



South Central Tennessee Development District

**Request for Proposal (RFP):
To Design, Develop, Install and Maintain a
Comprehensive Transit Management System
Demand Response GIS Based Routing, Scheduling and
Dispatching, MDC/GPS/AVL Integration,
Billing and Remittance Management**

Proposal Due Date: January 14, 2011

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NOTICE TO TRANSPORTATION SOFTWARE VENDORS
REQUEST FOR PROPOSALS FOR PROVISION OF
SCHEDULING AND DISPATCHING SYSTEM

The South Central Tennessee Development District is seeking competitive proposals for Transit Management software.

The deadline for receipt of proposals is 10:00 AM, JANUARY 14, 2011 at the location listed below. One original signature copy and three (3) copies of the vendor's Proposal should be submitted in a sealed envelope/package labeled "Transit Management Software" and sent to:

Sanford Potts, Transportation Program Director
South Central Tennessee Development District
P.O. Box 1346
815 South Main Street
Columbia, TN 38401

All respondents are notified that disadvantaged and women owned enterprises are encouraged to submit responses to this request. SCTDD will ensure that respondents to this request will not be discriminated against based on sex, race, color, creed or national origin in consideration of an award.

This project is funded, in part, by Federal Earmark funds through the Federal Transit Administration (FTA) under 49 USC Section 5309 ITS project number TN 004-0012-00, in part by State funds TDOT project number 985309-S3-018 and in part by local funds. SCTDD retains the right to reject any or all proposals, and to withdraw this solicitation at any time.

SCTDD is an equal opportunity employer.

1.0 Instructions to Vendors

1.1 Definitions

Agency: SCTDD, South Central Tennessee Development District

Authorized Signee: The person who is executing this contract on behalf of the bidder/contractor and who is authorized to bind the bidder/contractor.

AVL: Automated Vehicle Location

ASP: Active Server Pages

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Contract: The legally binding agreement between the SCTDD and the successful proposer (Contractor) to perform the services described in this RFP.

Contracting Officer: Jerry Mansfield, Executive Director

Contractor: The successful bidder who is awarded a contract for providing all labor and materials described in the contract documents.

EMI / RIS : Electromagnetic Interference / Radiated Interference

FTA: The Federal Transit Administration

NTD: National Transit Database

PCA: Personal Care Attendant

Procuring Agency: South Central Tennessee Development District

Proposal and Offer: The price and services offered by the Respondent in response to this RFP.

Respondent/Proposer/Vendor: The offeror or vendor responding to this RFP.

Request for Proposal (RFP): A solicitation, through competitive means, of a formal sealed proposal.

Third Party Contractor/Provider: The private company that provides the public transit services on behalf of SCTDD via a written contract.

Supplier: Any manufacturer, company or agency providing units, components or sub-assemblies for inclusion in the product or service to be supplied.

Work: Any and all labor, supervision, services, material, machinery, equipment, tools, supplies and facilities called for by the contract and necessary to the completion thereof.

1.2 Communications

Communications in connection with this contract shall be in writing. All such written questions shall be delivered by regular, registered, certified, or express mail to Sanford Potts, Transportation Director, SCTDD Rural Public Transportation, P.O. Box 1346, 815 South Main Street Columbia, TN 38401 or electronic mail (e-mail) addressed aturnbow@sctdd.org. **Telephone calls and other informal communications will not be permitted during the bidding period in order to ensure fair competition among prospective vendors.**

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1.3 Submission Instructions

1.3.1 Quantity

The proposer shall submit one original signature copy and three (3) copies of the vendor's Technical and Cost Proposal.

1.3.2 Proposal Delivery

In order to be considered, proposals must be received at the office of the SCTDD by **JANUARY 14, 2011**. Failure of the U.S. Postal Service, or other delivery service, to deliver proposal packages on time may result in the proposal not being opened or considered.

1.3.3 Proprietary Information

Any information contained in the proposal that the proposer considers proprietary must be clearly identified as such. SCTDD will respect requests for non-disclosure of proprietary information to the extent that information so restricted conforms to the Freedom of Information Act.

1.3.4 Forms

Section 6.0 of this solicitation contains forms that are mandatory in the proposal process. Precise computer reproductions to expedite the proposal preparation process are acceptable.

1.4 Questions Concerning the Project

1.4.1 Written Questions

Prospective proposers are encouraged to submit substantive questions, comments and concerns **in writing** if they desire additional information on the project. SCTDD will only accept questions via regular, registered, certified, or express mail or electronic mail (e-mail) in order to ensure fairness in the provision of project information among all prospective vendors. Questions received no later than 4:00 P.M., CST JANUARY 5, 2011 will be answered in writing and distributed to all vendors on the RFP distribution list via e-mail. Questions should be addressed to Anita Turnbow, Assistant Transportation Director at aturnbow@sctdd.org to the address listed in the instructions to vendors.

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1.4.2 Pre-Proposal Conference

A pre-proposal conference will not be held. Proposers should include a demonstration CD/DVD of the software and other components along with the price proposal. All communication should be in written form as stated in 1.4.1.

1.5 On-Site Interviews/ Online Demonstrations

SCTDD reserves the right to and will likely conduct on-site interviews with one or more of the top ranked proposers as part of the vendor evaluation and selection process. SCTDD further reserves the right to request demonstrations of any software product or technology contained in the proposer's offer, and to request the proposer to demonstrate the capabilities of its software. On-site interviews will also include the presentation of vehicle manifests derived by the proposer's software from typical operating data obtained from a 24-hour period. The operating data will be provided three days prior to the interview.

1.6 Proposal Format

1.6.1 General

The Scope of Services describes, from a functional standpoint, elements of the software system that would aid SCTDD in its daily mission of providing quality Demand Response service in an economical manner. It is our intent to provide proposers the opportunity to offer proven software products with minimal customization, to meet our strict implementation schedule.

SCTDD may not have addressed all functional elements of a particular vendor's software product. Such omissions are not intended to mean that SCTDD does not desire to have that functional element as part of the software system to be purchased under this procurement. A full-featured, functionally diverse software package is required.

All submitted proposals must adhere to the following guidelines:

1. Include a Letter of Transmittal signed by the person(s) with the authority to bind the offeror, to answer questions, or to provide clarification concerning submitted proposals;
2. Be typed (minimum font size:12) on 8 1/2" by 11" paper (not digital, not faxed);
3. Include one (1) original and three (3) complete copies;
4. Address, completely and accurately, the specifications and submission requirements found in this RFP;

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5. Include completed, accurately filled-in forms contained in this RFP, including the Cost Proposal Form and a description of required hardware configuration.
6. Be mailed to the following address in packages clearly marked: “Transit Management System”

Sanford Potts, Transportation Program Director
SCTDD
P.O. Box 1346
815 South Main Street
Columbia, TN 38401

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7. Be received at the designated place by the date and time specified in Section 1.3.2.
 8. Clearly state any and all exclusions or deviations from this RFP.

1.6.2 Submission of Supplemental Material

Proposers may submit any additional information that they consider relevant to the project scope of work and the project at hand. Such supplemental materials, if submitted, should be in addition to the proposal, not contained in the proposal itself.

1.6.3 Technical Proposal Content

At a minimum, each proposal should contain the following elements:

- ***Executive Summary*** - Based on information contained in this RFP, as well as information obtained in subsequent addenda, the proposer should indicate, in written narrative, how the proposed software will facilitate the system’s goals for providing cost-efficient, customer responsive, demand response transportation operated by SCTDD. Proposers should demonstrate a thorough understanding of FTA requirements. Proposers should indicate how their software system could work to improve the transit system’s handling of various tasks associated with Demand Response service delivery.
- ***System Description*** – Proposers should fully describe their proposed system including the software scheduling system, the in-vehicle system and the communications with the vehicles. Capabilities and features should be described in the context of the requirements identified in this RFP. Benefits gained from installing and using the vendor’s product should be described in full. Proposers must list all software components or modules necessary to fully implement the project, including third party application software necessary to complete the total installation.

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- ***Federal and State Standards*** - Proposer will be responsible for obtaining and ensuring compliance with Federal and State standards and architectural guidelines. National”Federal” guidelines can be obtained at <http://www.iteris.com/itsarch/html/menu/paindex.htm>.
- ***Data Protection***- The proposer should ensure that SCTDD meets or exceeds Data protection requirements (Security, and Disaster Recovery) per the Federal architecture. The requirements can be obtained by visiting <http://iteris.com/itsarch/html/security/security/securihome.htm> . The proposer should include in the proposal a plan and initial cost associated for a security and disaster recovery solution and implementation. The plan should ensure that data and passenger information collected is protected from physical interception, corruption and digital or electronic threats. Physical protection of the data and system should include redundant business environment, intrusion detection and hardware security as referenced in HIPPA compliance requirements.
- ***Implementation Plan*** – Proposers should fully describe the proposed implementation plan, detailing all major milestones in the process. A proposed timeframe from notice-to-proceed through live testing, de-bugging, and “live” operation should be developed as an integral part of this proposal. Describe the proposed individuals and team approach used to successfully communicate with SCTDD management staff throughout the project. If contractors are used for any part of the installation, customization, or maintenance of the proposed software system, this element of your overall approach must be identified.
- ***Training*** – Proposers should provide a detailed schedule and course outline for the necessary training of the designated individuals on the proposed scheduling system software. This section of the proposal should identify the training course content, the number of courses required, and type of training (classroom, hands-on, etc.) that will be provided, the length of the training session, etc. Proposers should indicate when the training should be provided in the context of the overall implementation time schedule provided above.
- ***Documentation*** – Proposers should identify the documentation that will be provided with the system.
- ***Maintenance, Support, and Upgrades*** – Describe the proposer’s network of technical support during the project, focusing both on the critical initial implementation period as well as long-term operation. Describe procedures for rendering support, including the availability of technicians to provide on-site repairs and ability to remotely access, diagnose, and make necessary repairs. Technical support policies and pricing must be explained in detail. Pricing should include as an option the first 5 years of maintenance.

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- ***Experience*** – Proposers should provide a corporate profile indicating their qualifications to provide the required software and support necessary to achieve objectives for the project. Proposers must submit a list of other transit systems where the proposed software application(s) have been installed. A separate list of the proposer’s last five (5) installations (United States and Canada), along with a project contact, address, telephone number, facsimile number, and e-mail address must be provided.
-
- ***Required Forms and Certifications*** – The proposer must indicate it has adequate financial resources and show compliance with certain Federal and state executive orders, laws, statutes, and regulations to be considered for award:
 - Proof of adequate financial resources
 - Acknowledgement of Receipt of Addenda (submit whether or not any addenda are issued).
 - Vendor Affidavit Form (Non-Delinquency of Personal Property Taxes, Non-Discrimination and Equal Employment Opportunity; and Non-Collusion)
 - Disadvantaged Business Enterprise Certification
 - Debarment Certification
 - Restrictions on Lobbying Certification
 - Declaration Regarding Material Assistance/No Assistance To A Terrorist Organization

1.6.4 Cost Proposal

Cost proposals should be submitted in the format stipulated in Section 6.0 of the RFP.

1.6.4.1 Cost Factors Used in Proposal Evaluation

SCTDD is requesting that proposers identify the following items as part of their base cost proposal. All products must include one year of warranty/support. Each item must be listed separately:

- *Software Purchase Costs*
- *MDC Hardware Costs*
- *Software Implementation Services*
- *Training Costs*
- *Annual Maintenance and Support for five Years 2, 3,4 and 5*
- *Expenses for all the above*
- *Other Costs – Any other costs not identified above.*

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- *Server Platform Required*

1.7 Disadvantaged Business Enterprise (DBE)

Please identify any participation in the project by disadvantaged business enterprises. SCTDD has established a project specific DBE goal for this acquisition at 1%. DBE's shall be given maximum opportunity to participate in contracting opportunities arising from this solicitation. Documentation demonstrating outreach efforts must be included in the proposer's response package.

1.8 Contract

1.8.1 Award of Contract

SCTDD anticipates award of a contract within sixty (60) days after receipt of proposals.

1.8.2 Contract Type

SCTDD will enter into a firm, fixed price contract with the selected vendor. The price shall include a perpetual license for all software and should be fully functional with or without an additional annual maintenance plan or license fee.

1.9 Evaluation Methodology

A Selection Committee will be established. The Committee will make all decisions regarding the evaluations, determination of responsible Offerors and the competitive range, negotiations and the selection of the Offeror, if any, that may be awarded the Contract. The Selection Committee will be assisted by an Evaluation Team which will include officers, employees and agents of the Procuring Agency. The Evaluation Team will carry out the detailed evaluations and report all of its findings to the Selection Committee.

1.9.1 Evaluation Criteria

Proposals for this project shall be evaluated using the following rank-ordered criteria:

Category	Subcategories
Technical Compliance	<ul style="list-style-type: none"> • The over-all system design, usability and system reliability with respect to the stated needs of SCTDD, life span of product, upgradeable for future needs; • Equipment interface for each of the primary functional areas of each proposal evaluated to determine compliance with the specifications of this RFP, including, but not limited to, Radio Subsystem, Computer Aided Dispatch routing and scheduling, Billing and Remittance Management, Automatic Vehicle Location, Automatic Wireless Local Area Network, Vehicle Health Monitoring., etc;

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Category	Subcategories
	<ul style="list-style-type: none"> • Qualifications of any subcontractors contracted for all or part of this project; • Experience of the Proposer with comparable projects
Project Management	<ul style="list-style-type: none"> • Experience and qualifications of the prime contractor, the proposed project team including the project manager, the project engineer, the support personnel resources, and onsite support; • Financial capability and stability of Proposers and sub-contractors; • Ability to perform work as scheduled and within budget; • Project plan, cutover plan, schedule, quality control, and warranty provisions; • Review of references • Past Performance
Responsiveness to RFP	<ul style="list-style-type: none"> • Understanding, conformity, and responsiveness to all sections of the RFP; • Completion of required certifications and forms; • System design concept and system functionality, user interface, documentation, training, support services, installation, quality assurance, and testing; • Proposers proposed project schedule and work plan; • Site Visit; • Warranty; • Inclusion, reliability, and attainability of DBE committed measurable levels
Cost Proposed	<ul style="list-style-type: none"> • Reasonableness of cost to systems proposed; • Comparable to other systems with similar specifications; • Life cycle of product proposed; • Future operational cost • Annual cost for maintenance and upgrades for five years

SCTDD expressly reserves the right to: Specify approximate quantities in the RFP; Extend the RFP opening date and time; Consider and accept alternate proposals, if specified in the RFP documents, when most advantageous to SCTDD; Waive as an informality, minor deviations from specifications, provided they do not affect competition or result in functionally unacceptable goods or services; Waive any minor informality in any proposal or RFP procedure (a minor informality is one that does not affect the competitiveness of the proposing firm); Award to other than the low bidder or offeror; Award best value based on both price and qualitative components; Additional terms or modify existing terms in the RFP; Reject a proposal at SCTDD's discretion; Reject or cancel any or all proposal; Reject a proposal for past performance; reissue a RFP and/or Procure any item by other means.

1.10 Project Schedule

Advertisement of Request for Proposals	DECEMBER 8, 2010
Deadline for Submission of Questions	JANUARY 5, 2011
Proposals Due	JANUARY 14, 2011
Proposal Evaluation, Interview, and Contract Award (WITHIN 60 DAYS AFTER PROPOSAL DUE DATE)	

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2.0 Project Background

2.1 Overview of the Transit System

The overview of the transit system is a summary of operations to allow the proposer to grasp a snapshot of the entire system and recommend any additional features not included in this RFP. A full-featured, functionally diverse software package is required. SCTDD operates a sizeable demand response and a small fixed route transportation service that covers a thirteen county area. Only two of thirteen counties have fixed route transportation services. The fixed route service should be given attention in the quote but the main focal point in this proposal will be the GIS based demand response routing and scheduling, trip assignment for contract trips, billing and remittance management and mobile data computers with GIS/AVL integration for all vehicles. SCTDD provides general public, subscription and coordinated contract services for the South Central area in Tennessee. SCTDD is not a broker for TennCare / Medicaid Transportation for the 13 counties but does have similar needs in relation to trip distribution and working with various subcontractors. The system is managed in Columbia, Tennessee where transit administrative, customer service functions, eligibility new hire approval, area wide training, financial reporting, NTD reporting, billing and invoicing functions are housed. The reservations, scheduling, and system dispatch functions are housed in each county. SCTDD operates a fleet of 180 currently, but will be expanding. Proposal should be based on 180 vehicles with an option of up to 250 vehicles for other governmental or transit agencies.

2.2 Service Area

The service area encompasses all ninety-five (95) counties in Tennessee and approximately four counties in Alabama.

2.3 Operating Times / Trip Description

SCTDD takes call in reservation from 8:00am to 4:00pm at each of the thirteen locations. Contract trips and most subscription trips are sent electronically in excel and will need to be downloaded in to the scheduling and software system with the capability to reassign. This can be in the form of a data transfer utility or other option as recommended by the awarded scheduling software vendor. SCTDD requests that general public and contracted reservations be made at least 24 hours in advance for demand response service. There are cases where contract clients require same day service, such as admits, discharges and urgent care. We have several subscriptions (standing) reservation trips such as dialysis, Vocational Rehabilitation and Job Access (JARC) that will need to be addressed as repeat trips for one time entry. There are several will calls, meaning, if an individual has a trip and the precise time of the return is unknown, the client must call in to schedule a return. Software should permit return trips to be scheduled as “will-call” trips with an estimated time for pickup. The system should also be capable of accepting trips for past dates to accommodate after hour trips and billing. Monday trips need to be scheduled no later than the previous Friday. In an attempt to provide a responsive service, the system accepts same day reservations or urgent care requests, if the schedule

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permits. Trip requests may not be available precisely at the requested pick-up time. Under these circumstances, dispatching staff will negotiate the requested time of travel. The system attempts to ensure that all negotiations are conducted within a +/- 1 hour window. This means if a passenger calls and requests a 2:00 P.M. pick-up/drop off time, the transit system may offer any time from 1:00 P.M. to 3:00 P.M. If the trip cannot be scheduled within this 1-hour window, the trip must be recorded as a trip denial. The system shall assist the dispatching staff to ensure that passengers arrive at their scheduled time and if possible an option to flag for prior problems, no negotiation and various alerts per individual client.

2.4 Trip Purpose Restrictions

Various contracting agencies will stipulate, as part of the terms and conditions of the contract, limitations on allowable trips that can be taken by the organization’s clients. There are no limitations or restrictions on general public patrons of the system. Agency trips include:

- | | | |
|-------------------------|-------------------------|------------------------------------|
| 1. Adult Day Care (ADC) | 9. Lab | 17. College |
| 2. Child Care | 10. Medical Appointment | 18. Senior Center |
| 3. Dialysis | 11. Nursing Home | 19. Shopping/Groceries |
| 4. Education/Training | 12. Other | 21. Support for Comm. Living (SCL) |
| 5. Employment/Work | 13. Personal Business | 22. Urgent Care Appointment |
| 6. Heart Drip | 14. Pharmacy | 22. Wound Care |
| 7. Home | 15. Radiation/Chemo | |
| 8. Hospital Release | 16. Recreation | |

2.5 Hours and Days of Service

SCTDD currently operates 24 hours per day. The demand response general public rural transportation service is from 6:00am to 6:00pm. However, contract services are based on needs and can be 24/7 seven days a week.

Fixed route service starts as early as 5:00am and ends as late as 8:00pm. Service operates Monday through Saturday, except for major holidays. Major holidays include New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. *(For holidays that fall on a weekend, the holiday will be observed on the nationally recognized date for that specific holiday).*

2.6 Capacity Constraints

SCTDD is committed to assuring that all of its services comply with the Americans with Disabilities Act (ADA). All fleet vehicles are fully accessible for passengers with mobility issues and approximately 85% are equipped with a wheelchair lift.

SCTDD generally does not practice or enforce any policy that materially restricts consumer access to the system; however, some policies are of note.

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First, the transit system requires an option to limit the length of any subscription (standing) order or for the subscription to begin or end. Renewal of subscriptions is not automatic, but requires that the passenger contact SCTDD for trips beyond the allotted time specified. Please note not all subscription trips are limited. The system does not have any arbitrary caps on the number of subscription trips that it will accept.

2.7 Vehicle Inventory and Utilization –

SCTDD fleet is currently 180 vehicles

Operational peaks occur between 6:00 A.M. and 9:30 A.M. and between 1:00 P.M. and 5:00 P.M. These are typically the hours when most work-related trips occur.

2.8 Current Technology & Technology Needs

2.8.1 Office Environment & Needs

The transportation administrative office is located at an annex of 815 South Main Street Columbia, Tennessee. Five transportation workstations are housed in the annex, located at 39 Public Square Columbia, Tennessee. Future plans for a new building will soon result in a move to consolidate all SCTDD employees. In the transportation administrative office one-employee serves as the Transportation Coordinator and coordinates with local county dispatchers for contract service trips and subscription trips received daily in an electronic format. Currently the transportation coordinator prints the manifests and distributes accordingly to counties and vendors. With the new software a utility will be required that imports electronic data into the routing and scheduling software for distribution to the counties and vendors by vendor code, eliminating the need to manually print and fax manifests to the counties. The transportation administrative office also enters and compiles all billing data for transmissions. There are two employees that deal primarily with contract billing for all of the thirteen counties and one contract vendor. Currently we use medical billing software. The offeror will be required to either build a utility that interfaces with existing billing software or to build a component that works with the offerors software. The Director and Assistant Director are indirectly involved with the day to day scheduling and billing, but do need to access financial information for management reporting, grant invoicing data, NTD reporting information, vehicle information and to have immediate access to all information if the need arises. The proposer shall define workstation, software and server equipment needed to efficiently operate proposed software.

2.8.2 Mobile Communications

The current communication with the drivers is currently Motorola two-way mobile radios, when outside the range of the repeater, the communication is cellular phone. There are dead areas within SCTDD as well as some of the neighboring counties. Where

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direct communication is not possible the system should allow for data to be uploaded to the mobile data terminals when vehicle is back in range.

2.8.3 Current Practices and Procedures in Trip Reservation and Scheduling

The current system of scheduling and dispatching for most locations is organized in an excel spreadsheet and printed for each driver. Some locations use a customized system to input client reservation and store client data but all locations currently schedule manually. Handwritten reservations and printed manifests are reviewed for time and location then scheduled at the discretion of the local county dispatcher.

2.8.4 Client Database

SCTDD does not currently have a complete client database that includes all modes. Currently we can export for our largest contract client database but all others will have to be compiled prior to start up of chosen system. SCTDD staff will work with vendor and county dispatchers to compile excel spreadsheets to include at a minimum client's first and last name, street address, city, state, zip code, social security number (as necessary), date of birth, date of death (as appropriate), telephone number, Medicaid number, alternate telephone number, client code (elderly, disabled, wheelchair use, etc.), consumer agency (agency that supports client – i.e. JARC, Amerigroup, Medicaid, Americhoice, Workforce, Workfirst, New Freedom, Voc-rehab and etc.), and comments that assist in the provision of transportation services for this client.

2.8.5 Reservations

Trip reservations are recorded manually and compiled for daily scheduling. Dispatchers and Schedulers perform the customer service functions of taking trip reservations, recording trip cancellations, fielding inquiries about the service, and responding to “where’s my ride” requests. SCTDD administrative staff receives trip manifests electronically and sends each agency trip reservations by fax. SCTDD administrative staff also fields inquiries about the transportation services and in turn has to call the county affiliated for information. General Public trip reservations are made primarily via telephone requests. Clients call their local public transportation office to schedule trips. Calls that come in to the SCTDD administrative office are directed to one of the thirteen county phone numbers. Contract trip requests are communicated to the system via facsimile transmission to the thirteen counties. After completion of the telephone call (if the trip is for the following 3-5 days), the dispatcher organizes the trip information in excel, a customized system, or files a paper copy for later scheduling. As a result, basic trip information is recorded twice and is a constant duplication of effort. The day prior to the actual trip the, dispatcher finalizes the schedule and then calls the client to inform them what the pickup time will be on the following day. Most return trips are scheduled at the same time as the originating trip. The exception is some trips, when passengers are not sure, due to unforeseen issues, what their return trip time could be. These passengers are then recorded as “will calls” and will call the dispatch office for the return trip after the appointment is completed. In addition, should a passenger see that they are running

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over on their appointments, they may call the dispatch office and change their scheduled pick up time to a “will call” pick up time.

2.8.6 Cancellations

When an individual calls in to cancel a trip the information is recorded on the master schedule. If the trip is a contract trip it is also recorded on the manifest. Depending on the situation or the contract program determines if the information is forwarded to SCTDD administrative staff. If a trip is cancelled, but the driver is in route to pick up the passenger, the trip is recorded as a no show. Information on that particular trip is entered using the time and mileage of when the driver was notified of the cancellation. Records are not readily accessible for reporting.

2.8.7 Client Inquiries

Inquiries about late arrivals, etc., may occasionally come into the system. When such calls are received, the dispatcher will refer to their master dispatch log to determine to which driver the trip was assigned. After locating the trip, the dispatcher will then communicate via two-way radio and if available cellular telephone to obtain an updated status of the estimated time of arrival (ETA).

2.8.8 Escorts/PCAs/Companions

Escorts are permitted to ride the public transit service, at no charge, with the passenger provided the escort has the same origin and destination as the customer. Companions are also permitted to ride on a fare-paying basis. It is noted on the manifest when a particular passenger requires an escort and would be an important aspect in a scheduling and dispatch system.

2.8.9 Scheduling

The scheduling practices at SCTDD can best be described as “slot” scheduling. In this manual method of scheduling, subscription orders are processed first. All trip orders contained in the daily spreadsheet templates are used to create the foundation of an individual run. The run assignments for all subscription trips have been pre-determined by the scheduler (typically at the time of acceptance of the subscription order). Times when the run is not assigned, subscription trips become open “slots”. These slots are then filled with consumer requests for casual demand response trips. The scheduler has some flexibility in assigning trips to a particular run given the flexible pick-up window. SCTDD does not have a standard and does not accurately monitor how often the actual final trip assignment results in a scheduled pick-up time outside this window. SCTDD currently relies on the dispatcher for a required pick and delivery report.

The scheduler will manually scan established runs seeking open slots that are geographically compatible with the trip under consideration. Once a suitable slot has

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been found, the scheduler will assign the trip accordingly. If the scheduler/dispatcher needs to make pick up time adjustments to fine tune the schedule, he/she will call the passenger to discuss the altered pick up time. No pick up changes are made without contact with the passenger. Once all trips have been assigned to a run, the scheduler enters the assigned run into the schedule for each trip and prints the schedule. Schedules and manifests are then placed in the driver's in-boxes for pick up at the beginning of their shifts. A copy of the master list is printed for the scheduler / dispatcher.

2.8.10 Dispatching

Dispatching at SCTDD involves communicating same day requests to the appropriate driver/run, noting late cancellations and no-shows, and inquiries generated from client requests. There is no direct or active oversight/control of the revenue fleet due to the lack of AVL capabilities at this time in all vehicles.

2.9 Post-Trip Passenger Accounting/Performance Evaluation

At the end of each driver's shift, driver manifests are turned into the office. The staff then reviews for errors or omissions, forwards to the data entry clerk to record actual pick-up and drop-off times and mileages. Operating data for each run, for each day, is manually tabulated.

2.10 Objectives for this Project/Functional Requirements

2.10.1 Overview

SCTDD seeks to continue to expand and improve its transportation operations while maintaining or increasing efficiency and customer service/satisfaction measures in service delivery. Specific areas of improvement sought in the implementation of automated scheduling and dispatch software include:

- Passenger/client database management
- Response time/no-show management/trip denial documentation
- Periodic re-optimization of manifest, standing orders/subscription management and dual option for scheduling between local county and administrative.
- Will-call return management with an alert for outstanding passenger pickups
- Performance monitoring/evaluation
- Driver Time Sheet.
- Driver Record Keeping, Background checks every five years, training documentation, physicals and etc.
- Increased ease in vehicle inventory.
- Increased ease in obtaining an unduplicated client report.
- Increase ease of management of trip details for contract agencies
- Increase ease of subscription trip distribution to counties and vendors by use of an import utility.

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- Increased ease of billing and invoicing. Mandatory solution for 837/835 billing & remittance capabilities. To include a complete approach to financial record keeping or propose a data transfer utility to export necessary data into existing medical billing software.
- Pick up / delivery report to include a minimum of trips completed, number and percentage of missed pickups, numbers of late pick ups or drop offs, number of missed appointments and average amount of time appointments late.
- Automated call ahead for trip confirmation.
- GIS based routing
- Preventative Maintenance and vehicle diagnostics.
- MDC and AVL Integration

2.10.2 Passenger/Client Database Management

There is considerable duplication associated with the task of recording new client information and trip reservation details at the present time. The client and trip reservation information may be evaluated and handled up to two or three times for every trip order taken by the staff. This could potentially lead to mistakes in data entry and error in transcribing various documents. In addition to being able to recall more details for each client for purposes of trip booking and record keeping, most scheduling software will contain tools for client management, including the ability to periodically update eligibility and perform mass mailings on system newsletters, policy updates, etc. The transit system could benefit from this functionality.

2.10.3 Billing and Remittance Management

Manifests for SCTDD originate at the administrative office and are dispensed by fax or email to the appropriate county or vendor. Abbreviations are used as vendor codes in trip assignment and billing. The vendor then schedules the trip or contacts the SCTDD administrative office to have the trip reassigned to another county or vendor. Once the trip is completed, the county or vendor records mileage, pick-up and drop-off times, and rate information on the paper manifest and sends via mail back to the SCTDD administrative office for data entry billing and transmission to the appropriate supporting agency. Software should offer a solution to import manifest for distributions and on completion of the trip by the county, the county should be able to confirm the trip for billing. System should allow the SCTDD administrative office to review county TennCare billing for submission directly from software or to export a TennCare / Medicaid billing upload.

2.10.4 Response Time/No-Show/Cancellation Management

A monitoring of the number of late and missed trips is required. A current policy regarding no-shows and cancellations requires SCTDD to monitor the number of no-shows and cancellations accumulated within a given period of time. SCTDD is also required to monitor trip statistics. SCTDD attempts to ensure that all trips are provided

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within a window of the appointment time. A client cannot arrive to their appointment, no more than one hour before their appointment time and should not wait any longer than one hour after the appointment is completed. These tabulations must be performed manually for each individual in the system under current practices. Automated scheduling software will provide tools to readily manage these functions, allowing for adherence to the current no-show/cancellation policy as well as data to make any needed changes to the policies.

2.10.5 Periodic Re-Optimization of Standing Orders/Subscription Management

Current methods of scheduling consist of manual scheduling techniques. Automated trip assignment to the best route will result in more efficient utilization of Demand Response vehicles. Primarily reservations will be entered at the county level but on occasion there may be a need for administrative staff to enter trips. Optimization of schedules for each county will be performed at the county level but there may be a need for administrative staff to optimize. Additionally, SCTDD will benefit from the provision of a dual option to optimize schedules, monitor capacity and subscription rates (fares) on a real time basis from the administrative office. With greater management oversight, it may be determined at some point that optimization of schedules for all counties is done at the administrative office but a dual option is required.

2.10.6 Will-Call Return Management

SCTDD permits customers to call the transportation system following completion of some medical appointments or for other trips when a precise return time cannot be stipulated at the time of reservation. These so-called “will-call” return trips are then scheduled when received. SCTDD seeks to improve its management of will-call returns by introducing the capability of real-time interactive scheduling and system display of “unscheduled” trips, and the ability to periodically re-schedule all existing trips. SCTDD also requires an alert for dispatchers that clients have not been picked up. SCTDD wants to insure that will call clients are never forgotten or left behind due to absentmindedness and human error.

2.10.7 Performance Monitoring/Evaluation

Effective performance evaluation is a critical factor in efficient Demand Response operations. As noted earlier, completed trip sheets or manifests are processed for post trip data entry. Integrated database functionality, combined with informative report generation capabilities, could significantly enhance SCTDD’s ability to respond to funding agencies and agency reporting requirements and could work to facilitate development of a more rigorous process of internal monitoring of operations. Pick-up and delivery needs to be accurately monitored and available to SCTDD administrative staff on a timely basis.

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2.10.8 Vehicle Equipment

All vehicle equipment proposed shall be constructed to meet the harsh operational conditions found in the transit environment. All Vendor-provided on-board equipment shall operate properly under the environmental conditions encountered on board the vehicles including conditions pertaining to temperature, humidity, dust/dirt, power variations, shock, vibration, and EMI/RFI interference. The proposer shall define the power and environmental specifications of the proposed vehicle equipment.

The Vendor shall provide all vehicle wiring and connectors required for the equipment. The wiring and connectors shall be appropriate to the transit environment where the equipment is to be installed. Shielded cables shall be provided where necessary to avoid interference problems. Provided antennas shall be of the low profile, fixed mount variety.

In addition to the equipment that the Vendor is explicitly required to furnish by this Specification, the Vendor shall provide any additional equipment that is required to install and/or operate the Vendor-provided equipment on the Public Transportation Vehicles. All installed on-board equipment shall be easily accessible, modular, and easily removable to facilitate maintenance and repair of the equipment.

The availability and location of space for equipment installation will differ according to the various types of vehicles in SCTDD's fleet and the dimensions of the Vendor provided equipment. The Vendor shall be responsible for inspecting each type of vehicle and for recommending how and where the equipment can be mounted. The installation details and placement of on-board equipment shall be included in the System Design document.

3.0 System Specifications

3.1 System Specifications

3.1.1 System Integration

SCTDD requires a computer aided Routing and scheduling system with GPS, AVL, and GIS integration, fully functional and operational in real time. The proposer shall accept full responsibility for integrating all components into a fully functional system. The SCTDD system will be ASP hosted, at the SCTDD administrative office with 13 satellite locations. The system should have a dual entry option between the county and the administrative office for reservations, scheduling, reports, vehicle inventory, vehicle maintenance, billing and etc.

3.1.2 GIS Functionality.

GIS and mapping functions shall be provided as part of the software system proposed by the vendor. At a minimum, the service area maps shall encompass all of Tennessee. Additional maps for the neighboring states may be necessary for medical transportation. However, it may be possible, given the software capabilities, to manually schedule out of

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state trips without the use of GIS. SCTDD considers mapping capabilities and the dispatcher's abilities to identify approximate current locations, based on last known point in the schedule, essential. Additionally, GPS / AVL technology should be able to integrate with the proposer's GIS base maps. SCTDD requires that the service area boundary be readily identifiable and graphic or query function must be present to determine if requested trip origins and destinations are within the service area. The system software should allow for county/ vendor assignment. Vehicles and drivers that are based in a particular county should start and end in that particular county; however, on occasion this must be altered. Trips downloaded from electronic trip request should sort by county or vendor. The software must incorporate routing and scheduling with GIS/GPS/AVL active (real-time) tracking capabilities and allow user access to the service area through a map view. The GIS map view must be capable of displaying individual routes or runs, and/or bus stops; specific street address; or other specified user-defined physical features.

In addition to providing support to the software's primary scheduling and customer information functions, the GIS functionality of the proposed software must support other GIS analyses. SCTDD desires that the software be capable of:

- Printing/producing camera ready printed output
- Providing geographically based query functions
- Displaying census or other demographic/socio-economic data in thematic layers to assist staff to better understand area characteristics

System shall be capable of importing and exporting data and graphic images from and to other software platforms. System shall be capable of printing maps to a wide range of printers/plotter devices.

3.1.2.1 Map Features and Attributes

Access to maps should be seamless from within the scheduling software (e.g., user should be able to generate needed maps with single mouse click or menu selection).

Base maps should contain current attributes on street segments, addressing, speed limits, etc. Vendor shall be responsible for supplying a fully up-to-date map complete with all attributes necessary for point-to-point scheduling using coordinate geography (not zones). Street network shall permit definition of segment characteristics, such as speed limits, one-way direction, etc. Vendor shall outline in its proposal how SCTDD should expect to receive updates on maps.

System shall provide methods of allowing user editing of the base map to add new streets, change municipal boundaries, define incomplete address ranges (if they exist), etc.

GIS functionality shall include ability to develop overlays or coverage of municipal census tracts, or block groups and zip code boundaries.

As noted previously in the RFP, SCTDD defines and needs the capability to handle various rates (fares). GIS functionality shall include ability to define service-based fares,

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such as set fares, zone fares, contract fares, varying fares, in county, out of county etc. This functionality is in addition to consideration of client codes such as elderly, disabled, child, etc.

System shall permit definition and display of physical features that act as barriers to transportation.

System shall be capable of defining and displaying point files, indicating system time points, major intersections, possible future major transfer points, and major destinations of travel, or other points of interest.

3.1.2.2 Geocoding

Service area map shall contain definitions of street segment name and address ranges. System shall have full geocoding capability allowing SCTDD to enter an address and locate the address on the map. System shall be capable of handling various abbreviations and spellings of names (*e.g.*, St. for Street, etc) in the geocoding process. System shall permit manual assignment of latitude and longitude coordinates in the event an address cannot be geocoded based on existing map address range attributes. Geocoding should include all 95 counties in the State of Tennessee.

3.1.2.3 Distance Computation

Systems shall have the capability of allowing user to calculate distance between points or along a specified portion of the street or route network. System shall include a capability to compare route scenarios such as shortest distance, shortest time, barriers or construction impacts. System shall also have the ability to override mileage calculations, for manual mileage calculations in cases of mileage disputes with subcontractors or known GPS errors.

3.1.2.4 Graphical Display of Trips

For any trip reservation, system shall be capable of providing, using the GIS capabilities of the software, a map image of the trip origin and/or destination in real time.

3.1.3 Client Database

SCTDD does not maintain a complete client database. SCTDD will compile in excel recommended data. The selected proposer, as soon as practical after notice to proceed, shall be responsible for providing a data conversion strategy/plan in order for staff to begin to compile the necessary information that needs to be transferred in the proposer's software in order to complete the client database elements required for use in scheduling, trip assignment, and reporting. SCTDD will provide sample data for testing to insure a smooth conversion process. Database conversion should be included in cost. Client database shall be capable of providing a full range of data elements for each client in the system. Information should include full identification (including social security number

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(as needed), TennCare / Medicaid numbers, birth date, address, contact, third party/emergency contacts, disability status, mobility aides used, program affiliation, and third party contract payee options. SCTDD will need assistance in defining the required fields for data to populate the client database fields. Vendor shall be responsible for providing a fully functional client file suitable to SCTDD transit system needs. System shall be capable of producing reports based upon client, sponsoring agency, transportation provider, origins or destinations, cities, or zip code, trip purpose, billing rules, birth date and status. A reservation/confirmation number for subscription trips should be as stated in the electronic file and be the same authorization number as assigned by the call center/broker. Other trips will bear unique numbers generated by the system. Date of trip in combination with reservation/confirmation number will uniquely identify all other trips in the system.

3.1.4 Billing Component or Data Interchange Utility

The system should allow entry of one or more billing codes for each client, indicating a third party to be billed for certain trip types. All third-party billing will be finalized at the SCTDD administrative office. The system should allow for locations to confirm trips. Under certain contracts SCTDD is allowed to bill for no shows and under certain contracts cancellations must be documented. The system should allow for this requirement. The system shall provide pop-up windows or list boxes to permit multiple selections from among a list of pre-defined trip types and selection of billing codes and corresponding rates (fares) for each selected trip type. There are situations where rates need to be adjusted and the system should allow for this requirement.

TennCare / Medicaid billing requires a particular billing process. The proposer can choose to build a component for billing or build a utility. The preferred method is a utility that imports and exports necessary data into the existing medical billing system. Proposer should offer a solution to import manifest from the call center on the front end for distributions by location/vendor code and upon completion of the trip the location/vendor should be able to confirm the trip for billing, no shows, and cancellations. System should allow the SCTDD administrative office to review and compile TennCare billing for submission directly from software or to export a billing upload. If the vendor chooses to build a billing component, it must on the front end, import trips from the call center and be capable of generating the 837 submission as well as to receive the 835 remittance and match the claims on the back end so you can easily print and see which claims are unpaid. In the case of unpaid claims, the system should be able to correct and resubmit. System should be able to generate reports by code, county, insurance company, clearinghouse, and etc.

3.1.5 Trip Reservations

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3.1.5.1 Real Time Trip Details Entry

System shall permit trip booking while SCTDD personnel are on the telephone with the client/customer. System must be capable of processing both subscription (standing-order) and demand response trips in this manner. System shall be capable of processing same day trip orders or past day trip orders.

System shall permit SCTDD staff to access client records by entering client last name, telephone number, address, social security number or other identification. Current protocols involve booking trips using client last name. However, due to common proper names, additional details must be available to the user in order to distinguish between customers with the same first and last name.

Pop-up windows or list boxes shall be used to display lists of clients for easy access and selection. Once selected, pertinent data from the client database file shall be accessible to the reservation clerk, either through on-screen display or pop-up window.

3.1.5.2 Default and Common Pick-Up Address

System shall default to the client's home address as the pick-up location. System shall provide ability to enter alternative addresses through keystroke entry or through use of list boxes of alternative pick-up addresses associated with that client (*e.g.*, common travel destinations of that customer).

3.1.5.3 Client Trip Destinations

System shall be capable of displaying, through pop-up window, list box, or similar alternative, a list of most frequent client travel destinations and/or recent destinations of travel for easy insertion into the destination field. User should be able to select destination from these fields and populate trip destination fields through this selection process.

3.1.5.4 Pick-Up Time and Allowances

System shall be capable of incorporating a user-specified policy on pick-up time negotiation with the client. System must be capable of incorporating multiple policies.

3.1.5.5 Advance Reservations

System shall be capable of accepting trip reservations for an open-ended period of time in advance of the requested trip date. Most trips entered are no more than 30-60 days in advance.

3.1.5.6 Standing Order Trip Entry

System shall be capable of accepting standing orders. System shall permit day of the week type travel dates and monthly calendar based travel date, example (*e.g.*, first and third Wednesday of each month or no end date) (Monday, Wednesday, Friday or daily).

System shall be capable of setting finite limits on the length of subscription orders.

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Systems shall permit SCTDD personnel to “turn off,” on a temporary basis, a client’s standing order. System shall permit entry of both a start date and end date of the time period when the client will not take the standing order trip.

3.1.5.7 Go and Return Trip Entry

System shall be capable of scheduling both go and return trips with ease. The current system allows the user to input the go trip, click on a “return trip” button to then enter only the time of pick up for the return trip. All information on the client’s origin and destination are reversed for the return trip. This process saves the user time in re-entering addresses for each trip.

3.1.5.8 Duplicate Trip Option/Companion Trip Details

System shall be capable of duplicating trips so that user can schedule multiple passengers from one address (i.e. – enter one passenger’s trip and duplicate for additional passengers.) This duplication should be available for go and return trips. Schedule must reflect a trip for each passenger.

3.1.5.9 Trip Reservation Editing

System shall provide means for an SCTDD customer service representative to easily and quickly access existing trip reservations for the client in order to edit travel destination, trip dates, and/or travel times. System shall maintain a log of changes including identifying who made the change.

System shall permit cancellation of any trip in the system in advance consistent with SCTDD policies on trip cancellations. System shall maintain a cancellation record, by client, to facilitate management of cancellation policies.

3.1.5.10 Suspended Service

System shall be capable of temporarily suspending a client’s eligibility for service on transit vehicles. System shall permit entry of both a start date and end date of the time period when the client’s ridership privileges are suspended. During this period, system shall not permit trip booking, providing a pop-up alarm for the customer service representative.

3.1.5.11 Escorts / Personal Care Attendants and Companions

System shall be capable, during the course of the reservation entry process, of allowing customer service agents to add personal care attendants and companions to the trip order.

3.1.5.12 Fare Computation

System, at the conclusion of trip booking, shall provide a confirmation of the booking with fare(s), if applicable, to be paid by the user(s), or companion. If for a contract trip, contract rate should be inserted in place of fare. System shall be capable of calculating coordinated trip fares.

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3.1.6 Scheduling

3.1.6.1 Automated Batch Scheduling

System shall be capable of scheduling, in batch mode on a next-day basis, or as trips are added (up to one-hour prior to requested pick-up time) all reservations for a designated travel day. Scheduling should be based on the actual street network in SCTDD service area (e.g., actual latitude and longitude- coordinates, not triangulation), parameters associated with network segments as established in the GIS system, physical barriers, speed parameters, time of day, and appropriate dwell times for the boarding and alighting of passengers.

3.1.6.2 Subscription Trips

System shall permit the establishment of base runs or subscription templates based on existing standing orders. System shall be capable of evaluating base runs in order to optimize runs in terms of parameter determined by SCTDD. The parameters (such as least distance traveled, shortest travel time and least time on board for each passenger) will allow SCTDD to optimize its operations at a point that is a balance between efficiency and customer service.

3.1.6.3 Unscheduled Trips

System shall permit trips/drivers/vehicles to be placed in the system schedule but remain unassigned to a specific run. This can be accomplished through a manual setting of the trip to “unassigned”, “will-call”, "available for use" category or similar means.

3.1.6.4 Same Day Trip Orders

System shall be capable of taking trip orders on a same day basis and dynamically scheduling the trip into existing schedules. System shall consider existing path of route travel, existing customer assigned trips, system policies on travel and pick up time windows in making the scheduling assignment. It is essential that the system be capable of rapidly determining and advising the call taker of best route to add the trip to allow for trip negotiation during the phone call.

When a same day order is accepted and assigned to a run (or unassigned run is assigned to a run), it is imperative that the system shall be capable of dynamically updating the remaining scheduled pick-ups and drop-offs on the run’s schedule. This functionality is essential to SCTDD.

3.1.6.5 Schedules

System shall be capable of producing schedules, by run, in chronological order, indicating projected arrival time of SCTDD vehicles at each origin and destination. System should be capable of assignment of vehicles, drivers and clients based out of specific locations due to driver and/or client limitations and/or preferences. System should allow for lunch/dinner and or breaks. Once generated, system shall be able to

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display all schedules for all runs on a given day. Display shall contain all pertinent run data and contain necessary menu and edit tools to provide manual adjustments, as necessary, to the scheduled runs.

3.1.6.6 Validation/Violations

System shall have internal validation controls to insure that schedules do not violate labor laws and work rules. Additionally, system shall have capacity to evaluate overall travel time for individual passengers to insure that system travel time limitations are not exceeded.

System should be capable of generating or identifying trips that violate system parameters so that staff can attempt to remedy the violation.

3.1.6.7 Manual Override

System shall provide the capability of SCTDD scheduling staff to manually move trips after schedule development. When such overrides are made, the system shall record and time stamp the override action in the trip record (or in an associated database) in order to establish a historical account of changes to the original (booked) reservation.

3.1.6.8 Labor Rules/Third Party Contract Requirements

System shall be capable of scheduling trips to establish runs taking into account SCTDD's third party contractor labor rules on work hours, breaks, and employee work hours.

3.1.6.9 Vehicle Assignment

In assigning passengers to vehicles and/or vehicles to system runs, system shall be capable of recognizing the need for accessible vehicles, vehicle capacity, vehicle location and etc. in making said assignments.

3.1.6.10 Editing Schedules

System shall be capable of adding trips to a previously generated schedule or re-assigning trips from one run to another in dynamic fashion. The system shall be capable of dynamically updating the remaining scheduled pick-ups and drop-offs on the run's schedule.

System shall be capable of evaluating individual trip parameters and select runs that best satisfy the requirements of the reservation and maintaining the integrity of existing reservations on the same run. If system generates a range of alternatives, system shall present alternatives in rank order with the highest ranked alternative indicating the "best" selection.

3.1.6.11 Dynamic Update of All Schedules

The system shall be capable of updating the schedules and all impacted trips after the system updates and all previously scheduled trips must remain on time. Schedules should

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not violate travel time rules, and etc.

3.1.6.12 Unscheduled Trips

If the system cannot schedule all orders for the day of travel being scheduled, the system shall be capable of displaying all such trips in its own dataset so that staff may consider manual overrides to the schedule and/or assignment of the trip.

3.1.7 Dispatching

3.1.7.1 Access to Dispatch Information

System shall allow dispatcher's access to run itineraries based on run number, vehicle number, or client name. System shall be capable of displaying the run number, number of passengers on the run, scheduled arrival time, estimated time of arrival and any special circumstances. Information displays should associate with the time of day (*e.g.*, 10:00 A.M. events are displayed at the top of the list window when the dispatcher makes queries at 10:00 A.M.).

3.1.7.2 Cancellations/No-Shows

System shall be capable of allowing dispatchers to process cancellations (cancellations received prior to system policy time), no show/late calls (cancellations received after the system policy time) and no-shows. System shall maintain a cancellation record and a no show record, by client, to facilitate management of cancellation and no show policies.

3.1.7.3 Same Day Reservation Changes/Add-Ons

System shall be capable of automatically displaying to the dispatcher/scheduler cancellations, same day reservations, and will-call return trips waiting for vehicle assignment (*e.g.*, trip reservations made but not yet assigned/scheduled).

3.1.7.4 Service Emergencies/Vehicle Breakdowns/Unexpected Illness

System shall be capable of identifying runs when a vehicle is pulled from service due to an emergency, unexpected illness or vehicle breakdown. Dispatcher shall have the capability to dynamically re-schedule all trips impacted by this service emergency.

3.1.7.5 Removal of Vehicles from Service

If the dispatcher is advised that a vehicle is not fit for revenue service, system shall be capable of programming a vehicle substitution on the affected run(s).

3.2 Automated Call Feature & Interactive Voice Response System

SCTDD desires an automated "call ahead" system that integrates with the transit management system proposed. The automated call system should assist with trip

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confirmations and cancelations. Proposer should offer an automated call feature; to call clients with pick up times the day or afternoon prior to the trip. The system should offer retry if the client is unavailable or the phone is busy. The system should allow the client to confirm or cancel a trip by voice or key tone. The system should be capable and upgradeable for both inbound and outbound. The system should meet all requirements set forth by the Americans with Disabilities Act.

This solution should be listed as an option on the cost proposal. The solution should include phone system requirements and the cost of software, service and system hardware required to operate and maintain the system

3.3 System Parameters

System shall have capability for user specified settings that govern the scheduling process. For example, SCTDD typically operates at the posted speed limits. However, they may be operated at a lower speed for safety reasons (road conditions, pedestrians, bicyclists, weather conditions, etc).

Vendors should specify the range of parameters that can be user set and how the vendor will assist SCTDD in the initial setting of these parameters to ensure maximum scheduling efficiency in daily operations.

3.4 Reports

3.4.1 Standard Reports

Software should be capable of generating a range of management and service reports necessary to permit sufficient oversight of the Demand Response service. Current reports required by SCTDD: 1) List of trips provided, by date, by agency, by special needs, by fare type, by driver, by vehicle. This list includes column indicating if trip was completed, a late trip, a no-show, a no-show late call, or a missed trip, date of transportation, client name, address, pick up address, scheduled pick up time, actual pick up time, drop off address, scheduled drop off time, actual drop off time, miles traveled, passenger hours (out to 2 decimals), customer code (elderly, disabled, wheelchair etc.); 2) List of passenger trips provided with same details as listed in 1; 3) List of trips provided by provider with same details as listed in 1.

Each of these reports tallies at the bottom of the report the summary of each column, including number of trips in each category (completed, late, etc.), number of passengers in each customer code, total miles and passenger hours, number of in-county and out of county trips, etc.

3.4.2 TennCare Subcontractor/Broker Reports

System must be capable of the following:

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- A) Support multiple regions with multiple mileage rates and caps on allowable costs.
- B) Report format availability for in and out of county trips
- C) Calculate payments of mileage reimbursements to JARC, Families First and private auto providers.
- D) Provide various types of electronic manifests for counties and subcontractors.
- E) Import subcontractor completed trip information.
- F) Create payment batches for payments to subcontractors and other providers.
- G) Create state required reports (i.e.: TennCare, NTD, Monthly Data) encounter monthly data and summary reports.
- H) Record, report and apply to scheduling preferred providers.
- I) Mileage reports by client type, wheelchair, ambulatory, disabled, county, and (i.e.: funding source, TennCare, Public, JARC, etc.) subscription type.
- J) Trip count by client type, wheelchair, ambulatory, disabled, county, and (i.e.: funding source, TennCare, Public, JARC, etc.) subscription type.
- K) Revenue by client type, wheelchair, ambulatory, disabled, county, and (i.e.: funding source, TennCare, Public, JARC, etc.) subscription type.

3.4.3 Ad-Hoc Reports

System shall be capable of permitting the user to create, format, and print user-defined reports based on any data element contained in the database.

3.5 Hardware

The proposer shall specify the necessary hardware to effectively create an optimal computing environment and document additional hardware and software necessary for installation at our location. SCTDD will host the system at the administrative office and each county will connect via DSL. Vendor shall include in the RFP response, a complete list of technical specifications for additional computer hardware that will generate best performance in the software's runtime environment. Vendor shall indicate how the current hardware is or is not adequate (as applicable) to support the proposed program. SCTDD would like to reserve the right to acquire all necessary additional hardware through local government procurement options or other sources. Proposer should offer as an option to the proposal a cost for all necessary equipment.

3.6 In-Vehicle Systems / User Interface

The proposer shall provide transit type Mobile Data Computers for all vehicles described in this RFP. The MDC shall serve as the interface between the Vehicle Operators and the

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Dispatchers. The MDC shall be securely mounted on rigid SCTDD-provided support brackets that are fitted for each type and variation of vehicle within the fleet. MDC

should allow for wireless upgrades. The Mobile Data Terminal (MDC) component shall control the in-vehicle components, and provide a user interface for the vehicle operators. The following sections describe the various functions expected to be performed by the MDC.

The proposer shall provide a display that can display a minimum of 40 alphanumeric characters at a time. This display shall display messages received from the Dispatchers, error messages, prompts, status messages, time (in 24-hour format), and other text as required, and Vehicle Operator entries in real time. This display shall be designed to be readily readable by the Operators in lighting conditions ranging from bright sunlight to total darkness and by Operators wearing sunglasses including polarized, un-polarized, "blue-block" and other conventional types of sunglasses. The display units shall be designed to minimize reflective glare from the front surface of the display. Display controls for brightness and contrast shall be included. Adjustment of display brightness and contrast over the useful range of settings shall be possible but adjustment of display brightness and contrast to settings where the display is unreadable shall be prevented.

The MDC display characters shall be at least ¼" in height. Larger MDC display characters shall be utilized as necessary to meet accepted human factors design criteria for personnel with 20/20 vision at the distance and angle seated Operators would be from the MDC when they are mounted in the vehicles. SCTDD desires a dual user option for data entry. Touch screen for quick access and function key buttons for those unsuccessful with touch screen. Function keys/buttons should be backlit for Operator entry of command and control functions. The function keys shall be software controllable, functions commonly required by the Operators. Any buttons shall be durable, wear-resistant and large enough for convenient Operator selection. The buttons shall be spaced sufficiently far apart to minimize inadvertent selection of adjacent buttons. The backlighting of the buttons shall be adjustable by the Operators. The MDC shall produce audible tones when a message is received from the Dispatcher that requires the Operator's attention.

3.6.1 Data Messaging

The MDC should be user friendly and provide the Operators with the means to display, select and send pre-defined canned messages to the Dispatchers. Means shall be provided for displaying a particular message and for indexing forwards and backwards in the list of canned messages. The proposer-provided equipment shall support the definition and storage of at least 16 canned messages of 30 characters each. Convenient mechanisms shall be provided to allow SCTDD to change the definition of each canned message and to add new messages up to the maximum number of messages supported. The specific canned messages to be supported will be defined after contract award. The MDC shall store and support selective retrieval of messages received from the Dispatcher. Storage for at least 8 messages of 30 characters each shall be provided. The Operators shall be able to selectively view, acknowledge, respond yes or no, save, and delete messages from the MDC. Means for scrolling a message when the message is longer than what can be

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3.6.2 Automatic Vehicle Location

The proposer shall include a GPS receiver and antenna on the vehicles for providing location data to the MDC. The GPS Receiver shall be packaged in the MDC. The GPS Receiver / Logic Unit shall forward location data in real time to the fixed end via the data communications system. Location reports shall be based on time, distance and event. The Location shall use the Global Positioning System to determine the vehicle location, time, heading, and speed. It shall report the information over the mobile data communications network:

- At regularly scheduled intervals (programmable in seconds);
- When a vehicle has moved a predetermined distance (programmable in feet)
- On driver-initiated events (logon, logoff, arrive, depart, etc.).

The vendor shall state the specified accuracy of the positioning system in the proposal.

3.6.3 Location Reports

The system shall be capable of real time GPS tracking and generate a Location report consisting of the current GPS status and last known vehicle location, time, heading, and speed. The current GPS status (Good GPS or Lost Lock) shall reflect the latest condition of the GPS receiver when the Location report was generated. A Lost Lock status shall be used to identify that the GPS receiver was unable to detect the current vehicle location due to blockage of the satellite signals (vehicle is inside a garage or under an overpass, trees or parked next to a tall building). The last known good GPS location, time, heading, and speed shall always be included in the Location report even if the GPS status is reported as Lost Lock.

3.6.4 Covert Alarm & Microphone

The covert alarm switch shall be mounted at a location approved by each agency.

The covert alarm switch shall be of the normally open type, with (1) a small parallel resistance that creates a monitoring current with an open circuit and (2) a closed circuit when the switch is depressed by the driver.

The covert alarm switch circuit shall incorporate a fuse, so that a short circuit condition in the wiring shall result in blowing the fuse.

The MDC shall detect if the circuit is closed for at least one (1) second and automatically send a covert alarm message to dispatch and place the MDC into the covert alarm mode.

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The MDC shall repeat sending the covert alarm message until it receives an acknowledgement message from dispatch.

The MDC shall detect an open or short circuit due to a wiring fault, from the absence of the monitoring current, and automatically send a faulty covert alarm message to dispatch.

When the MDC is in the covert alarm mode, there shall be no indication on the display other than an unobtrusive symbol or icon approved by the agencies.

When the MDC is in the covert alarm mode, the MDC shall use a configurable alternate time between location reports.

When the MDC is in the covert alarm mode, the MDC shall activate the covert microphone. Upon command from the dispatch software, the MDC shall send covert microphone audio over the transmit frequency of the existing vehicle voice radio, or stop sending covert microphone audio.

The MDC shall only revert from covert alarm mode upon command from dispatch.

Optionally, when a covert alarm is activated, a strobe red light is activated in the dispatch room.

Upon receiving a covert alarm message from an MDC, the system shall send an acknowledgement message to the MDC and provide a clear and noticeable indication to the dispatcher (e.g., a distinct flashing icon for that vehicle on the map display).

The system shall be able to command the MDC to begin or end the sending of covert microphone audio over the transmit frequency of the existing voice radio.

The system shall be able to command the MDC to revert from covert alarm mode.

3.6.5 Rate Of Location Report

The system shall generate the Location reports at programmable intervals. SCTDD prefers to have the location report intervals be programmable as defined below. The vehicles shall initiate a Location report once every “x” seconds, where “x” is a programmable whole number programmed at system setup. Location reports shall be sent at least every 2 minutes. The vehicle shall also initiate a Location report once every “y” feet, where “y” is a programmable whole number. Location reports shall be sent at least every mile. The vehicle shall also include a Location report with any driver-initiated events (logon, logoff, arrive, depart, etc.). Proposers shall describe in their proposal in detail the location reports that are generated (including the data that is in the report) and the intervals at which the reports are generated. If the interval rates differ from that defined above, the proposer shall describe why the interval rates provided are as good as or better than defined here.

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3.6.6 AVL Communication Exceptions

Proposers shall describe in their proposal what happens to location reports when the vehicle attempts to send a Location report while out of radio coverage area.

3.6.7 Log On / Log Off

The MDC shall provide a means for the operator to log on to the vehicle. This log on shall include the driver's ID, run that the driver will be operating, and the vehicles starting odometer reading. This log on information shall be sent to dispatch system over the mobile data communications network.

The MDC shall also provide a means for the operator to log off of the vehicle at the end of the operational period, with an ending odometer reading.

3.6.8 Mileage Tracking

The MDC shall be capable of tracking and reporting the mileage traveled by the vehicle. Connecting the MDC to the vehicle odometer or through GPS may do this. Current odometer reading shall be included with driver-initiated events (logon, logoff, arrive, depart, etc.). The proposer shall in their proposal describe how mileage traveled is collected and reported as well as the accuracy of the mileage data.

Note: All new vehicles will have electronic speedometers and odometers.

3.6.9 Demand Response/Demand Response Functions

The MDC shall interface to the Transportation Scheduling and Management Software via the interface and provide real time communications of trip manifest, trip status, text messages, and AVL location reports. The MDC shall provide simple to use interface to allow vehicle operators to register when the vehicle has arrived at the pick-up or drop-off location. In addition, the mobile data terminal working in concert with the radio network and dispatching software shall perform the following functions:

- Log the vehicle operator in or out.
- Pre-Trip Inspection to include enhancements to the customized MDT screen for operator pre-trip inspection input
- Download a vehicle's work schedule/manifest at the start of a shift or throughout the day.
- Record vehicle diagnostic such as engine temperature, oil pressure as well as record speed, odometer, preventive maintenance alerts and any market added features available.
- Add, delete, or change pick-up and drop-off information throughout the day.
- Register the time and mileage when departing or arriving.
- Display in an easy to view large screen, detailed trip information.
- Signal the vehicle operator of incoming text messages
- Signal the dispatcher of the following conditions: arrival, departure, passenger late, no show, and passenger-canceled trip.

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- Signal the dispatcher with canned text messages of SCTDD defined context.

The system's design shall allow Operators to enter numeric data following the selection of specific function buttons in order to provide data pertaining to the specific function (ex: entering companion count when departing pickup).

3.7 Communications

The proposer should propose up to three options for communication and data transfer from scheduling system software to and from MDC. The first option, should be a dual system that will interface with current UHF two-way radio system in conjunction with cellular communications to transmit data between the administrative office, county offices and vehicles. The system should meet the highest current standards for operation in the public-transit service environment. The system should use UHF when in reach of the repeater and switch to cellular when out of reach of the repeater. The MDC/AVL system shall store data when out of range of both repeater and/or cellular for transmittal upon returning into range. SCTDD would like to explore using existing communication infrastructure as the main source of voice and data communication to cut recurring monthly cost. SCTDD feels this will reduce monthly cellular cost and provide a more reliable communication network in the event the cellular service is immobilized however the initial cost of UHF verses cellular will be evaluated. Proposers should provide information on the quantity and speed of data to be transmitted and assist SCTDD in determining monthly operating costs for first option data communications. SCTDD currently possess radio frequencies, SCTDD's current (operational) transmit frequency is a UHF 450mhz band. In the proposal, the proposer is required to identify the number and potential frequencies of radio channels required to support this proposed system. This must be sized to accommodate both present and future. New data frequencies will be required for option one; proposer shall pursue and be responsible for acquiring the new data frequencies. SCTDD has MTR 2000 Motorola repeaters in 12 of the 13 counties served but not data frequencies. If individual repeaters are needed for data proposer will need to include such cost. Each vehicle is currently equipped with a 2004 Motorola CMD 1550. Proposer should list all cost associated with this option.

The second option, will rely solely on two-way radio system the proposer shall describe specifications, frequencies needed as stated in option one. The option should meet all of the highest current standards and the needs of SCTDD. The proposer must demonstrate in their proposal the ability to meet the needs, initial cost of implementation and expected annual cost to operate.

The third option, will rely solely on cellular the proposer shall describe specifications. The option should meet all of the highest current standards and the needs of SCTDD. In either case proposer must demonstrate in their proposal the ability to meet the needs, initial cost of implementation and expected annual cost to operate.

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3.8 Products Offered

3.8.1 Use of Existing Market Products

SCTDD does not desire to purchase products that represent beta versions or products that have not been installed in other operational environments in other transit systems in the United States.

3.8.2 Current Version

SCTDD requires the proposer to offer the latest, tested release version of each software product/module included in this proposal. Proposer shall include the estimated date of the next update to proposer's offered software.

4.0 Implementation Plan

4.1 Project Manager

4.1.1 Designation of Project Manager

The proposer shall name one (1) individual from the firm who shall have complete authority and control over all aspects of customization, data conversion, installation, testing, and training. This individual shall be named in the proposal and a resume of the individual's qualifications to oversee this project shall be detailed. A list of other project installations directly under the control of this individual shall be named in the proposal.

4.1.2 Single Point of Contact

The proposer's project manager shall be the sole point of contact between the vendor and SCTDD for all business matters concerning the purchase, customization, installation, testing, and training phases of this project.

SCTDD recognizes that other individuals will lead some phases of work during the project. It is our intent, however, to have one individual in an authoritative position to represent the proposer in all aspects of the project.

4.2 Warranty

SCTDD requires the successful proposer to warrant the software product(s) offered to perform as described in the proposal response for a minimum of 1 (one) year from date of "live" operation. Support and Maintenance shall be available from the Vendor for a period of at least 10 (ten) years. Costs for years 2 to 5 must be included in the **Price Proposal**.

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4.3 Technical Support

4.3.1 Scope

SCTDD requires that the proposer offer a minimum of one full year of full technical support as part of its price proposal. This technical support shall include, but not necessarily be limited to:

- Toll-free, telephone support with service technician/engineer at a minimum during SCTDD operating hours and an emergency contact for after hours 24/7 services.
- Support response and actual work response should be no more than four hours on critical system issues.
- Provision of diagnostics/repairs via remote control access to system hardware/software.
- On-site technical support when required.
- Product upgrades, new releases, patches, etc. when issued by the vendor throughout the first three (3) years of implementation.

4.3.2 Local & Escalated Support

The Contractor shall arrange for local support from one or more qualified firms to be available on a four-hour response basis when needed by the procuring transit agency to assist with fault diagnosis or component replacement. The proposal must include a list of the local support firms, their support responsibilities and the response arrangements.

If a local support firm does not respond within the agreed response timeframe, or when a local support firm is not able to provide the needed support, the Contractor shall provide supplementary support in accordance with an agreed escalation procedure. The escalation procedure can initially involve telephone support, but must culminate the Contractor providing on-site support if needed. The proposal must define the proposed support escalation procedure.

4.4 Installation, Testing, and Acceptance

4.4.1 Access to SCTDD Office Location

Throughout the period of software installation, SCTDD shall designate a local project liaison to coordinate the vendor's local installation efforts. All contact with SCTDD regarding project matters, site visits, project schedule, training, etc. shall be coordinated through this project liaison.

4.4.2 Installation

The proposer's implementation schedule shall document major milestones during the development, customization, and installation phases of the project. Upon completion of the installation phase, the vendor shall notify SCTDD, in writing, of the readiness of the

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system installation for testing.

The vendor may stage installation to best insure compatibility of all integrated scheduling products.

4.4.3 Testing

Upon notification that the system is ready for testing, SCTDD and the vendor will schedule a date for performance testing. During this period, SCTDD will operate, with respect to Demand Response scheduling software, in dual mode. SCTDD will continue to use its current database method for actual scheduling of Demand Response trips. For other software, testing shall commence when notified by the vendor that the software is ready for testing.

4.4.4 On-Site Representation

Proposer shall have the Project Manager and/or a duly qualified software engineer on-site during the initial testing of all software products.

4.4.5 Testing Period

SCTDD shall operate in test mode for a minimum of four weeks, up to a maximum of 60 days, during the testing period. During this time, SCTDD shall compile a list of issues, bugs, software glitches, additional training needs, etc. that shall be the responsibility of the vendor to correct during an additional 60-day period.

4.4.5.1 Errors, Corrections, and Fixes

If, after transit system testing, software does not perform to specifications or vendor representations, vendor shall be given 14 days after notification of the problem to remedy the issue or payment will be withheld until correction of issue.

4.4.5.2 Final Testing

Upon satisfactory fix of all software bugs, integration problems, etc., SCTDD will again commence a final testing period to verify that the vendor has addressed the identified problems.

4.4.6 Acceptance

After final testing is completed to the satisfaction of SCTDD, the Transportation Director will issue a letter of acceptance to the vendor.

4.5 Training

4.5.1 General

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Vendor shall be required to train designated individuals to proficiency on all software, in-vehicle hardware and communications products offered. All training shall be conducted at SCTDD offices. All training schedules shall be coordinated with SCTDD Transportation Director.

4.5.2 Training Program

Vendor shall be required to provide a combination of classroom and “hands-on” training for all software, in-vehicle hardware, firmware and communications products offered. Training content and duration shall be stated specifically in the proposer’s written offer in response to this procurement.

4.5.3 Computer Hardware for Training

It shall be the responsibility of SCTDD to provide the computers necessary for the selected vendor to provide all “hands-on” modules of software training.

4.5.4 Class Size

Vendor shall work with SCTDD to assess the potential number of individuals who will require vendor training on the various software products.

4.5.5 Training on Ancillary Software

If the complete system offered by the vendor relies on third party software (*e.g.*, PC-Anywhere, etc.), it shall be the responsibility of the vendor to provide training, in structure and in content, on that software equal to that provided for its own products.

4.6 Manuals and Documentation

Vendor shall provide fifteen (15) copies of the software user and administrator manuals for each product offered as part of this procurement.

4.7 Payment Procedures

SCTDD will issue progress payments to the vendor based on successful accomplishment of major milestones. Proposers shall indicate a proposed schedule for payments, linking payment milestones to specific elements contained in the implementation section of their proposal. This “payment schedule” must be part of the proposal submittal.

5.0 General Terms and Conditions

5.1 Proprietary Rights

Each Proposer must submit proposed terms and conditions governing the following:

- Contractor Proprietary Rights
- Ownership of Intellectual Property

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- Intellectual Property Indemnity
- Licensed Software
- Software and other Intellectual property specifically developed for the SCTDD
- Existing Proprietary Rights
- SCTDD owned data
- Subsequent released/versions of software
- Embedded technology
- Modification to software
- Warranties

These terms and conditions may be a part of the evaluation of proposals.

Software should be operational with or without upgrades, annual license fees and or the purchase of offered maintenance packages. Software should operate successfully after purchase and installation requiring no mandatory fees for operation. The SCTDD Transportation Program is a federal and state funded program. If for any reason, funding decreases due to economy or other monetary driven reason, SCTDD wants to insure that the software license and equipment purchased will be a perpetual license and/or the property of SCTDD and the software will operate successfully with no additional fees.

SCTDD also requires a provision or a software escrow, in the event the vendor demonstrates an inability or unwillingness to fulfill any of its obligations under the license agreements. The provision or escrow should include all rights including access to source codes, passwords and credentials pertinent to the software provided. This will protect SCTDD in the event the chosen software vendor is unable or unwilling to fulfill its promise, terminates business or any unseen event that might affect SCTDD and its use of the software.

5.2 Indemnification and Hold Harmless

The Contractor shall indemnify and hold harmless South Central Tennessee Development District and its Transportation Organization, their officers, agents and employees from:

- a) Any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of Contractor, its officers, employees and/or agents, including its sub or independent contractors, in connection with the performance of the contract, and,
- b) Any claims, damages, penalties, costs and attorney fees arising from any failure of Contractor, its officers, employees and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.

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- c) SCTDD will not indemnify, defend or hold harmless in any fashion the Contractor from any claims arising from any failure, regardless of any language in any attachment or other document that the Contractor may provide.
- d) Contractor shall pay SCTDD any expenses incurred as a result of Contractor's failure to fulfill any obligation in a professional and timely manner under this Contract.
- e) Contractor agrees that it shall indemnify and hold harmless SCTDD and SCTDD's directors, officers, and employees from and against any loss, damages, or injuries SCTDD and SCTDD's directors, officer, or employees shall suffer or incur as a result of any suit, claim, or proceeding based on the claim that the Software infringes the intellectual property or trade secret rights of any third party. Contractor shall pay any damages, costs, expenses, fees (including reasonable attorneys' fees) incurred by SCTDD or SCTDD's directors, officers, or employees, provided that SCTDD gives Contractor prompt notice of the claim and SCTDD does not enter or propose to enter into any settlement of such suit, claim or proceeding without Contractor's written consent.

5.3 Payment

Payment shall be made as outlined in Section 4.7.

5.4 Tax Status

SCTDD operates as a form of local government, referred to as a political subdivision of the State of Tennessee, a non-profit, tax-exempt chartered corporation / organization doing business in the State of Tennessee.

5.5 Dispute Process

Any dispute arising from this proposal or subsequent contract shall be resolved through arbitration. Any litigation shall be handled under the jurisdiction of Maury County, Tennessee District Court.

5.6 Assignability Clause

The terms and provisions of the contract documents shall be binding upon SCTDD, the contractor and their respective partners, successors, heirs, executors, administrators, assigns, and legal representatives. The rights and obligations of the contractor under the contract may not be transferred, assigned, sublet, mortgaged, pledged, or otherwise disposed of or encumbered in any way without SCTDD's prior written consent. The contractor may subcontract a portion of its obligations to other governmental firms or parties, but only after having first obtained the written approval by SCTDD. SCTDD may assign its rights and obligations under the contract to any successor of SCTDD or to any successor agency deemed necessary to the extent required by applicable laws or

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governmental regulations or to the extent SCTDD deems necessary or advisable under the circumstances. Right of assignment shall include FTA funded agencies and local governments with the approval of SCTDD. SCTDD shall incur no financial responsibility for agencies wishing to participate or purchase from an approved award or contract. SCTDD shall provide assignment in writing, once assigned FTA funded agencies or local governments will be solely responsible for required certification.

5.7 Proposal Postponement and Amendments

SCTDD reserves the right to postpone the proposal due date for their own convenience and to waive any minor informalities in proposals submitted. SCTDD may cancel the RFP completely or in part and re-advertise if adequate response is not received. If the RFP is re-advertised, prior RFP's shall remain closed to inspection until the evaluation of the re-advertisement is complete.

SCTDD reserves the right to revise, amend, or modify the specifications at any time up to the time set for receipt of the proposals. If it is appropriate to revise any portion of this RFP, either at the request of a Proposer or upon SCTDD initiative, a written addendum will be issued setting forth the revision. Addenda will be forwarded to all Proposers who received or requested the RFP and have submitted the **Notice to Proposers Form** before the specified due date. Proposers shall acknowledge receipt of addenda by completing the **Acknowledgement of Addenda Form** and returning with proposal. Failure to acknowledge receipt of all addenda may cause the proposal to be considered non-responsive. If the revisions and amendments are likely to require the revision of proposal prices the proposal opening date may be postponed by the number of days SCTDD feels necessary for Proposers to revise their proposal. The proposal opening shall be at least five (5) working days after the last amendment, and the amendments shall include an announcement of the new date. **All amendment(s) shall be acknowledged on the form found in the RFP.**

Should a Proposer find a discrepancy or omissions from these specifications, or be in doubt as to their meaning, they shall at once make inquiry in writing to SCTDD.

5.8 Proposing Firm's Representations

In submitting its proposal, the proposing firm makes the following representations to SCTDD:

- The Proposer is familiar with all of the requirements and specifications of this RFP and is fully willing and able to satisfy the requirements of SCTDD as outlined in the RFP.
- The firm is currently in the business of supplying CAD/AVL Systems used in transit and is fully qualified and has knowledgeable and experienced personnel to

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design and provide the requested radio system, and will provide qualified personnel to install, and train SCTDD personnel.

- The firm is licensed and will furnish all permits, labor, materials, tools, equipment, and supervision required for the supervision, and installation of the radio systems.
- The firm has the ability, capacity, skills, and financial resources to perform the project.
- No other person, firm, or corporation has any interest in this proposal or the proposed contract other than as set forth in the proposal.
- The Proposer has not divulged to, discussed, or compared his proposal with other Proposer' and has not colluded with any Proposer or parties.
- The Proposer and its Subcontractors is not a defaulter as surety or in arrears on any other obligation.
- If awarded the contract the Proposer agrees to post a notice in a conspicuous place within the plant or work site stating the Proposer shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, creed, age, disability, or national origin.

5.9 Best and Final Offer

At the conclusion of negotiations with Proposers if there is an interest, each of the Proposers in the competitive range may be requested to amend its proposal and make its Best and Final Offer (BAFO). The request for BAFO shall include:

- Notice that discussions have concluded.
- Notice that the request is the opportunity for submission of a BAFO.
- A reasonable length of time for Proposers to prepare a written BAFO with the date and time for submission included.
- Notice that BAFO must be received by the date and time specified for the receipt of the BAFO.
- Notice that if Proposers do not submit a BAFO their previous Offer will be their BAFO.
- Proposers shall identify their submittal as their BAFO. All modifications to the initial proposals shall be identified in the BAFO. The Evaluation Committee will

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evaluate the BAFO according to the same requirements and criteria as the initial proposals.

6.0 Proposal Forms and Certifications

6.1 Required Forms

The forms provided in this section must be completed and submitted with proposals.

6.1.1 Certification of Receipt of Addenda to the Request for Proposal

All persons or firms submitting a proposal in response to this RFP must certify receipt of any addenda issued by SCTDD under this solicitation.

6.1.2 Price Proposal Form

The Price Proposal Form contains specific categories that must be submitted by the proposer for purposes of price evaluation by SCTDD. If a particular cost item is included as part of the price proposal for another item, the proposal shall so state. **Failure to submit this form in a properly executed manner will result in the bid/proposal being found non-responsive and rejected. This certification required for all procurements.**

6.1.3 Exceptions

If proposer is not capable of meeting all the requirements of this proposal, a list of all exceptions must be submitted along with this proposal. Barring a list of exceptions, the proposer must meet all requirements as listed above.

6.1.3.1 Additional Items

If a proposer determines that a specific or integral component of their offer is not specifically identified on SCTDD price proposal form, the proposer shall list the item under “Other” to ensure the vendor submits a complete price proposal.

6.2 Required Certifications

Forms for each required certification are contained in this Request for Proposal and are required for a proposal to be considered responsive to these specifications.

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6.2.1 Certification of Receipt of Addenda to the Request for Proposal

Failure to submit this form in a properly executed manner will result in the bid/proposal being found non-responsive and rejected. This certification required for all procurements.

Acknowledgement of Receipt of Addenda

The undersigned hereby acknowledges receipt of the following addenda to the above referenced RFP:

Addendum Number: _____, dated: _____

Addendum Number: _____, dated: _____

Addendum Number: _____, dated: _____

Name of Individual, Partnership or Corporation:

Address:

Name of Authorized Person:

Signature:

Title of Authorized Person:

Date:

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6.2.2 Affidavit of Non-Collusion

I hereby swear (or affirm) under the penalty of perjury:

- (1) That I am the bidder (if the bidder is an individual), a partner in the bidder (if the bidder is a partnership), or an officer or employee of the bidder having corporation authority to sign on its behalf (if the bidder is a corporation);
- (2) That the attached bid or bids have been arrived at by the bidder independently and have been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the invitation to bid designed to limit independent bidding or competition;
- (3) That the contents of the bid or bids have not been communicated by the bidder or its employees or agents to any person not an employee or agent of the bidder or its surety on any bond furnished with the bid or bids, and will not be communicated to any such person prior to the official opening of the bid or bids, and;
- (4) That I am not on the Comptroller General's List of Ineligible Contractors.
- (5) That I have fully informed myself regarding the accuracy of the statements made in the affidavit.

Signed:

Firm:

Subscribed and sworn to before me

this _____ day of _____ 20 ____

Notary Public

My Commission Expires _____ 20 ____

Proposer's Federal Employer Identification No.. _____
(As used on employer's quarterly Federal Tax Return)

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6.2.3 Disadvantaged Business Enterprise (DBE)

Certification – Non Vehicle Purchases

Policy: It is the policy of the U.S. Department of Transportation that DBE's as defined in 49 CFR Part 23 as amended, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal and/or state funds under the agreement which results from the Purchaser's acceptance of the proposer's offer. Consequently, the DBE requirements of 49 CFR Part 23, as amended, applies to that agreement.

DBE Obligation: The bidder/contractor agrees to ensure that DBE's as defined in 49 CFR Part 23, as amended, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under the agreement which results from the Purchaser's acceptance of the proposer's offer. In this regard, all bidders/contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23, as amended, to ensure that DBE's have the maximum opportunity to compete for and perform contracts. Bidders/contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of Department of Transportation assisted contracts.

DBE PROJECT GOAL: 1%

Signature: _____

Date: _____

Title: _____

Firm: _____

Failure to submit this form in a properly executed manner will result in the bid/proposal being found non-responsive and rejected. This certification required for all procurements except for those in which motor vehicles are being purchased.

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6.2.4 CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

The Primary Participant, _____ (major third part Bidder), certifies to the best of its knowledge and belief, that it and its principals:

- A. Are not presently debarred, suspended, proposed for Debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- B. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or Local) with commission of any of the offenses enumerated in paragraph B of this certification; and
- D. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or Local) terminated for cause or default.

(If the Primary participant is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.)

The primary participant, _____, certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Sections 3801 *et seq.* are applicable thereto.

Signature and Title of Authorized Official

The undersigned chief legal counsel for the _____ hereby certifies that the _____ has authority under state and local law to comply with the subject assurances and the certification above has been legally made.

Signature of the Applicant's Attorney

Date

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6.2.5 CERTIFICATION OF LOWER TIER PARTICIPANTS

REGARDING DEBARMENT, SUSPENSION, AND OTHER INELIGIBLE AND VOLUNTARY EXCLUSION

The Lower Tier Participant (potential third party Bidder, or potential subcontractor under a major third party contract), _____, certifies, by submission of this proposal, that neither it nor its principals are presently debarred suspended, proposed for Debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(If the Lower Tier Participant is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.)

The lower tier participant, _____, certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understand that the provisions of 31 U.S.C. sections 3801 et seq. are applicable thereto.

Signature and Title of Authorized Official

The undersigned chief legal counsel for the _____ hereby certifies that the _____ has authority under state and local law to comply with the subject assurances and the certification above has been legally made.

Signature of Applicant's Attorney

Date

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6.2.6 CERTIFICATION OF RESTRICTIONS ON LOBBYING

(Required When the Total Extended Price/Cost is \$100,000 or Greater)

The undersigned hereby certifies on behalf of Bidder/Proposer named below 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 any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

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

Executed this ____ day of _____, 20__.

Name of Bidder/Proposer _____

Address _____

City, State, Zip _____

Signature of Authorized Official _____

Printed Name of Official _____ Title of Official _____

Telephone _____ Fax _____ E-Mail _____

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6.2.7 CERTIFICATIONS FOR CAPITAL PROCUREMENT +\$5,000.00 BY BID PROCESS

The undersigned: _____ as a representative of the
(PRINT NAME)

Vendor: _____ hereby
(PRINT NAME)

Certifies that the vendor has read and understands the following Federal procurement clauses and will comply with each of these:

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

*All clauses may not apply; bidder must sign stating they have read and understand the clauses and will be able to comply. Bidder must return a signed copy of this form. For more information concerning FTA clause requirements visit http://www.fta.dot.gov/laws/circulars/leg_reg_8641.html Circular FTA C 4220.1F.

Signature

Date

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1. **FLY AMERICA REQUIREMENTS**

49 U.S.C. § 40118 41 CFR Part 301-10

Applicability to Contracts

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

Flow Down Requirements

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

Model Clause/Language

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

Fly America Requirements

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

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2. BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j)

49 CFR Part 661

Applicability to Contracts

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

Flow Down

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

Mandatory Clause/Language

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

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

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

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

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

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

Date _____

Signature _____

Company Name _____

Title _____

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

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

Date _____

Signature _____

Company Name _____

Title _____

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

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

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

Date _____

Signature _____

Company Name _____

Title _____

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

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

Date _____

Signature _____

Company Name _____

Title _____

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3. CHARTER BUS REQUIREMENTS

49 U.S.C. 5323(d)

49 CFR Part 604

Applicability to Contracts

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

Flow Down Requirements

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

Model Clause/Language

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

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

3. SCHOOL BUS REQUIREMENTS

49 U.S.C. 5323(F)

49 CFR Part 605

Applicability to Contracts

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

Flow Down Requirements

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

Model Clause/Language

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

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

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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.

Model Clause/Language

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

Cargo Preference - Use of United States-Flag Vessels - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the 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

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

CFR Part 41

Applicability to Contracts

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

Flow Down

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

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Model Clauses/Language

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

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

6. ENERGY CONSERVATION REQUIREMENTS

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

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Flow Down

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

Model Clause/Language

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

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

7. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

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

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The

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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.

Model Clause/Language

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

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

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

CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS

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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.

Model Clause/Language

Clause and language therein are merely suggested. 49 C.F.R. Part 663 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors.

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

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

"Buy America Requirements--Surface Transportation Assistance Act of 1982, as amended,"

49 C.F.R. 661.12, but has been modified to include FTA's Buy America requirements codified at 49 U.S.C. A 5323(j).

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

(1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling

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

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

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

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

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

Certificate of Compliance

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

Date: _____

Signature: _____

Company Name: _____

Title: _____

Certificate of Non-Compliance

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

Date: _____

Signature: _____

Company Name: _____

Title: _____

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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.

Mandatory Clause/Language

Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

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

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

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

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

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

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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.

Model Clause/Language

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

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

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a 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, examinations, 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

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contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
7. FTA does not require the inclusion of these requirements in subcontracts.

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Requirements for Access to Records and Reports by Types of Contract

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

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 18 CFR 18.36 (i)

12. FEDERAL CHANGES
49 CFR Part 18

Applicability to Contracts

The Federal Changes requirement applies to all contracts.

Flow Down

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

Model Clause/Language

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

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

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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 in the contract. Payment bond amounts required from Contractors are as follows:
 - (1) 50% of the contract price if the contract price is not more than \$1 million;
 - (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (3) \$2.5 million if the contract price is more than \$5 million.
- d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

Flow Down

Bonding requirements flow down to the first tier contractors.

Model Clauses/Language

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

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Bid Bond Requirements (Construction)

(a) Bid Security

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

(b) Rights Reserved

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

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

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

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

Performance and Payment Bonding Requirements (Construction)

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

(a) Performance bonds

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

(b) Payment bonds

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

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

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

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

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

Performance and Payment Bonding Requirements (Non-Construction)

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

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

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

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

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

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

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

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

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

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

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

1. The penal amount of payment bonds shall equal:

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- (i) Fifty percent of the contract price if the contract price is not more than \$1 million;
- (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- (iii) Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

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

Patent Infringement Bonding Requirements (Patent Indemnity)

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

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

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14. CLEAN AIR
42 U.S.C. 7401 et seq
40 CFR 15.61
49 CFR Part 18

Applicability to Contracts

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

Flow Down

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

Model Clauses/Language

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

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

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

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15. RECYCLED PRODUCTS

42 U.S.C. 6962

40 CFR Part 247

Executive Order 12873

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

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

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

16. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

Background and Application

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

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

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Clause Language

Davis-Bacon and Copeland Anti-Kickback Acts

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

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

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

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

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

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- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.
- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits 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

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

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

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

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

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

(2) **Withholding** - The [*South Central Tennessee Development District*] 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 [*South Central Tennessee Development District*] 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

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

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the [***South Central Tennessee Development District***] for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

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

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

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

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

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

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

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or

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owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

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

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage

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determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

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17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Background and Application

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

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

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

Clause Language

Contract Work Hours and Safety Standards

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

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

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

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forth in paragraph (2) of this section.

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

18. [RESERVED]

19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

Applicable to all contracts.

Flow Down

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

Model Clause/Language

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

No Obligation by the Federal Government.

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

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

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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.

Model Clause/Language

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

Program Fraud and False or Fraudulent Statements or Related Acts.

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

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

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21. TERMINATION

49 U.S.C. Part 18

FTA Circular 4220.1E

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

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

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

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

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

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the

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Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

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

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

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

g. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

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

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

h. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take

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possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

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

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

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

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

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

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

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

j. Termination for Convenience 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

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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)

Background and Applicability

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

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

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

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

Clause Language

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

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor

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is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

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

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

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

23. PRIVACY ACT
5 U.S.C. 552

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

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

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

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

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

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

24. CIVIL RIGHTS REQUIREMENTS

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

Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

Flow Down

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

Model Clause/Language

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

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

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

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

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

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

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

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

25. BREACHES AND DISPUTE RESOLUTION

**49 CFR Part 18
FTA Circular 4220.1E**

Applicability to Contracts

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

Flow Down

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

Model Clauses/Language

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

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

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

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property

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

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

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

26. PATENT AND RIGHTS IN DATA

**37 CFR Part 401
49 CFR Parts 18 and 19**

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

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

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

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

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

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technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

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

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

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

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

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

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

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

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Federal Government under any patent.

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

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

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (*i.e.*, a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

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

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

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

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

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

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27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

49 U.S.C. § 5310, § 5311, and § 5333

29 CFR Part 215

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

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

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

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

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

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance

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authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

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

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

Background and Applicability

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

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

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

Clause Language

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

Disadvantaged Business Enterprises

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency’s overall goal for DBE participation is **10 %**. A separate contract goal of **1 % DBE participation** has been established for this procurement.
- b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as **{insert agency name}** deems appropriate. Each subcontract the contractor signs with a subcontractor must

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include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

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

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

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

{If no separate contract goal has been established, use the following} The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

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

e. The contractor must promptly notify **{insert agency name}**, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of **{insert agency name}**.

29. [RESERVED]

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30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1E

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Flow Down

The incorporation of FTA terms has unlimited flow down.

Model Clause/Language

FTA has developed the following incorporation of terms language:

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

31. DRUG AND ALCOHOL TESTING

49 U.S.C. §5331

49 CFR Parts 653 and 654

Applicability to Contracts

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

Flow Down Requirements

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

Model Clause/Language

Introduction

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

How a recipient does so depends on several factors, including whether the contractor is covered

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independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

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

Explanation of Model Contract Clauses

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

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

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

**Drug and Alcohol Testing
Option 1**

The contractor agrees to:

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

**Drug and Alcohol Testing
Option 2**

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program

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as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

**Drug and Alcohol Testing
Option 3**

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

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32. CERTIFICATION OF COMPLIANCE

The bidder hereby certifies that it will meet the requirements of the applicable regulations in these Model Clauses.

Date: _____

Signature: _____

Company Name: _____

Title: _____

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

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

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B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS (Continued)

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

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Copeland Anti-Kickback Act Section 1 Section 2				All All exceeding \$2,000 (including ferry vessels)	
Bonding				\$100,000	
Seismic Safety	A&E for New Buildings & Additions			New Buildings &	
Transit Employee Protective Arrangements		Transit Operations			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit Operations			
Alcohol Misuse and Testing		Transit Operations			
Patent Rights	Research & Development				
Rights in Data and Copyright Requirements	Research & Development				
Energy Conservation	All	All	All	All	All
Recycled Products		Contracts for items designated by EPA, when procuring \$10,000 or more per year		Contracts for items designated by EPA, when procuring \$10,000 or more per year	Contracts for items designated by EPA, when procuring \$10,000 or more per year
Conformance with ITS National Architecture	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States	Limited to States	Limited to States	Limited to States	Limited to States

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6.3 Compliance Matrix

Instructions for filling out the matrix:

The proposer is required to indicate the compliance status relative to each individual requirement listed in the Compliance Matrix. For each requirement, the proposer must indicate if their proposed system will comply (C); not comply (N); or comply only if SCTDD adopts a proposed modified version of the requirement (CM).

No additional commentary shall be provided for responses of “C” or “N”. A response of “C” with any added commentary will be treated as an “N” response.

A response of “CM” should only be used to indicate that the proposer will comply if the requirement wording is changed to specific alternate text that must be provided by the proposer in the column provided. The “CM” will be equivalent to a response of “C” if SCTDD opts to change the requirement as proposed, or equivalent to a response of “N” if SCTDD opts to not change the requirement. If alternate requirement wording is not proposed in conjunction with a “CM” response, this will be treated as an “N” response.

Ref #	Requirement In RFP Order	Proposed Compliance Status (C/N/CM)	Proposed Modified Requirement Text (required for CM)
1	1.0 Instructions to Vendors		
2	Compliance of (1.1 –1.6.2)		
3	Technical Proposal Content & Cost Proposal in Requested Format		
4	DBE Documentation and / or Demonstration of Outreach Efforts		
5	3.0 SYSTEM SPECIFICATIONS		
6	System Integration		
7	GIS Functionality		
8	Client Database		
9	Billing Component... Or		
10	Data Interchange Utility for Billing in Current System		
11	Trip Reservations		
12	Scheduling		
13	Dispatching		
14	System Parameters		

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Ref #	Requirement In RFP Order	Proposed Compliance Status (C/N/CM)	Proposed Modified Requirement Text (required for CM)
15	Reports		
16	Standard Reports		
17	TennCare Subcontractor/Brokers Reports		
18	Ad-Hoc Reports		
19	Hardware		
20	In Vehicle Systems		
21	User Interface		
22	Data Messaging		
23	AVL / Automatic Vehicle Location		
24	Location Reports		
25	Covert Alarm & Microphone		
26	Rate of Location Report		
27	AVL Communication Exceptions		
28	Log / On Log/ Off Requirement		
29	Mileage Tracking		
30	Demand Response / Demand Response Functions		
31	Vehicle MDC & Driver Communications Option 1		
32	Vehicle MDC & Driver Communications Option 2		
33	4.0 Implementation Plan		
34	Products Offered / Market Tested / Current Version		
35	Warranty		
36	Technical Support		
37	Local & Escalated Support		
38	Installation / Testing / Acceptance		
39	On site Representation		

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Ref #	Requirement In RFP Order	Proposed Compliance Status (C/N/CM)	Proposed Modified Requirement Text (required for CM)
40	Testing Period		
41	Training		
42	Training On Ancillary Software		
43	Manuals & Documentation		
44	Demo CD/DVD of proposed management system		

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6.4 Price Proposal Form

Signature :	Date:	Vendor Name & Job Title:
Item Description for SCTDD Project ***** (26 users/180 vehicles) *****	Base Cost	Vendor Explanation / Substitution
1. Transit Management & Scheduling System Software license for The SCTDD Application		
2. Other Software Products (list individually) (Identify basis for pricing in explanation)		
3. Billing Component (Fully Functional)designed by vendor or.....		
4. Billing Utility (Import & Export) for use with existing medical billing software. Preferred Method.....		
Data Acquisition/Conversion		
5. GIS/Map Sourcing/Enhancement Costs - SCTDD		
6. State of Tennessee		
7. CAD / AVL		
Mobile Data Computers/Communication Method		
8. MDC / Mobile Data Computers & Installation		
9. Communication Option : 1 Dual UHF 2-Way Radio & Cellular		
10. Communication Option : 2 UHF Only		
11. Communication Option : 3 Cellular Only		
12. Communication Option: Vendor Option (Suggestions)		
Services/ On and off-site Costs		
13. Installation and transfer of existing data (Describe Cost and Timeline)		
14. 100 % Performance Bond		
15. Training Costs (Describe) Staff Training Costs		
Other Fees (Describe)		
16. Local Support (Describe) Any Additional Annual or Ongoing Fees (Describe) Other Fees (Describe)		
TOTAL COST:		
Options / Other Technical Support (Proposers must specify exactly what is covered, e.g., software upgrades, on-site support, remote access support, etc.)		
17. Maintenance/Upgrade/Support Costs for Additional Years		
Year Two		
Year Three		
Year Four		
Year Five		
Total Cost for years 2-5		
18. Automated Call Option		
19. Additional Hardware (Servers, Work Stations & Misc. Hardware required for high functional performance)		
20. **PLEASE INCLUDE A NUMBERED NARRATIVE AND SOFTWARE DEMO CD/DVD WITH PRICE PROPOSAL. ONLINE DEMONSTRATION MAY BE REQUESTED AT A LATER DATE**		