



## REQUEST FOR QUALIFICATIONS (RFQ) FOR ARCHITECTURAL AND ENGINEERING SERVICES

| Sequence of Events                | Date                          |
|-----------------------------------|-------------------------------|
| Request for Qualifications Issued | October 14, 2021              |
| Pre-Submission Walk Thru          | October 28, 2021 (10am – 1pm) |
| Clarifications/Questions Due      | November 3, 2021              |
| Clarifications/Questions Answers  | November 8, 2021              |
| Qualifications Submissions Due    | November 15, 2021 (4:00 pm)   |
| Qualifications Award Date         | November 22, 2021             |

Macatawa Area Express Transportation Authority  
11660 Greenway Ave  
Holland, Michigan 49424  
616-355-1010

[www.catchamax.org](http://www.catchamax.org)

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## **APPENDICES**

- Appendix 1: Elevator Specifications
- Appendix 2: Drawings



**PUBLIC NOTICE**

Macatawa Area Express Transportation Authority

**REQUEST FOR QUALIFICATIONS**

Architect & Engineering Services

Date Issued: **October 14, 2021**

Pre-submission Walk Thru: **October 28, 2021 (10:00 a.m. – 1:00 p.m.)**

RFQ Submission Deadline: **November 15, 2021 (4:00 p.m.)**

The Macatawa Area Express Transportation Authority (MAX Transit) is seeking architectural and engineering services for renovations to their Transportation Center at 11660 Greenway Ave, Holland, MI.

The project will require elevator installation and second floor office/workspace design and construction, as well as oversight and management of the project. To access the full RFQ including project details and schedule, go to [www.catchamax.org](http://www.catchamax.org) **Doing Business with Us/RFQ**.

**Qualifications Submission:**

Firms must email one copy of their qualifications to Beth Higgs at [b.higgs@catchamax.org](mailto:b.higgs@catchamax.org). The signed original plus two copies should be submitted by mail or hand delivery in an envelope marked "A&E Services" by **4:00 p.m. on November 15, 2021** at the following address. Late submissions will not be accepted.

Macatawa Area Express  
A&E Service Qualifications  
11660 Greenway Ave.  
Holland, MI 49424

**Conditions for Qualifications:**

Submitted qualifications become MAX Transit property. The contents of qualifications are considered valid for one hundred and twenty (120) days after the submission deadline. MAX Transit reserves the right to waive any informalities or minor defects and to accept or reject any or all of the submitted qualifications or postpone the qualifications due date for sound, documentable, business reasons. Conditional qualifications will be considered non-responsive, and may be rejected unless MAX Transit gives specific approval to a written request received at least ten (10) working days prior to the due date. This RFQ does not commit MAX Transit to award a contract, to pay any cost incurred in the preparation of qualifications, or to preclude MAX Transit from canceling, in part or in its entirety, this RFQ for sound, documentable, business reasons.

**Qualifications Content:** *(more details referenced under Section 2 of the RFQ)*

Submission must include a description of the business organization, the firm's experience with architectural and engineering projects, the qualifications of individuals performing the work, and three references with the references' contact information. The description of experience must describe the firm's experience with design, project management and construction management, although not all of these services may be procured.

**DO NOT** send price information with the qualifications. The agency will negotiate price and work schedule with the top scoring firm.

# SECTION 1

## PROJECT DESCRIPTION (SCOPE) & SPECIFICATIONS

### BACKGROUND

The Macatawa Area Express (MAX) is a small urban transit system that has operated fixed bus routes and demand response service since 2000. The system is governed by an independent Authority formed under Public Act 196 on July 1, 2007, when the City of Holland transferred oversight to the Authority Board. MAX operates 11 fixed routes and demand-response services within the City of Holland, Holland Charter Township, the City of Zeeland, and Park Township, with limited service provided to Zeeland Charter Township. MAX currently employs 75 staff members.

### PROJECT DESCRIPTION (SCOPE)

MAX is soliciting qualifications from firms for renovations to their Transportation Center in accordance with the specifications and terms and conditions set forth in this Request for Qualifications (RFQ).

### PROJECT BACKGROUND

The MAX Transportation Center was built in 2012/2013 and is the central hub of their operations, maintenance, dispatch and training. The current facility has approximately 26,700 square feet. The approximate breakdown by area is as follows:

- First Floor Office 6200 sf
- Second 'Open Office' & Mechanical 4000 sf
- Transportation Maintenance and Service 16500 sf

### SUMMARY OF REQUIREMENTS

These specifications are meant to outline the Authority's functional requirements and are not meant to be an exhaustive list of services or equipment required to accomplish these requirements:

### PROJECT SUMMARY

#### Second Floor Renovations

- The second floor is currently an open office, the MAX Transportation Authority would like to add the following program to this space:
  - Conference Room
  - Operations Manager Office
  - Secondary Executive Office
  - Human Resource Managers Office
  - IT Coordinator Office
  - Secure IT Storage Office
  - Secure uniform storage and fitting room

#### Elevator Installation

- The Transportations Center's original design included provisions for the installation of an elevator in the southeast corner of the office area. A preliminary investigation concluded the following:

- The foundations were designed for an elevator and the elevator pit was potentially ‘capped’ so the space could be used as a hallway on the first floor.
  - There is a drywall shaft above the first-floor ceiling, with an elevator hoist beam.
  - Attachment A is the specification for the intended elevator.
- The successful firm will need to work with the MAX to verify existing conditions, complete all field investigations, and complete final construction documents for the installation of a new elevator. The final design must comply with all applicable codes and regulations.

## SECTION 2

### REQUEST FOR QUALIFICATION SUBMISSIONS

1. Qualifications MUST be received by the due date and time specified in this RFQ. Qualifications received after the due date and time will not be considered.
2. MAX assumes no responsibility for errant delivery of Request for Qualification responses, including those relegated to a courier agent who fails to deliver in accordance with time and receiving point specified.
3. This RFQ does not commit MAX to award a contract.
4. MAX is not responsible for any costs associated with preparing responses to this RFQ.
5. Firms responding to this RFQ agree to and acknowledge all specifications, terms and conditions, and indicates ability to perform by submission of its qualifications.
6. Submitted qualifications shall be valid for at least one hundred and twenty (120) days.

### QUALIFICATION REQUIREMENTS

Firms must include the minimum information in their response to this RFQ.

1. Cover Letter

Qualifications must include a cover letter identifying the firm, mailing address, contact person, telephone number, website address, and email address. The cover letter must be signed by the individual who is authorized to negotiate and execute a contract on behalf of the firm.

2. DO NOT send pricing information with the qualifications. The agency will negotiate price and completion of work schedule with the top scoring firm, at which time the firm must provide a proposal. If MAX Transit is unable to successfully negotiate price and a completion of work schedule, negotiations will end and the next highest scoring firm will be contacted.

Include Disadvantaged Business Enterprise (DBE) certification (if applicable). The DBE program is explained on the Michigan Department of Transportation (MDOT) website at [www.michigan.gov/mdot](http://www.michigan.gov/mdot). Click on “Doing Business”, “Disadvantaged Business Enterprises” under the Service Centers heading.

3. The following completed/signed forms and certifications, the forms for which are included in this Invitation for qualifications:
  - a. Certification Regarding Debarment & Suspension

- b. Bonding Requirement signature page
- c. Acknowledgement Form for Terms & Conditions and FTA Required Clauses
- d. Signature of acceptance for the Davis Beacon Act Clause

Qualifications must be sent via email to [b.higgs@catchamax.org](mailto:b.higgs@catchamax.org) as well as hard copies delivered by **November 15, 2021 by 4:00 p.m.** to:

Beth Higgs  
A&E Service Qualifications  
Macatawa Area Express Transportation Authority  
11660 Greenway Ave  
Holland, MI 49424

## SECTION 3

### EVALUATION OF QUALIFICATIONS

#### SELECTION CRITERIA

The evaluation criteria for this solicitation are listed below. Each category is listed in the order of importance. Price proposal **should not** be submitted at this time.

- Responsiveness: RFQ received on or before due date, cover letter, and all required signature pages completed within this RFQ (Up to 40 Points)
- Documented ability to provide A&E services, including design, project management and construction management. (Up to 40 Points)
- Staff qualifications (Up to 40 Points)
- Three (3) Past References (Up to 20 Points)

The selection panel members are the agency's Executive Director, Deputy Director, Operations Manager.

## SECTION 4

### TERMS & CONDITIONS

**OCCUPANCY OF FACILITY:** Project work will be completed while the facility remains occupied and open for business from 6 a.m. to 10 p.m. At no time shall this project interfere with MAX's daily operations, including transit buses being able to pull through the transfer center hourly during the pulse from 0:45 -0:00. Firms are required to describe any potential work disruptions to the office staff or bus operations and how this will be minimized.

**REMOVAL & DISPOSAL OF REPLACED EQUIPMENT:** The selected firm is responsible for the removal, transportation and disposal of all materials, equipment and parts removed or replaced for this project. Any related costs must be included in the proposal during the negotiation stage with the

winning firm.

**GUARANTEED ENERGY REBATES & INCENTIVES:** Bidders are required to identify, list and guarantee any and all energy efficient rebates and incentives offered by equipment manufacturers, municipalities and/or utilities for which this project would be eligible, and to file for these rebates on behalf of MAX. Once a firm is awarded the project, bidders are to list the source of the rebate/incentive, applicable product, and the guaranteed rebate amount.

**DURATION OF PROJECT & AGREEMENT:** The top scoring firm will enter into price and work completion timeline negotiations with MAX Transit. The project will commence with MAX's Notice of Award/Notice to Proceed.

**PROJECT CHANGES:** Additions, deletions or modifications to this project and agreement may be made only with written agreement between MAX and the selected firm.

**DISPUTES:** Except as otherwise provided in this agreement, any dispute concerning a question of fact arising under the agreement which is not disposed of by agreement shall be decided by MAX, which shall put its decision in writing and mail or otherwise furnish a copy to the firm. In connection with any appeal proceeding under this clause, the firm shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute thereunder, the firm shall proceed diligently in accordance with the project agreement and in accordance with MAX's decision.

This clause does not preclude consideration of law questions in connection with decisions provided for in this clause, provided that nothing in this agreement shall be construed as making final the decision of an administrative official, representative or board on a question of law.

**INDEMNIFICATION:** The firm agrees to indemnify and hold MAX, its officers, agents, employees and /or trustees, harmless from and against any and all claims or causes of action brought against MAX and from any and all damages, losses, expenses, attorney fees, costs and liabilities sustained by the MAX arising out of any claimed defect in the goods and services provided by the firm. The firms' obligation under this paragraph shall include the obligation to indemnify and hold the MAX harmless for negligence, whether active, passive or concurrent, in the performance of MAX's duties and obligations pursuant to this project and agreement.

**COVENANT AGAINST GRATUITIES:** The firm warrants that he/she has not offered or given gratuities (in the form of entertainment, gifts or otherwise) to any official or employee of the MAX with a view toward securing favorable treatment in the awarding, amending, or evaluating this project and agreement.

**ASSIGNABILITY RIGHTS:** The Bidder shall not assign this contract—wholly or in part—without the written consent of the Macatawa Area Express. No assignment shall relieve the Bidder of any obligations under the contract.

**LIABILITY INSURANCE:** The firm shall maintain such insurance as will protect it from claims under Worker's Compensation Acts and other employee benefit acts; from claims for damages because of bodily injury, including death, to its employees and all others and from claims for damages to property; any and all of which may arise out of result from the firm's operations under this agreement, or from any subcontractor or anyone directly or indirectly employed by either of them.

**LICENSING & PERMITTING:** The contractor shall be licensed. Additionally, the contractor awarded

the project will be required to file any permitting, as required, for this project.

**CONTRACT TERM:** The contract between the MAX and the Contractor shall become effective upon signing and shall remain in force until completion of the project, or until notice of termination in writing is given by the other party as provided herein. MAX reserves the right to terminate the contract at any time if the successful bidder fails to meet requirements.

The contract shall terminate absolutely and without further obligation at such time as appropriated and otherwise unobligated funds are no longer available to satisfy the obligations under this contract.

**WRITTEN STANDARDS OF CONDUCT:** MAX employees, officers, agents (e.g. City of Holland) or other appointed agents acting on behalf of MAX's interest, immediate family members, and committee or Board members are prohibited from: participating in the selection, award, or administration of a contract supported by FTA funds if a conflict of interest, real or apparent is involved; and soliciting or accepting gifts, gratuities, favors or anything of consequential value from current or potential contractors or parties to sub agreements that could influence purchasing decisions. MAX employees or agents with a potential conflict of interest shall remove themselves from the procurement in question.

**TAXES:** MAX is exempt from taxes; however, the Contractor shall pay all taxes required by law. MAX cannot exempt others from tax.

**COMPLIANCE WITH LAWS:** The Contractor will comply with all State, Federal, and local laws and regulations.

**CANCELLATION FOR CAUSE:** If either party shall refuse, fail, or be unable to perform or observe any of the terms or conditions of the contract for any reason, then the party claiming such failure shall give the other party a written notice of such breach. If, within thirty (30) days from such notice, the failure has not been corrected, the injured party may cancel the contract effective thirty (30) days after notice of cancellation.

MAX reserves the right to terminate the contract immediately in the event that the Contractor discontinues or abandons operations; is adjudged bankrupt, or is reorganized under any bankruptcy law; or fails to keep in force any required insurance policies or bonds.

Failure of the contractor to comply with any section or part of the contract will be considered grounds for immediate termination of the contract by the MAX without penalty to MAX. MAX shall pay for services rendered up to the point of termination.

Notwithstanding anything to the contrary contained in the contract between the MAX and the successful contractor, the MAX may, without prejudice to any other rights it may have, terminate the contract for convenience and without cause, by giving thirty (30) days written notice to the successful contractor. If the termination clause is used by the MAX, the successful contractor will be paid by the MAX for all scheduled work completed satisfactorily by the successful contractor up to the termination date set forth in the written termination notice.

**CONDITION OF MATERIALS:** It is understood and agreed that materials delivered shall be new, of latest design, and in first quality condition, unless specified otherwise.



**DISADVANTAGED BUSINESS ENTERPRISE (DBE), EEO AND NON-DISCRIMINATION:** MAX seeks and encourages DBE participation on projects and contracts that use federal funds that have an established DBE goal. MAX is an Equal Opportunity Employer, and does not discriminate on the basis of race, religion, color, sex, national origin, age, or disability. Bidders are required to disclose any sub-contracts for this project that will be completed by certified DBE firms.

**WRITTEN PROTEST PROCEDURES:** protests must be made in writing and submitted to MAX Authority at its Administrative Offices at 171 Lincoln Ave., Ste 20, Holland MI 49423. The written protest must clearly articulate the procedure or decision being protested and the reason(s) for the protest. All protests must be filed within 10 business days of the MAX Authority Board decision. The Executive Director or designee will review the written protest and provide a written response to the protestor.

The protestor can appeal MAX's decision/response to the MAX Authority Board, provided that the appeal is filed with the Executive Director or designee within ten (10) business days of MAX's decision.

In the event of an appeal, the MAX Authority Board will make the final decision on the protest. All protests will be forwarded to the Federal Transit Administration for its information.

**PROJECT COORDINATION:** The Contractor shall employ and assign only qualified and competent personnel to perform any service or task involved in this project. The Contractor shall designate one such person as a Project Manager, and the Project Manager shall be deemed to be the Contractor's authorized representative, who shall be authorized to receive and accept any and all communications from the MAX. The MAX shall name a Project Manager who shall be authorized to generate, receive and accept communication as an authorized representative of the MAX. The Contractor hereby agrees to replace any personnel or sub-contractor, at no cost or penalty to the MAX, if the MAX reasonably determines that the performance of any sub-contractor or personnel is unsatisfactory.

**ACCURACY OF WORK:** The Contractor shall be responsible for the accuracy of the work performed and shall promptly correct its errors and omissions without additional compensation. Acceptance of the work by the MAX will not relieve the Contractor of the responsibility for subsequent correction of errors, the clarification of any ambiguities, or the costs associated with any additional work caused by negligent acts, errors, or omissions by the Contractor or latent defects in the products sold by the Contractor.

**APPROPRIATION OF FUNDS:** The initial contract and any continuation contract(s) shall terminate immediately and absolutely at any such time as there are no appropriated and otherwise unencumbered funds available to satisfy the MAX's obligations under said contract(s).

**DRUG-FREE WORKPLACE:** By submission of a Bid, the Contractor certifies that the provisions "Drug-free Workplace Act", have been complied with in full. The Contractor further certifies that:

1. A drug-free workplace will be provided for the Contractor's employees during performance of the contract; and
2. Each Contractor who hires a sub-contractor to work in a drug-free work place shall secure from that sub-contractor the following written certification:
3. As part of the subcontracting agreement with (Contractor's name), (Sub-contractor's name) certifies to the Contractor that a drug-free workplace will be provided for the sub-contractor's employees during the performance of this

Contract pursuant to Paragraph (7) of Sub-section (b) of Code Section 50-24-3".

4. The Contractor further certifies that he will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the Contract.

**PAYMENT TERMS:** Payment shall be made monthly, or at the end of each project, within 30 days of the submittal of a correct invoice for goods received or work performed. If applicable, expenses shall be billed at cost without markup, and must be supported by actual receipts. Mileage and per diem rates, if applicable, shall not exceed the federal rates. Bidders may suggest other payment terms for consideration. Under no circumstances will payment be advanced prior to work or services provided.

**RFQ CONSTITUTES BINDING CONTRACT:** the successful bidder will be required to execute a contract with the MAX based on a negotiated price and related terms and those terms set forth in this RFQ. Any changes to the terms or requirements of this Contract must be documented in the Award of Contract/Notice to Proceed.

## SECTION 5

### FEDERAL TRANSIT ADMINISTRATION REQUIRED CLAUSES

#### 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.

## **2. BUY AMERICA REQUIREMENTS**

**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.

## **3. 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.

#### **4. ENERGY CONSERVATION REQUIREMENT**

**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 sub agreements 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.

#### **5. 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.

#### **6. LOBBYING**

**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.

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.

## **7. 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 sub-grantee 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 sub-grantee 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 sub-grantee 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 sub-grantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the

Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

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

## **8. 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.

## **9. BONDING REQUIREMENTS** **2 C.F.R. § 200.325** **31 C.F.R. part 223**

### **Applicability to Contracts**

Bonds are required for all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold. FTA may accept the bonding policy and requirements of the recipient if FTA has determined that the Federal interest is adequately protected. If such a

determination has **not** been made, the following minimum requirements apply:

- a. **A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must 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 the bid, execute such contractual documents as may be required within the time specified.**
- b. A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

#### **Flow Down**

These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier that exceed the simplified acquisition threshold.

#### **Model Clauses/Language**

There is no required language for bonding requirements. Recipients can draw on the following language for inclusion in their federally funded procurement

#### **Bond Requirements**

##### **Bid Guarantee**

Bidders shall furnish a bid guaranty in the form of a bid bond, or certified treasurer’s or cashier’s check issued by a responsible bank or trust company, made payable to the RECIPIENT. The amount of such guaranty shall be equal to **\$\$\$\$** or **5%** of the total bid price.

In submitting this bid, it is understood and agreed by bidder that the RECIPIENT reserves the right 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 [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 [90] days after the bid opening without the written consent of the RECIPIENT, or refuse or be unable to enter into this Contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance and Payment Bonds, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, it shall forfeit its bid guaranty to the extent RECIPIENT’S damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security thereof.

It is further understood and agreed that to the extent the defaulting bidder's bid guaranty 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 guarantee 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 herein, other than that requested will render the bid unresponsive.

### **Performance Guarantee**

A Performance Guarantee in the amount of **100%** of the Contract value is required by the Recipient to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit shall be provided by the Contractor and shall remain in full force for the term of the Agreement. The successful Bidder shall certify that it **will provide the requisite Performance Guarantee to the RECIPIENT within ten (10) business days from Contract execution**. The RECIPIENT requires all Performance Bonds to be provided by a fully qualified surety company acceptable to the RECIPIENT and listed as a company currently authorized under 31 C.F.R. part 22 as possessing a Certificate of Authority as described hereunder. RECIPIENT may require additional performance bond protection when the 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 amount of the existing bond or to obtain an additional bond.

If the Bidder chooses to provide a Letter of Credit as its Performance Guarantee, the Bidder shall furnish with its bid, certification that an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contractor. The Bidder shall also provide a statement from the banking institution certifying that an Irrevocable Stand-By Letter of Credit for the action will be provided if the Contract is awarded to the Bidder. The Irrevocable Stand-By Letter of Credit will only be accepted by the RECIPIENT if:

1. A bank in good standing issues it. The RECIPIENT will not accept a Letter of Credit from an entity other than a bank.
2. It is in writing and signed by the issuing bank.
3. It conspicuously states that it is an irrevocable, non-transferable, "standby" Letter of Credit.
4. The RECIPIENT is identified as the Beneficiary.
5. It is in an amount equal to **100%** of the Contract value. This amount must be in U.S. dollars.
6. The effective date of the Letter of Credit is the same as the effective date of the Contract
7. The expiration date of the Letter of Credit coincides with the term of this Agreement.
8. It indicates that it is being issued in order to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between the RECIPIENT and the Contractor the work stipulated herein.

The issuing bank's obligation to pay will arise upon the presentation of the original Letter of Credit

and a certificate and draft (similar to the attached forms contained in Sections X and Y) to the issuing bank's representative at a location and time to be determined by the parties. This documentation will indicate that the Contractor is in default under the Contract.

**Payment Bonds**

A Labor and Materials Payment Bond equal to the full value of the contract must be furnished by the contractor to Recipient as security for payment by the Contractor and subcontractors for labor, materials, and rental of equipment. The bond may be issued by a fully qualified surety company acceptable to MAX Transit and listed as a company currently authorized under 31 C.F.R. part 223 as possessing a Certificate of Authority as described thereunder.

**Sample Bond**  
**Certifications**

**Performance Guarantee Certification**

The undersigned hereby certifies that the Bidder shall provide a Performance Guarantee in accordance with the Specifications.

Designate below, which form of Performance Guarantee shall be provided:

- Performance Bond
  - Irrevocable stand-by-letter of credit
- { check one of the above }

BIDDER'S NAME:

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**10. 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 in-definite quantities where the amount is expected to exceed \$100,000 in any year.

**11. 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.

## **12. EMPLOYEE PROTECTIONS**

**49 USC 5333(a)**  
**40 USC 3141 – 3148**  
**29 CFR part 5**  
**18 USC 874**  
**29 CFR part 3**  
**40 USC 3701-3708**  
**29 CFR part 1926**

### **Applicability to Contracts**

Certain employee protections apply to all FTA funded contracts with particular emphasis on construction related projects. The recipient will ensure that each third-party contractor complies with all federal laws, regulations, and requirements, including:

#### **1. Prevailing Wage Requirements**

- a. Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA’s “Davis-Bacon Related Act”);
- b. The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147; and
- c. U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.

#### **2. “Anti-Kickback” Prohibitions**

- a. Section 1 of the Copeland “Anti-Kickback” Act, as amended, 18 U.S.C. § 874;
- b. Section 2 of the Copeland “Anti-Kickback” Act, as amended, 40 U.S.C. § 3145; and
- c. U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States,” 29 C.F.R. part 3.

#### **3. Contract Work Hours and Safety Standards**

- a. Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701-3708; and supplemented by Department of Labor (DOL) regulations, 29 C.F.R. part 5; and
- b. U.S. DOL regulations, “Safety and Health Regulations for Construction,” 29 C.F.R. part 1926.

### **Flow Down**

These requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. The Davis-Bacon Act and the Copeland “Anti-Kickback” Act apply to all prime construction, alteration or repair contracts in excess of \$2,000. The Contract Work Hours and Safety Standards Act apply to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers.

### **Model Clause/Language**

The recipient must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. In addition, recipients can draw on the following language for inclusion in their federally funded procurements.

#### **Prevailing Wage and Anti-Kickback**

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

#### **Contract Work Hours and Safety Standards**

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 this clause 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 this clause.

The FTA 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 this section.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.

### **Contract Work Hours and Safety Standards for Awards Not Involving Construction**

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

## **13. 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.

**14. 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.

**15. 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 affected 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 affected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

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

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

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written



notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by 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 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.

## **16. SAFE OPERATION OF MOTOR VEHICLES**

**23 USC 402**

**Executive Order No. 13043**

**Executive Order No. 13513**

**US DOT Order No. 3902.10**

### **Applicability to Contracts**

The Safe Operation of Motor Vehicles requirements apply to all federally funded third party contracts. In compliance with Federal Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third-party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third-party subcontract involving the project. Additionally, recipients are required by FTA to include a Distracted Driving clause that addresses distracted driving, including text messaging in each of its third-party agreements supported with Federal assistance.

Flow Down Requirements

The Safe Operation of Motor Vehicles requirements flow down to all third-party contractors at every tier.

### **Model Clause/Language**

There is no required language for the Safe Operation of Motor Vehicles clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **Safe Operation of Motor Vehicles**

#### **Seat Belt Use**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or AGENCY.

#### **Distracted Driving**

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

## **17. 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 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 MAX. If it is later determined that the bidder or proposer knowingly rendered an

erroneous certification, in addition to remedies available to MAX, 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.

## **18. 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.

(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.

## **19. 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.

(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.

## **20. 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 **0.25%**. A separate contract goal **has not** been established for this procurement.

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

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

c. 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 MAX.

d. The contractor must promptly notify MAX, 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 MAX.

## **21. 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 MAX requests which would cause MAX to be in violation of the FTA terms and conditions.

## **22. ACCESS REQUIREMENT FOR PERSONS WITH DISABILITIES (ADA)**

### **ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES (ADA)**

The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The Contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires the provision of accessible facilities and services, and with the following Federal regulations, including any amendments thereto:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations,



"Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) 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;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- (9) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

Any implementing requirements FTA may issue.

### **23. PROMPT PAYMENT**

#### **Applicability to Contracts**

All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The prime contractor agree to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from the Recipient. The prime contractor agrees further, to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DEBE and non-DBE subcontractors.

## SECTION 6

### CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

As required by U.S. Department of Transportation regulations on Government and Suspension at 49 CFR 29.510, the Contractor certifies to the best of its knowledge and belief, that it and its principals:

- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
- (2) Have not within a three-year period preceding this bid or 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 anti-trust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
- (3) Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, state, or local) with the commission of any of the offenses listed in paragraph (2) of this certification.
- (4) Have not within a three-year period preceding this contract had one or more public transactions (Federal, state, or local) terminated for cause of default.

The contractor certifies that if it becomes aware of any later information that contradicts the statements of paragraphs (1) through (4) above, it will promptly inform FTA. Should the contractor be unable to certify to the statements of paragraphs (1) through (4) above, it shall acknowledge on its signature page and provide a written explanation to FTA.

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Signature of Authorized Individual

---

Title

## SECTION 7

### ACKNOWLEDGEMENT FORM FOR TERMS & CONDITIONS

#### AND REQUIRED FTA CLAUSES

I have received, read, understand, and agree to comply with the Terms & Conditions and the Required FTA Clauses included in the Macatawa Area Express Transportation Authority's Request for Qualifications (RFQ) that was issued **October 14, 2021**.

I understand that failure to acknowledge or comply with any of these terms, conditions, or requirements will deem our firm unresponsive to this RFQ or result in our default of the contract after its execution.

Date: \_\_\_\_\_

Printed Name of Authorized Representative:

\_\_\_\_\_

Signature of Authorized Representative:

\_\_\_\_\_

Name of Firm:

\_\_\_\_\_

Address, City, State:

\_\_\_\_\_

## CERTIFICATION OF COMPLIANCE WITH DAVIS-BACON ACT

*(Firm Name) \_\_\_\_\_ acknowledges receipt of, and agrees to comply with the Davis-Bacon Act for the Architect & Engineering Services purchased by the Macatawa Area Express Transportation Authority. The firm also agrees that all contractors and sub-contractors hired will comply with this Act.*

|                       |       |
|-----------------------|-------|
| VENDOR REPRESENTATIVE | TITLE |
| SIGNATURE             | DATE  |

## **APPENDIX 1 – Elevator Specifications**

The following pages are specifications for the elevator equipment and installation as referenced in Section 1 of this RFQ.

Any questions should be directed to Beth Higgs at [b.higgs@catchamax.org](mailto:b.higgs@catchamax.org) on November 3, 2021.

SECTION 142600 – LIMITED-USE/LIMITED-APPLICATION ELEVATORS

PART 1 - GENERAL

1.1 SECTION INCLUDES

- A. Limited-Use/Limited-Application Elevators.

1.2 RELATED SECTIONS

- A. Section 033053 – Miscellaneous Cast-in-Place Concrete.
- B. Section 081416 – Flush Wood Doors.
- C. Section 087100 - Door Hardware.
- D. Section 093000 – Tiling.
- E. Division 26 Sections for electrical service for elevators to and including disconnect and fused switches at machine room.
- F. Division 26 Sections for standby power source, transfer switch, and connection from auxiliary contacts in transfer switch to controller.
- G. Division 26 Section "Voice and Data Communication Cabling" for telephone service to elevators.

1.3 REQUIREMENTS OF REGULATORY AGENCIES:

- A. Fabrication and installation work in compliance with applicable jurisdictional authorities.
- B. File shop drawings and submissions with local authorities as the information is made available. Company pre-inspection and jurisdictional authority inspections and permits are to be made on timely basis as required.

1.4 SUBMITTALS

- A. Submit under provisions of Section 013300.
- B. Product Data: Manufacturer's data sheets on each product to be used, including:
  - 1. Preparation instructions and recommendations.
  - 2. Storage and handling requirements and recommendations.
  - 3. Installation methods.
- C. Shop Drawings: Provide a complete layout of lift equipment detailing dimensions and clearances as required.

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- D. Selection Samples: For each finish product specified requiring selection of color or finish, two complete sets of color charts representing manufacturer's full range of available colors and patterns.
- E. Provide statement of compliance with 49 C.F.R. Part 661—Buy America Requirements—Surface Transportation Assistance Act Of 1982, As Amended.

1.5 QUALITY ASSURANCE

- A. Manufacturer Qualifications:
- B. Installer Qualifications:
  - 1. Execute work of this section only by a company that has adequate product liability insurance.
  - 2. Skilled tradesmen shall be employees of the installing contractor approved by the manufacturer, with demonstrated ability to perform the work on a timely basis.

1.6 DELIVERY, STORAGE, AND HANDLING

- A. Store products in manufacturer's unopened packaging until ready for installation.
- B. Store and dispose of solvent-based materials, and materials used with solvent-based materials, in accordance with requirements of local authorities having jurisdiction.

1.7 PROJECT CONDITIONS

- A. Maintain environmental conditions (temperature, humidity, and ventilation) within limits recommended by manufacturer for optimum results. Do not install systems under environmental conditions outside manufacturer's absolute limits.

1.8 WARRANTY

- A. Coverage - this warranty applies to the repair or replacement, at Manufacturer's option, of parts that fail due to defective material or workmanship. Manufacturer may, at its option, provide factory reconditioned parts. This warranty is provided to the Authorized Dealer on behalf of the final purchaser of the product and is not transferable. The Manufacturer's warranty does not cover labor charges for the removal, repair or replacement of warranty parts but such costs may be covered for a period of time by Authorized Dealer's warranty, which is provided to purchaser separately.
  - 1. The manufacturer shall offer a 36-month warranty on parts from date of substantial completion.

PART 2 - PRODUCTS

2.1 MANUFACTURERS

- A. Basis of Design Manufacturer: Savaria Concord Lifts Inc., which is located at: 107 Alfred Kuehne Blvd. ; Brampton, ON, Canada L6T 4K3; Toll Free Tel: 800-661-5112; Tel: 905-791-5555; Fax: 905-791-2222; Email: [request info](mailto:request info); Web: [www.savaria.com](http://www.savaria.com)
- B. Requests for substitutions will be considered in accordance with provisions of Division 0.

## 2.2 LIMITED-USE/LIMITED-APPLICATION ELEVATORS

- A. Limited Use Limited Application elevator: Savaria Orion.
- B. Work described in this section includes providing equipment, incidental material and labor required for complete, operable roped hydraulic passenger elevator installation. Elevator shall be erected, installed, adjusted, tested and placed in operation by system manufacturer, or manufacturer's authorized installer.
  - 1. Elevators shall be in accordance with the ASME A18. 1 and ADA compliant including local codes and regulations except where specified otherwise.
- C. The following preparatory work to receive the lifts specified in this section is part of the work of other sections:
  - 1. Permanent 220 VAC, 50 amp single phase power to operate lift to be provided from a lockable fused/cartridge type disconnect switch with auxiliary contacts for battery operation. 110 VAC, 15 amp single phase power to operate the lighting circuit. Refer to drawings for permanent power specifications and location of disconnects. Temporary power may be provided to expedite installation of lift.
  - 2. Provide a plumb and square hoistway with smooth interior surfaces, including fascias or furring of the hoistway interior.
  - 3. Provide rough openings per lift contractor's shop drawings.
  - 4. Provide substantial, level pit floor slab as indicated on the lift contractor's shop drawings.
- D. Limited Use Limited Application elevator: The elevator described here, manufactured by Savaria Concord Lifts Inc., is a LULA Elevator consisting of a roped hydraulic tower with a lifting platform. The platform can be customized to better accommodate a wheelchair user or a person with impaired mobility.
  - 1. Savaria Model Orion.
  - 2. Rated Load: 1400 lb (635 kg)
  - 3. Rated Speed: 25 f.p.m. (nominal) (0.13 m/s)
  - 4. Car Dimensions: 48 inches W by 54 inches D (1219 mm by 1371 mm).
  - 5. Levels Serviced: 2.
  - 6. Openings: Enter/exit same side.



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7. Openings: Enter/exit front/rear.
  8. Openings: 90 degree exit.
  9. Travel: 12'-0" feet. \* Maximum of 25 feet (300 inches).
  10. Operations: Automatic pressure.
  11. Power Supply: 230 volt, 1 phase, 60 amp, plus 110 volt, 15 amp, 1 phase, 60 Hz
  12. Drive System: 2:1 roped hydraulic.
  13. Paint: Powder coat finish.
  14. Emergency Power: Battery operation in down direction
  15. Controller: PLC
  16. Motor/Pump: 220/208VAC, 5HP
  17. Manual Lowering: Outside the hoistway in machine room.
- E. Car Enclosure:
1. Fire rated steel cab construction.
  2. Walls: Steel Walls (Architectural White, Black) (Standard)
  3. Walls: Plastic Laminate Panels (Stone Grafix, Fog, Contract Mahogany, Natural Oak)
  4. Ceiling Finish: Solid architectural white ceiling with four recessed incandescent down lights.
  5. Telephone Cabinet: Stainless steel.
  6. Lower and upper door and door frame with 1 1/2 hour ULC Fire rating, 2 speed, horizontally sliding.
  7. Handrail: A single handrail, with 1-1/2 inch (38 mm) diameter rail and with both ends returned to the side guard, shall be located on the control wall of the cab.
- F. Doors and Gates:
1. Landing Doors - Automatic:
    - a. 1 1/2 hour UL/ULC fire rated assembly.
    - b. 36 inches (914 mm) clear opening.
    - c. Concealed electro/mechanical interlock.

- d. Two speed sliding doors.
- e. Concealed 24 volt door opener with battery back-up.

G. Car Operation:

- 1. Car Operating Panel shall consist of metal push bottoms with illuminated haloes, emergency stop/alarm button, on/off key switch and emergency light mounted on a removable stainless steel panel (Type 304 #4 Stainless Steel Finish).
- 2. Digital floor indicator and directional indicator in cab and at each landing.
- 3. Emergency Operation - The car shall be equipped with a battery operated light fixture, emergency battery lowering device and alarm in case of normal building supply failure. The battery shall be the rechargeable type with an automatic recharging system. A manual lowering device shall be located outside the hoistway in a lockable box positioned at a designated landing.
- 4. Fire Service: Phase 1 and Phase 2 fire Recall Service.

H. Pumping Unit and Control:

- 1. The pumping unit and control shall be enclosed in the tower. The controller and pump unit shall be pre-wired and tested prior to shipment. The controller is to be electronic-free with relay logic operation for ease of maintenance and service. Pump unit shall incorporate the following features :
  - 2. Smooth stops at each landing.
  - 3. Submersible pump and motor.
  - 4. Adjustable pressure relief valve.
  - 5. Manually operable down valve to lower lift in the event of an emergency. This valve shall be activated from outside of the hoistway through a keyed box.
  - 6. Pressure gauge isolating valve, manually operable.
  - 7. Gate valve to isolate cylinder from pump unit.
  - 8. Electrical solenoid for down direction control.
  - 9. Emergency lowering by battery power, from the car control.

I. Cylinder And Plunger:

- 1. The cylinder shall be constructed of steel pipe of sufficient thickness and suitable safety margin. The top of the cylinder shall be equipped with a cylinder head with an internal guide ring and self-adjusting packing.
- 2. The plunger shall be constructed of a steel shaft of proper diameter machined true and

smooth. The plunger shall be provided with a stop electrically welded to the bottom to prevent the plunger from leaving the cylinder.

- J. Leveling Device:
  - 1. The lift shall be provided with an anti-creep device which will maintain the carriage level within 1/2 inch (12 mm) of the top landing.
  - 2. All limit switch and leveling device switches shall be located in a position to be inaccessible to unauthorized persons. They shall be located behind the mast wall and be accessible through removable panels.
- K. Guide Yoke: The 2:1 guide yoke assembly shall be supplied with two (2) sheaves, guide shoes, bearings and guards.
- L. Control Panel: Stainless steel control panel with tactile identifications (keyed stations).
- M. Terminal Stopping Devices: Normal terminal stopping devices shall be provided at top and bottom of runway to stop the car positively and automatically. Microswitches shall not be used.
- N. Guide Rails and Brackets: Steel 8 lb per ft guide rails and adjustable brackets shall be used to guide the platform and sling.
- O. Wiring: All wiring and electrical connections shall comply with applicable codes. Insulated wiring shall have flame-retardant and moisture-proof outer covering and shall be run in conduit or electrical wireways if located outside the unit enclosure. Quick disconnect harnesses shall be used when possible.

## PART 3 - EXECUTION

### 3.1 EXAMINATION

- A. Do not begin installation until hoistway and machine room has been properly prepared.
- B. Site dimensions shall be taken to verify that tolerances and clearances have been maintained and meet local regulations.
- C. If substrate preparation is the responsibility of another installer, notify Architect of unsatisfactory preparation before proceeding.

### 3.2 PREPARATION

- A. Clean surfaces thoroughly prior to installation.
- B. Prepare surfaces using the methods recommended by the manufacturer for achieving the best result for the substrate under the project conditions.

### 3.3 ELEVATOR INSTALLATION

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- A. Install in accordance with manufacturer's instructions.
- B. Install the components of the elevator system that are required and that are required by jurisdictional authorities to license the elevator.
- C. Trained employees of the elevator contractor shall perform installation work.
- D. Adjust elevator for proper operation and clean unit thoroughly.
- E. Instruct users in operating procedures and owner's maintenance person in trouble-shooting and maintenance procedures.

3.4 LIFT INSTALLATION

- A. Install all the components of the lift system that are specified in this section to be provided, and that are required by jurisdictional authorities to license the lift.
- B. Trained employees of the lift contractor shall perform all installation work of this section.
- C. Adjust lift for proper operation and clean unit thoroughly.
- D. Instruct users in operation procedures and Owner's maintenance person in trouble-shooting and maintenance procedures.

3.5 PROTECTION

- A. Protect installed products until completion of project.
- B. Touch-up, repair or replace damaged products before Substantial Completion.

END OF SECTION 142600

APPENDIX 2  
Page 1  
First Floor



