

Office of the Controller

Fayette County, Pennsylvania



Phone (724) 430-1217
Fax (724) 430-1366

November 19, 2015

A D V E R T I S E M E N T

Sealed bids will be received in the Office of the County Controller, Courthouse, 61 E. Main Uniontown, Pennsylvania, until 3:00 p.m. on Thursday, December 10, 2015 to furnish and install Cummins Engines that are factory remanufactured complete engine assemblies.

Bid sheets and specifications may be obtained by contacting the Chief Clerk to the County Commissioners, Courthouse, Uniontown, PA 15401 or by calling 724-430-1200 extension 213 or online at www.co.fayettepa.us. Technical questions regarding this bid should be directed to Kim Renze 724-628-7492.

All bids submitted pursuant to this advertisement must be SEALED WITH TAPE and clearly marked on the outside of the envelope **Bid No.15-08**.

Submit One (1) original and five (5) copies of the completed bid forms to the office of the County Controller, Courthouse, 61 East Main Street, Uniontown, Pennsylvania, 15401, together with bid deposit.

An award will be made to the lowest responsible bidder. The Fayette County Commissioners reserve the right to reject any or all bids or parts thereof.

Sidney L. Bush

Acting Controller

Advertise: 11/23/15, 11/27/2015

Opening: 12/10/2015

**FAYETTE AREA COORDINATED TRANSPORTATION
FACT
Cummins Replacement Engines – Remanufactured Assemblies
November 2015**

INSTRUCTIONS TO BIDDERS

1. GENERAL DESCRIPTION OF WORK TO BE DONE:
Furnish and install Cummins Engines that are factory remanufactured complete engine assemblies. Technical questions regarding this bid should be directed to Kim Renze 724-628-7492.
2. Five (5) copies of the bid must be received no later than 3:00 PM, Thursday, December 10, and should be addressed to:

Fayette County Office of the Controller
Fayette County Courthouse
61 East Main Street
Uniontown, PA 15401

The bids received will be publicly opened and read at the time and date specified. Bids which are received after this date and time for any reason will not be accepted and will be returned to the bidder unopened. FACT will not be responsible for late postal delivery service nor will the postmark date be considered in honoring bids.
3. The bid shall be in an envelope sealed with tape and clearly marked “ BID 15-08”
4. The Bidder shall have a minimum of three (3) years’ experience with projects similar in nature to the Work of this contract. The bid shall include a list of three recent clients for whom similar projects have been completed.
5. The bid shall include a description of the firm, including history, size, principals and specialty area, if any.
6. All bids and contracts are subject to a grant between FACT and the Pennsylvania Department of Transportation. All applicable Federal and State laws, municipal ordinances, codes, statutes and/or orders and the rules and regulations of all authorities having jurisdiction over construction of the Project shall apply to the Contract Documents throughout, and they shall be deemed to be included in the Agreement the same as though herein written out in full.
7. The bidder shall provide within ten (10) days of receipt of FACT’s written request additional information as requested by FACT to assist in its determination that the bidder is responsible and has the financial, legal and technical capacity to perform the work.
8. The Bidder shall include the following signed documents:
 - Amount of Bid and items #4 and #5 from above on letterhead
 - Certification Forms required by FTA

Specifications

1.0 Scope

- 1.1 This Specification outlines the requirements to furnish and deliver Cummins Engine Inc. factory remanufactured complete engine assemblies for FACT coaches as specified

herein.

- 1.2 Cummins Engine Inc. factory remanufactured engines shall be remanufactured to meet Cummins new-engine performance specifications, including compliance with Original Equipment Manufacturer (OEM) Air Resources Board certification for each bus as specified in this specification.
- 1.3 FACT makes bus purchases in groups. FACT bus groups or “*Bus Series Range*” are equipped with the same and exact engine for the bus series range listed.
- 1.4 All engines shall be installed as complete assemblies. All required components, i.e., bell housings, starters, fuel pumps, ECM, turbocharger, etc. shall be installed on the complete engine, shall be the latest version, shall be adjusted and/or calibrated for the specific bus installation.

Item No.	Year / Mfg. / Make	Bus Series Range	S/N
Item 1	2008 Gillig LF Phantom	91494-91499	15GGE271881091494
Item 2	2008 Gillig LF Phantom	91494-91499	15GGE271181091496
Item 3	2008 Gillig LF Phantom	91494-91499	15GGE271581091498
Item 4	2008 Gillig LF Phantom	91494-91499	15GGE271781091499

2.0 Technical Data

2.1 Item 1 thru 4: 2008 Gillig Low Floor Phantom

- 2.1.1 The Cummins ISL 280 Engines covered by this contract are currently used on FACT’s 2008 Gillig Low Floor Series Chassis #s 91494-91499.
- 2.1.2 All engines shall be remanufactured, direct-fit replacements, and conform to the original manufacturer’s specifications including the latest revisions.
- 2.1.3 Engines shall be Cummins ISL 280 HP; Cummins Engine Configuration.
- 2.1.4 Engines shall be running complete. All data tags, serial numbers and decals required by Cummins Engine Inc. shall be properly located and permanently installed on each engine.
- 2.1.5 All engine up builds and CPL revisions, including but not limited to ECU programming, shall be the sole responsibility of the Contractor.
- 2.1.6 Engines shall be equipped for connections to, and be compatible with, the transmission currently operated on FACT’s Gillig Low Floor coaches.

3.0 Contractor Qualifications

- 3.1 Contractor/remanufacturer shall be responsible for knowledge of the FACT’s ECM

programming currently utilized on engines in service in the existing fleet. FACT shall not be required to re-program or modify its current programming to make the engines operational after installation completion.

- 3.1.1 All work completed during build-up, calibration, function and operational testing, including warranty repairs, shall be accomplished by a Cummins Engines, Inc. certified and trained technician having experience servicing the engines specified in this contract. Upon request of FACT, documentation shall be provided that confirms the Contractor's/remanufacturer's technician(s) are authorized by Cummins Engines, Inc. to perform warranty service work for engines as specified on this contract.
- 3.2 Contractor/remanufacturer shall be responsible for providing engines covered on this contract with operating and durability performance that meets or exceeds that of the original engine installed in the bus series range as specified for respective chassis numbers shown.
- 3.3 Contractor/remanufacturer shall provide a detailed parts list, hardcopy (paper) and electronic version, showing the Genuine Cummins Part Number, description and a quantity required for each engine within five (5) calendar days after engine is installed and coach received by FACT.

4.0 Warranty

- 4.1 All engines typically installed with automatic transmissions and listed above shall carry a manufacturer's warranty against defects in materials and workmanship for a minimum of two (2) years, unlimited miles, from the date the item is installed on the coach and the coach is returned to revenue service.
 - 4.1.1 In the event that a specific manufacturer parts(s) warranty period exceeds the aforementioned time period, then this warranty period would be accepted for the covered part(s) time period.
- 4.2 Engines breaking or failing to provide satisfactory service during the warranty period shall be repaired or replaced with genuine Cummins Engine Inc. authorized new and/or remanufactured parts (latest revision). All repairs performed under warranty shall be by accomplished at a local authorized Cummins Engine, Inc. facility by Cummins Engine, Inc. certified and trained technicians qualified to repair the engines specified on this contract. FACT may request the full payment for the repair of a failed item. Choice of replacement or payment will be at the discretion of FACT.
- 4.3 This warranty is in addition to any rights provided under the Uniform Commercial Code or any other remedy provided by law.

- 4.4 If the engine fails while the coach is in a normal service area and FACT must tow the Coach to the assigned garage or to the local Cummins facility, the Contractor/remanufacturer shall reimburse FACT for towing services. Current towing cost is \$400.00.
- 4.5 In the event a warranty failure requires an “on-site” visit for diagnosis of a warranty failure, response shall occur within forty-eight (48) hours of notice from FACT. On-site visits shall be at no costs to FACT and may be required during shifts. All visits shall be coordinated through FACT’s Operations Manager, so as not to disrupt any locations operation.
- 4.6 All warranty-covered repairs shall be completed within three (3) days, or a mutually-agreed upon time period, from the time the coach is made available for repair by FACT. For any coach which is in custody and control of the repair facility/contractor for repairs, beyond three (3) business days, or a mutually-agreed upon time period, the repair facility shall reimburse FACT at the rate of \$500.00 per day for “loss of use”. This shall include all requests for testing and/or instances above and beyond the control of the repair facility/contractor or its supplies. FACT shall make the coach available to complete repairs timely with the repair facility/contractor’s schedule.
- 4.7 A copy of warranty statement shall be submitted with the bid. Statement shall be on manufacturer’s official letterhead, and include (at minimum) a description of coverage, time period and/or mileage, and exclusions.

5.0 Delivery

- 5.1 All coaches will be delivered and picked up by FACT within a 50 mile radius of FACT’s Maintenance Facility located at 825 Airport Rd, Lemont Furnace, PA. 15456.
- 5.2 Contractor will be responsible for pickup and delivery of each coach should Contractor’s facility be outside the 50 mile radius of FACT’s location.

Insurance Requirements

Contractor shall maintain insurance in accordance with the attached requirements throughout the duration of a resultant contract. Proof of insurance will be required prior to award.

6.0 Payment

- 6.1 Contractor will be paid per Coach upon completion and acceptance of the operating equipment by FACT in accordance with the proposal pricing indicated.
- 6.2 Contractor will receive final payment when all criteria; including manuals, parts lists, drawings, and schematics have been provided under this contract.

CERTIFICATION FORMS

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION

1. This certification is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, FACT may, in addition to other remedies available to the Federal Government, pursue available remedies, including suspension and/or debarment.
2. The prospective lower tier participant shall provide immediate written notice to FACT if it learns at any time that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
3. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause and certification have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 (49 CFR Part 29). FACT may be contacted for assistance in obtaining a copy of those regulations.
4. The prospective lower tier participant agrees, by submitting this proposal, that, should the proposed covered transaction be entered into, it shall not knowingly enter into any subcontract with a person or firm who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless so authorized in writing by FACT.
5. The prospective lower tier participant further agrees that it will include the same "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. A participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.
7. Nothing detailed above shall be construed to require establishment of system of records in order to render in good faith the required certification. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
8. If it is determined that a participant in a covered transaction knowingly entered into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction (except for transactions authorized by FACT, under Paragraph 4 of these instructions,), FACT may, in addition to all remedies available to the Federal Government, pursue available remedies including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-
Lower Tier Covered Transaction

The prospective lower tier participant named below, by submission of this bid or proposal, hereby certifies that neither it nor its "principals" [as defined at 49 CFR 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Name of Lower Tier Participant

If the Lower Tier Participant named above is unable to certify to any of the statements in this certification, such participant must attach an explanation to this proposal.

Signature and Title of Authorized Official

Date

CERTIFICATION REGARDING LOBBYING

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 USC 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 USC 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.

Pursuant to 31 USC 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 USC 3801(A), *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Typed Name and Title of Contractor's Authorized Official

Date

BIDDER/PROPOSER NON-COLLUSION CERTIFICATION

THIS DOCUMENT MUST BE NOTARIZED AND RETURNED WITH ALL BIDS.

Bidders/proposers must fill out the appropriate sections of this Certificate and return with bid.

1. If the Bidder/Proposer is not the parent company, insert below the name and main office address of the parent company. (A parent company is one that owns at least a majority (51%) of the voting rights and/or assets in that company.) If Bidder/Proposer is the parent company, complete only Section 2.

I, _____,
(typed name - authorized official) (title)

for _____, the Bidder/Proposer,
(executing agent)

attest to the proposal on behalf of the Bidder/Proposer and the parent company if other than the Bidder.

(authorized official - signature)

2. By submission of this Bid/Proposal, each respondent and each person signing on behalf of any respondent certifies and in the case of a joint bid, each party certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:
 - a. The prices in this Bid/Proposal have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition as to any other matter relating to such prices with any other bidder or with any other competitor.
 - b. Unless otherwise required by law or this solicitation, the prices which have been included in this Bid/Proposal have not been knowingly disclosed by the Bidder/Proposer and will not knowingly be disclosed by the Bidder/Proposer prior to the bid opening (submission deadline for proposals) to any competitor; and
 - c. No attempt has been made or will be made by the Bidder/Proposer to induce any other person, partnership or corporation to submit or not to submit a Bid/Proposal for the purpose of restricting competition.

Signature

Title

Typed Name

Company

Taken, subscribed and sworn before me this _____ day of _____, 20_____.

Notary Public in and for the County of

My commission expires

DRUG AND ALCOHOL TESTING COMPLIANCE CERTIFICATION
CONTRACTS AND SUBCONTRACTS FOR TRANSIT OPERATIONS AND
OTHER SAFETY SENSITIVE FUNCTIONS AS APPLICABLE

___ **Option 1** The Contractor agrees to participate in FACT's drug and alcohol program established in compliance with 49 CFR 653 and 654.

___ **Option 2** The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, to produce any documentation necessary to establish its compliance with Parts 653 and 654, and to permit any authorized representative of the U.S. Department of Transportation or its operating administrations, the State Oversight Agency of Pennsylvania or FACT, to inspect the facilities and records associated with implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before _____, a date to be specified by FACT, and to submit the Management Information System (MIS) reports before February 15th of each year to: Ms. Amy Revak, Director of Operations, FACT, 825 Airport Road, Lemont Furnace, PA 15456. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for FTA Grants and Cooperative Agreements," published annually in the Federal Register.

___ **Option 3** The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, to produce any documentation necessary to establish its compliance with Parts 653 and 654, and to permit any authorized representative of the U.S. Department of Transportation or its operating administrations, the State Oversight Agency of Pennsylvania or FACT, to inspect the facilities and records associated with implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before _____, a date to be specified by FACT and to submit the Management Information System (MIS) reports before February 15th of each year to: Ms. Amy Revak, Director of Operations, FACT, 825 Airport Road, Lemont Furnace, PA 15456. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for FTA Grants and Cooperative Agreements," published annually in the Federal Register. The Contractor agrees further to:

- ___ submit, prior to contract award, a copy of its Policy Statement developed to implement its drug and alcohol testing program, or
- ___ adopt FACT's Drug and Alcohol Policy Statement as its policy statement required under 49 CFR 653 and 654, or
- ___ submit for review and approval, prior to contract award, a copy of its Policy Statement developed to implement its drug and alcohol testing program, and to follow the procedures detailed below for specific aspects of the program (such as selection of a certified laboratory, substance abuse professional or Medical Review Officer, or use of a consortium) as determined by FACT.

Contractor or subcontractor

Signature of Authorized Representative

Typed Name and Title

Date

CONTRACT CLAUSES AND SUPPLEMENTAL CONDITIONS

- 1.1 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.
- 1.2 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.
- 1.3 Clean Water** - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.
- 1.4 Pre-Award and Post-Delivery Audit Requirements** - The Contractor agrees to comply with 49 U.S.C. § 5323(1) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:
- (1) **Buy America Requirements:** The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
- (2) **Solicitation Specification Requirements:** The Contractor shall submit evidence that it will be capable of meeting the bid specifications.
- (3) **Federal Motor Vehicle Safety Standards (FMVSS):** The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.
- 1.5 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. (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.

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

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

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

(3) Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are

directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

(4) Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the 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

1.7 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.

1.8 Bid Bond Requirements (Construction)

(a) Bid Security

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

(b) Rights Reserved

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

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

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of

the Instructions to Bidders]) shall prove inadequate to fully recompense (Recipient) for the damages occasioned by default, then the undersigned bidder agrees to indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) whole.

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

1.09 Performance and Payment Bonding Requirements (Construction)

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

(a) Performance Bonds

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

(b) Payment Bonds

1. The penal amount of the payment bonds shall equal:
 - (i) Fifty percent of the contract price if the contract price is not more than \$1 million.
 - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (iii) Two and one half million if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

1.10 Performance and Payment Bonding Requirements (Non-Construction)

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

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

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.

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

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

- existing bond or to obtain an additional bond.
- (c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.
 - (d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:
 1. The penal amount of payment bonds shall equal:
 - (i) Fifty percent of the contract price if the contract price is not more than \$1 million;
 - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (iii) Two and one half million if the contract price is increased.

1.11 Advance Payment Bonding Requirements

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

1.12 Warranty of the Work

- (1) The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the Project Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- (2) The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient).

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

1.14 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.

1.15 Davis-Bacon and Copeland Anti-Kickback Acts

- (1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide

fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

1.16 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.

1.17 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.

1.18 Termination of Contract

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

the (Recipient) directs.

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

- (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 of Default (Cost-Type Contracts)** The (Recipient) may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the (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.

1.19 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.

- (a) **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.
- (b) **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.

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

1.21 Transit Employee Protective Provisions.

- (1) The Contractor agrees to comply with applicable transit employee protective requirements as follows:

- (a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.
- (b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.
- (c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

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

1.22 Disadvantaged Business Enterprises

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

1.23 Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and

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

1.24 Drug and Alcohol Testing

The contractor agrees to:

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