate will provide 45 days notice of cancellation, and under the cancellation section, the wording "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" will be crossed out and initialed. A copy of the Additional Insured Endorsement attached to the policy shall be included with the certificate.

The contractor shall also maintain workers compensation throughout the State of Washington.

The Certificate of Insurance as required in this section shall be signed by a duly authorized agent of the company. Also, the additional insured endorsement shall be signed by the agent and specifically name the City of Yakima, their agents, employees, and elected or appointed officials as additional insured for this project.

If a broker is involved, the Certificate and Endorsement will be signed by a duly authorized agent of the company.

If at any time during the life of the contract or any extension, the contractor fails to maintain the required insurance in full force and effect, all work under the contract shall be discontinued immediately. Any failure to maintain the required insurance may be sufficient cause for the City to terminate the contract.

2. Contractor shall, and hereby agrees to, release, save, otherwise hold harmless and indemnify the City of Yakima from claims, demands, damages, actions, causes of actions or other liability, injury, or harm caused by act or omissions, foreseen or unforeseen, negligent or otherwise, that would otherwise befall said City arising out of the Contractor's implementation of the terms of this Contract.

K. Site and Specification Examination:

1. The submission of a bid shall be conclusive evidence that a bidder has made sufficient examination of the specifications and contract documents and has thoroughly investigated and is satisfied as to the existing conditions to be encountered at the project site; the character, quantity, quality and scope of work; the quantities and qualities of materials to be supplied and equipment and labor to be used; and the requirements of the Contract and proposal submitted, including all addenda for performance of the work.
2. The bidder must be familiar with all state, federal and local laws, ordinances and regulations which in any manner might affect those engaged or employed in the work, the materials, equipment or procedures used in the work, or which in any other way would affect the conduct of the work. They are assumed to be familiar with such laws and regulations, and no plea of misunderstanding or ignorance of the law will be considered.
3. The bidder must determine, from careful examination, the methods, materials, labor and equipment required to perform the work in full and shall reflect the same in his bid price. If, in the performance of the work, additional materials, labor or equipment are required beyond those anticipated by the bidder, they will not be entitled to additional compensation except as may be provided for elsewhere in these specifications.

L. Permits and Licenses

1. Procurement of a City Business License. The successful vendor must procure a City of Yakima Business License and pay all charges, fees, and taxes associated with said license.
2. Washington Contractor's Registration. Bidders must have a valid Washington State Contractor's License at the time of opening of the bids.
3. The Contractor must obtain all required permits and license required for all phases of this project, including but not limited to: building permits, electrical permits, street break permits etc.

M. Award of Contract:

The City of Yakima reserves the right to reject any or all bids or accept any presented which meet or exceed these specifications, and which would be in the best interest of the City and will not necessarily be bound to accept the low bid.

1. The award of the Contract will be made within sixty days after the opening of the proposals.

2. Company experience level and qualifications of subcontractor or agent designated to complete the testing requirements is important and will be considered in the evaluation of the bid. The enclosed Contractor Qualification Statement must be completed and enclosed with the bid to be considered for award. Non-conformance may result in rejection of bid as non-responsive.
3. It shall not be the responsibility of the City to provide engineering or other services to protect the Contractor from additional costs accrued from performing this Contract.

N. Payment:

Vendor is to submit properly completed invoice(s) to the City of Yakima Accounts Payable, 129 No. 2nd Street, Yakima, WA. 98901. To insure prompt payment each invoice should cite Bid Number 10405, purchase order number, discount terms and include the vendor's name and return remittance address. Payment will be mailed within thirty (30) days after receipt of properly completed invoice. Vendor is to divide yearly charges by the 9 active months of the season and bill the City in 9 equal payments during the season.

O. Protection of existing utilities

Identification and location of all underground utilities are the responsibility of the Contractor. The Contractor shall:

1. Notify the Owner in writing, on each occasion, of the intent to work near underground utility services or structures. Submit proposed work "procedure for approval" to assure safe and continuous operation of the services.
2. Proceed with sufficient caution to preclude damaging any utilities known or unknown. In the event unidentified utilities are encountered, the contractor must notify the Owner immediately.
3. In the event utilities are damaged during construction, temporary services and/or repairs must be made immediately, at the Contractor's expense, to maintain continuity of services.

P. Waste materials

All refuse and waste material must be disposed of by the Contractor off the Owner's property, at the Contractor's expense. The Contractor must immediately clean up any spilled material from buildings, roads, etc.

Q. Manufacturer's instructions

All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier, or distributor, except as otherwise specifically provided in the contract documents.

R. Public convenience and safety

1. The Contractor must so conduct operations as to offer the least possible obstruction and inconvenience to the public, and shall have under construction no greater length or amount of work than can be performed with due regard to the rights of the public.
2. The Contractor must provide and maintain such fences, barriers, directional signs, lights, and flag persons as are necessary to give adequate warning to the public at all times of any dangerous conditions to be encountered as a result of the work and to give directions to the public.

S. Dust/debris control

1. The Contractor must take whatever steps, procedures or means as are required to prevent abnormal dust and debris conditions being caused by the operation in connection with the work. Dust control must be incidental to this project and in accordance with Clean Air Laws.
2. All areas where personnel are, or will be present during the course of work, shall be thoroughly cleaned of debris and garbage daily. Specific areas are adjacent buildings, walkways and parking areas.

ACORD™ CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YY) DATE
PRODUCER AGENT ADDRESS	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED CONTRACTOR ADDRESS	INSURERS AFFORDING COVERAGE INSURER A: A - VII or better admitted carrier INSURER B: A - VII or better admitted carrier INSURER C: INSURER D: INSURER E:	

COVERAGES
 THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	ABC 123	01/01/99	01/01/00	EACH OCCURRENCE	\$1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire)	\$ 50,000
	<input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR				MED EXP (Any one person)	\$ 5,000
	<input checked="" type="checkbox"/> Per Job Aggregate				PERSONAL & ADV INJURY	\$1,000,000
					GENERAL AGGREGATE	\$2,000,000
					PRODUCTS - COMP/OP AGG	\$1,000,000
					GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/>	
B	AUTOMOBILE LIABILITY	DEF 456	01/01/99	01/01/00	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
	<input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				AUTO ONLY - EA ACCIDENT	\$
	GARAGE LIABILITY				OTHER THAN AUTO ONLY: EA ACC \$ AGG \$	
	EXCESS LIABILITY				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$	
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE					
	<input type="checkbox"/> DEDUCTIBLE					
	RETENTION \$					
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	ABC 123	01/01/99	01/01/00	WC STATU-TORY LIMITS	OTH-ER
					E.L. EACH ACCIDENT	\$ 1,000,000
					E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
	OTHER				E.L. DISEASE - POLICY LIMIT \$	

INFORMATIONAL COPY

INFORMATIONAL COPY

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS BY ENDORSEMENT/SPECIAL PROVISIONS
 City of Yakima, its Agents, Employees, and elected or appointed officials as additional insured's for project # _____.

CERTIFICATE HOLDER City of Yakima 129 N. 2nd Street Yakima, WA. 98901	ADDITIONAL INSURED; INSURER LETTER: CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL endeavor to MAIL 20 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. AUTHORIZED REPRESENTATIVE Signed by Agent
---	--

POLICY NUMBER: ABC 123

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED—OWNERS, LESSEES OR
CONTRACTORS (FORM B)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

Name of Person or Organization: CITY OF YAKIMA, ITS AGENTS, EMPLOYEES, AND
ELECTED OR APPOINTED OFFICIALS

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

Agent Signature

Date

CG 20 10 11 85

Copyright, Insurance Services Office, Inc., 1984

CG 20 10 11 85

VI.H.208

**CITY OF YAKIMA
GENERAL PROVISIONS FOR TRANSIT CONTRACTS
(A PART OF ALL CONTRACT DOCUMENTS)**

These General Provisions, the Specifications, the Invitation to Bid/Quote form and any attachments, constitutes the bid document, and will be considered as one document.

1. Laws and Regulations

The contractor shall comply with all applicable laws and regulations pertaining to this contract. In addition, the contractor shall ensure that any subcontractor performing this contract shall comply with all applicable laws and regulations pertaining to this contract.

2. Acceptance

The City reserves the right to reject any or all quotations, to waive any technicalities and informalities, and to accept or reject all or any part of this quotation at prices shown.

All bids/quotes must remain open for acceptance by the City for a period of at least 60 calendar days from the date of opening of the bids/quotes, unless otherwise stated.

3. Bid/Quote Submittals

Bids and quotes shall be submitted on the attached forms only. Extra pages and literature may be added to this package, however, the package shall be returned intact as received.

All prices and notations must be typewritten or written in ink, with no erasures permitted. Mistakes may be crossed out and corrections written adjacent thereto, and must be initialed in ink by person signing quotation. Verify your quotations before submission, as they cannot be withdrawn or corrected after being opened.

If applicable, unit prices for all items, all extensions, and the total amount of bid or quote must be shown. In the instance of a discrepancy between the unit price and the total price, the unit price shall govern. Any pricing, configuration, or other errors discovered after bid/quote opening or quotation due date must remain and cannot be adjusted.

4. Change Orders

Change Orders for material or services will be without effect unless issued and authorized in writing by the Purchasing Manager.

5. Quality Standards

The brand names listed indicate the standard of quality required. Brands of equal quality, performance and use will be considered, provided the offeror specifies the brand, model and other data for comparison with their bid/quote. The City of Yakima will be the sole judge for approving other brands offered as equals to the brand specified. Bidders shall indicate if they are offering alternate brands in the space below each item and must provide descriptive specifications explaining the merits of the substitute item.

6. Delivery

Time is of the essence and this order is subject to cancellation by the City of Yakima for Vendor's failure to deliver on time. For any exception to the delivery date specified in this order, Vendor shall give prior written notification and obtain written approval from the City. The acceptance by the City of later performance with or without objection or reservation shall neither waive the City's right to claim damages for such breach nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Vendor. All quotations shall include delivery F.O.B. destination, freight pre-paid, unless otherwise stated in this "Bid Call" or "Invitation to Quote" at the designated address set forth in the proposal given to each

6. Delivery (...continued)

bidder. When shipping addresses specify room identification, Vendor shall make such delivery thereto without additional charge.

If the City grants specific authorization to ship goods F.O.B. Shipping Point, Vendor agrees to prepay all shipping charges, route the goods by cheapest common carrier, and bill the City as a separate item on the invoice for said charges. It is also agreed the City reserves the right, at its sole option, to refuse COD Shipments.

7. Identification

The purchase order number shall appear on all invoices, packing lists, packages, shipping notices and other written documents relating to this order. Packing lists shall be enclosed in each and every box or package shipped pursuant to this order, indicating the content therein.

8. Payment

Vendor is to submit properly completed invoice(s) and mail to:

*City of Yakima
Accounts Payable
129 No. 2nd St.
Yakima, WA 98901*

To insure prompt payment, each invoice should cite purchase order number, bid/quote number, description of item purchased, unit and total price, discount terms and include the vendor's name and return remittance address. Payment will be mailed within thirty (30) days of (a) the receipt and acceptance of the product or service and (b) a properly completed invoice.

9. Risk of Loss

Regardless of the F.O.B. Point specified above, Vendor agrees to bear all risk of loss, injury, or destruction of goods ordered herein which occur prior to actual physical delivery to the City, and such loss, injury, or destruction shall not release Vendor from any obligation hereunder.

10. Force Majeure

Vendor will not be responsible for delays in delivery due to acts of God, fire, Strikes, epidemics, war, riot, delay in transportation or railcar transport shortages, provided vendor notifies the Purchasing Manager immediately in writing of such pending or actual delay. Normally, in the event or any such delays (acts of God, etc.) the date of delivery will be extended for a period equal to the time lost due to the reason for delay.

11. Rejection

All goods and any services purchased in this order are subject to approval by the City. Rejection of goods or services, resulting because of nonconformity to the terms, conditions, and specifications of this order, whether held by the City or returned, will be at Vendor's risk and expense.

12. Approximate Quantity

The quantities listed are the City's current approximate requirements. The City of Yakima will neither be obligated by, nor restricted to, these quantities and may increase or decrease any item(s) ordered under this contract and pay according to the unit prices quoted in the Bid/Quote.

12. Approximate Quantity...continued...

If it is agreeable to both parties and prices have not changed and the 12. same unit/materials are still available, additional units/materials may be ordered within 12 months of the signing of the original agreement.

13. Cooperative Purchasing

The Washington State Interlocal Cooperative Act RCW 39.34 provides that other governmental agencies may purchase goods and services on this solicitation or contract in accordance with the terms and prices indicated therein if all parties are willing.

14. Samples

Samples of items, when required, must be furnished free of expense to the City, and if not destroyed by tests will, upon request, be returned at the bidder's expense.

15. Inspection

Cost of inspection on deliveries or offers for delivery, which do not meet specifications, will be for the account of the vendor.

16. Hazardous Materials

If this order covers goods which include hazardous chemicals, Vendor shall, at the time of product delivery, provide the City with copies of Material Safety Data Sheets for such chemicals. These sheets shall be in the form then required by applicable law or regulation (See WAC 296-62-05413). This requirement shall be in addition to whatever other requirements are imposed by law or regulation.

17. Public Disclosure

The City shall promptly notify Vendor of any requests for public disclosure of documents pursuant to Chapter 42.17 Revised Code of Washington (RCW) which may require disclosure of documents and information supplies under this order. Vendor shall be responsible for and bear the costs of taking legal action to prohibit disclosure of such documents and information and shall indemnify and save the City harmless from any and all cost, liability, penalty and expense related to the City's failure to disclose. In no event shall the City be liable for breach of this order should a court order that such documents and information be, and the same are, disclosed.

18. Warranties

Vendor warrants that all goods and services furnished under this order are new, conform strictly to the specifications herein, are merchantable, good workmanship, free from defect, are fit for the intended purpose of which such goods and services are ordinarily employed and if a particular purpose is stated in a Special Condition, the goods are then warranted as for that particular purpose. Vendor further warrants that no violation of any federal, state or local law, statute, rule, regulation, ordinance or order will result from the manufacturer, production, sale, shipment, installation or use of any other goods. Vendor's warranties (and any more favorable warranties, service policies, or similar undertaking of Vendor) shall survive delivery, inspection, and acceptance of the goods or services.

19. Re-Award

When the contract is terminated by the vendor upon 30 days notice as herein provided, the City, pursuant to City ordinance, may re-award the contract to the next most responsible bidder.

When a vendor is unable to supply goods and/or services to the City and is in breach of the contract, or when the contract is terminated by the City for cause as herein provided, the City reserves the right to re-award the contract to the next most responsible bidder.

20. Errors and Omissions

The City reserves the right to correct obvious ambiguities and errors in the Bidder's proposal and to waive non-material irregularities and/or omissions. In this regard, if the unit price does not compute to the extended total price, the unit price shall govern.

21. Late Receipt of Bid/Quote Documents

Bids and/or quotations and modifications received after the exact hour and date specified for receipt of bids and/or quotations will not be considered (i.e. if bid was due by 2:00 PM, any bids received after 2:00:00 PM will be rejected) .

22. Licenses

If applicable, successful vendor shall have a valid and current business license per Chapter 5.02 Section 5.02.010 of the Yakima Municipal Code covering this type of business and shall satisfy all applicable City Code provisions. Said license shall be obtained prior to the award of any contract. Inquiries as to fees, etc., should be made to the Office of Code Administration, telephone (509) 575-6121.

In addition, Contractors are required to be registered by the State per Chapter 18.27 of the Revised Code of Washington and their registration number must be listed on the bid/quote.

23. Delivery of Unapproved Substitutions

Vendors are authorized to ship only those items ordered covered by the contract. If a review of orders placed by the City reveals that an item other than those covered by and specified in the contract have been ordered and delivered, the Purchasing Manager will take such steps as are necessary to have the item(s) returned to the contractor at no cost to the City regardless of the time lapsed between the date of delivery and discovery of the violation. Violation of this clause may result in the removal of the offending vendor's name from the City mailing list for a period of up to three (3) years.

24. "No Bids"

Vendors who are unable to or do not wish to submit a bid and are encouraged to respond by notating their bid "NO BID" on page one of the "BID CALL" and mailing it to the City of Yakima Clerk's Office, 129 North 2nd Street, Yakima, Washington, 98901, with the Bid/Quote due date and time written on the face of the envelope. It is the City's practice that if no response to a bid is received by a vendor after two consecutive mailings, the vendor will be deleted from our vendor's mailing list for that type of commodity item.

25. Non-Collusion

The Bidder represents, by the submission of the Proposal, that the prices in this bid/quote are neither directly nor indirectly the result of any formal or informal agreement with another bidder.

26. Evaluation of Bid/Quote

In the evaluation of otherwise responsible bids/quotes, the Bidder's experience, delivery time and responsibility in performing other contracts will be considered. In addition to price, the following may be considered:

- I. The ability, capacity and skill of the bidder to perform the contract and provide the services required.
- II. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference.
- III. The character, integrity, reputation, judgement, experience and efficiency of the bidder.
- IV. The quality of performance of previous contracts or service.
- V. The previous and existing compliance by the bidder with laws and ordinances relating to contracts or services.
- VI. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service.

26. Evaluation of Bid/Quote...continued...

- VII The quality, availability, and adaptability of the supplies or contractual services to the particular use required.

VIII. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract.

27. Taxes

The City will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The City is exempt from Federal Excise Tax. Where applicable, the City shall furnish a Federal Excise Tax Exemption certificate.

28. Non-Discrimination

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

- A. The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, religion, age, marital status, disability, sex, or national origin. 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.
- B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, age, marital status, disability, sex, or national origin.
- C. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, advising the labor union or workers' representative of the contractor's commitment to non-discrimination, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The contractor will furnish all information and reports required by the City of Yakima and will provide on request evidence to substantiate compliance with non-discrimination clauses of this contract.
- E. In the event of the contractor's noncompliance with the non-discrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for any future City of Yakima contracts.

29. Delay of an Award

If, after bid/quote opening, administration problems threaten to delay award beyond the bidder's acceptance period, bidders shall be requested to extend the bid/quote acceptance period. This request must be made and confirmed in writing prior to the expiration date of their bids/quotes (with consent of sureties, if any) to avoid the need to re-advertise.

30. Termination - Convenience

This contract may be terminated by either party by giving thirty (30) days written notice of such intent and will become effective thirty (30) days from the date such written notice is delivered to the applicable party to the contract.

31. Termination - Cause

The City reserves the right to terminate this contract at any time, upon written notice, in the event that the services of the Contractor are deemed by the City to be unsatisfactory, or upon failure to perform any of the terms and conditions contained in this agreement. In addition to the foregoing right of termination, the City may terminate this contract, with or without cause, upon thirty (30) days written notice to Contractor.

32. Venue

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of the Agreement, the venue of such

action of litigation shall be in the Courts of the State of Washington in and for the City of Yakima. This Agreement shall be governed by the laws of the State of Washington.

33. Defense and Indemnity Agreement

The vendor agrees to defend, indemnify and save harmless the City, its appointed and elective officers and employees, from and against all loss or expense, including but not limited to judgements, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account to damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Vendor, his/her subcontractors, its successor or assigns, or its or their agent, servants, or employees, The City, its appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its appointed or elected officials or employees. It is further provided that no liability shall attach to the City by reason of entering into this contract, except as expressly provided herein.

34. Permits

The vendor shall procure and pay for all permits and licenses necessary for the completion of the Contract, including those permits required by the City of Yakima. In the event a necessary permit is not obtained, the Vendor will not be permitted to work on items subject to said permit and any delays caused thereby will not be subject to extra compensation or extension.

35. Severability

If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

36. Waiver

Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

37. Entire Agreement

This written contract represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understanding between the parties.

38. Protest Against Award

The City of Yakima shall consider all protests or objections regarding the award of a contract, whether submitted before or after award. If the protest is oral and the matter cannot otherwise be resolved, written confirmation of the protest must be provided by the complainant to the City Purchasing Manager. Upon receipt of an oral or written protest by the Purchasing Manager:

38. Protest Against Award...continued...

Step I - Division Manager and Purchasing Manager try resolving matter with protester.

Step II - If unresolved, the protest matter is put before the Department Head by the division.

Step III - If unresolved, the protest matter is put before the City Manager by the Department Head.

Step IV - If unresolved, the protest matter is put before the Transit Committee (if applicable) by the City Manager.

Step V - If unresolved, the protest matter is put before the full City Council by the Transit Committee (if applicable).

Step VI - If the bid is a Transit Division Bid and the protest matter is not resolved at the local level to the satisfaction of the protester; then, depending on the matter protested, the protester may file a formal protest with the Federal Transit Administration or any other federal agency concerning the alleged specific violation and shall be provided the guidelines for such filing.

39. Protest Before Award

The City shall require written confirmation of an oral protest. The written confirmation must be submitted seven (7) business days prior to award and the protester must be informed by the City that award will be withheld until the specified time. If the written protest is not received by the time specified, the oral protest shall be disregarded by the City and the award made in the normal manner.

The notice of protest and its basis shall be given to all affected bidders. When the City determines to withhold award pending disposition of a protest, bidders whose bid might become eligible for award shall be requested to extend the time for acceptance (with consent of sureties, if any). To avoid the need for re-advertisement, the request for extension shall be made prior to the expiration of the acceptable period.

- 2) Delivery or performance will be unduly delayed by failure to make award promptly;
- 3) A prompt award will otherwise be advantageous to the City.

If the award is made, the file must be documented to explain the basis for the award. Written notice of the decision to proceed shall be sent to the protester and others who may be concerned.

NOTE: If an award is made while a protest is pending, such award does not assure federal funding, if applicable, in the event the protest is upheld.

40. Protest After Award

Vendors may appeal or protest a proposal award as soon as practical following the award, but no later than five (5) business days following notification of the award.

When an award has been made, the contractor shall be provided the notice of protest and the basis for the protest. If it appears likely that the award will be invalidated and a delay in receiving the supplies or services is not prejudicial to the City's interest, the City shall consider a mutual agreement with the contractor to suspend performance at no cost to the City.

When award is made to other than the apparent low bidder, the City must promptly notify the unsuccessful lower bidders that their bids were rejected. The notification shall state the reasons for rejection. In addition, notification that an award has been made to another firm shall be given immediately to all unsuccessful bidders.

39. Protest Before Award...continued...

When a written protest against making an award is received, the award shall not be made until the matter is resolved unless the City determines that one of the following applies:

- 1) The supplies or services to be contracted for are urgently required;

