

**BSOOB Transit FTA Clauses for Contracts & Purchases
May 22, 2023**

FEDERAL TRANSIT ADMINISTRATION (FTA) CLAUSES

These clauses are required because this procurement is funded in whole or in part by the United States Department of Transportation (USDOT), Federal Transit Administration. The requirements in these clauses are in addition to and, unless inconsistent and irreconcilable, do not supplant requirements found elsewhere in a BSOOB Transit Contract. If any requirements in these clauses are inconsistent with a provision found elsewhere in a Contract and is irreconcilable with such provision, the requirement in these clauses shall prevail

ARTICLE FTA-1. DEFINITIONS

- 1.1 C.F.R.** : The acronym referring to the United States Code of Federal Regulations, which contains regulations applicable to FTA grant recipients and their Vendors and subcontractors.
- 1.2 DOT** : The acronym referring to the United States Department of Transportation. Also represented as USDOT.
- 1.3 EPA** : The acronym referring to the United States Environmental Protection Agency. Also represented as USEPA.
- 1.4 FTA** : The acronym referring to the Federal Transit Administration, a public transit regulatory unit of the USDOT, formerly known as the Urban Mass Transit Administration.
- 1.5 U.S.C.** : The acronym referring to the United States Code.

ARTICLE FTA-2. ACCESS TO RECORDS, ACCESS TO CONSTRUCTION SITE, AND MAINTENANCE OF RECORDS

- 2.1** *Access to Records.* The VENDOR agrees to provide sufficient access to FTA and its Subcontractors to examine, inspect, and audit records and information related to performance of this Contract as reasonably may be required.
In accordance with 49 U.S.C. section 5325(g), the VENDOR agrees to provide the Council, the Secretary of Transportation, the FTA Administrator, the Comptroller General of the United States, and any of their authorized representatives access to any books, documents, papers, and records of the VENDOR which are directly pertinent to this Contract for the purposes of making audits, examinations, inspections, excerpts, and transcriptions
The VENDOR also agrees, pursuant to 49 C.F.R. section 633.15, to provide the FTA Administrator or the Administrator’s authorized representatives, including any project management oversight (“PMO”) Vendor, access to the VENDOR’s records and construction sites pertaining to a major capital project, defined at 49 U.S.C. section 5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. sections 5307, 5309, or 5311
- 2.2** *Access to the Sites of Performance.* The VENDOR agrees to permit FTA and its Vendors access to the sites of performance under this Contract as may reasonably be required
- 2.3** *Reproduction of Documents.* The VENDOR will retain, and will require its subcontractor at all tiers to retain, complete and readily accessible records related in whole or in part to this Contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontractor, arrangements, other third-party agreements of any type, and supporting materials related to those records.

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- 2.4** *Retention Period.* The VENDOR agrees to comply with the record retention requirements in accordance with 2 C.F.R section 200.333. The VENDOR shall maintain all books, records, accounts, and reports required under this Contract for a period of not less than 3 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 records shall be maintained until the disposition of all such litigation, appeals, claims, or exceptions related thereto. The expiration or termination of this Contract does not alter the record retention or access requirements of this Section

Applicability

This article applies to all federally funded purchase orders over \$3,000.

ARTICLE FTA-3. BUY AMERICA, BUILD AMERICA

These provisions of this Article FTA-3 apply if the value of this Contract (including the value of any amendments) exceeds \$150,000.

- 3.1** *Buy America Provision.* The VENDOR agrees to comply with 49 U.S.C section 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless iron, steel, 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. §section 661.7.

Build America, Buy America Act. Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented from time to time by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. The CONTRACTOR acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

Applicability

This article applies to all federally funded rolling stock purchases, construction contracts; and contracts for material and supplies for steel, iron or manufactured products over \$100,000.

ARTICLE FTA-4. CARGO PREFERENCE

- 4.1** *Cargo Preference—Use of United States-Flag Vessels* The VENDOR agrees:

4.1.1 To use privately owned United States-Flag commercial vessels to ship at least 50 % 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;

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4.1.2 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 loading 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 Section 4.1.1 above to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the COUNCIL; (through the VENDOR in the case of a lower-tier participating Subcontractor's bill of lading); and

4.1.3 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.

Applicability

This article applies to all federally funded rolling stock purchases, construction contracts; and contracts for material and supplies which may be transported by ocean vessels.

4.2 *Fly America Requirements*

The VENDOR agrees to comply with 49 U.S.C. 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 C.F.R part 301-10, which provide that recipients and subrecipients of Federal funds and their Vendors 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 VENDOR 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 VENDOR agrees to include the requirements of this section FTA-4.2 in all subcontracts that may involve international air transportation.

Applicability

This article applies to all federally funded if the purchase order is over \$3,000; contracts; or subcontracts may involve the international transportation of goods, equipment or personnel by air.

ARTICLE FTA-5. EMPLOYEE PROTECTIONS

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Certain employee protections apply to all FTA-funded contracts with particular emphasis on construction related projects. The CONTRACTOR will comply with all federal laws, regulations, and requirements, including:

5.1 *Davis-Bacon and Copeland Anti-Kickback Acts* (40 U.S.C. §3141-3146, 29 CFR §5.1-5.33, 18 U.S.C. §874, 29 CFR Part 3) This article applies to all federally funded construction contracts over \$2,000.

5.2 **Contract Work Hours and Safety Standards Regulations.**

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5.2.1 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

5.2.2 U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. part 1926.

5.3 *Flow Down.* These requirements extend to all third-party contractors and their contracts at every tier. The Contract Work Hours and Safety Standards Act applies to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers.

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

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

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

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

5.6 *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

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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 any subcontractor under any such contract or any other Federal contract with the CONTRACTOR, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of the CONTRACTOR or any subcontractor for unpaid wages and liquidated damages as provided in this section. Non-Construction Services

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 CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.

Applicability

This article applies to all federally funded purchase orders over \$3,000 and contracts for transit operations unless otherwise stated.

ARTICLE FTA-6. DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

- 6.1** The VENDOR agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200 during the term of this Contract. By signing this Contract, the Consultant certifies that neither it nor its principals, affiliates, or subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or disqualified from participation in this Contract by any Federal department or agency. This certification is a material representation of fact upon which the Council relies in entering this Contract. If it is later determined that the VENDOR knowingly rendered an erroneous certification, in addition to other remedies available to the Council, the Federal Government may pursue available remedies, including suspension or debarment or both. The VENDOR shall provide to the Council immediate written notice if at any time the VENDOR learns that its certification was

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erroneous when submitted or has become erroneous by reason of changed circumstances. The VENDOR will include a provision requiring such compliance in its lower tier covered transactions.

Applicability

This article applies to all federally funded purchase orders over \$25,000 and contracts.

ARTICLE FTA-7. ENVIRONMENTAL STANDARDS AND PRACTICES

- 7.1** *Clean Water Act.* For any project of \$150,000 or more, the VENDOR 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. sections 1251-1387. The VENDOR agrees to report each violation to the COUNCIL and understands and agrees that the COUNCIL will, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency (“EPA”) Regional Office. The VENDOR also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.
- 7.2** *Clean Air Act Compliance.* For any project of \$150,000 or more, the VENDOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. sections 7401-7671q. The VENDOR agrees to report each violation to COUNCIL and understands and agrees that COUNCIL will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The VENDOR also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.
- 7.3** *Energy Conservation.* The VENDOR 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 Federal Energy Policy and Conservation Act.

Applicability:

This article applies to all federally funded purchase orders over \$3,000 and contracts.

- 7.4** *Solid Wastes.* A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements **of Section 6002** include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

The VENDOR agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (“RCRA”) as

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amended (42U.S.C. section 6962) and U.S. Environmental Protection Agency, "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

Applicability

This article applies to federally funded operations/management, construction, or materials and supplies purchase orders or contracts for items designated by the Environmental Protection Agency, when procuring \$10,000 or more per year.

ARTICLE FTA-8. LOBBYING RESTRICTIONS

For any project of \$100,000 or more, the VENDOR is required to make the following certifications. The VENDOR must also require its Vendors or subcontractors to make the following certification in any Contracts or subcontracts valued at or above \$100,000.

8.1 ***Certification of Restrictions on Lobbying; Disclosure.*** The VENDOR certifies, to the best of its knowledge and belief, that no Federal appropriated funds have been paid or will be paid by or on behalf of the VENDOR 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.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement, the VENDOR shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The VENDOR 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 COUNCIL has relied to enter this Contract. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. section 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.

By its signature on a Contract, the VENDOR certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, VENDOR understands and agrees that the provisions of 31 U.S.C. Section 3801, *et seq.*, apply to this certification and disclosure, if any.

ARTICLE FTA-9. SEISMIC SAFETY

Any new building or addition to an existing building will be designed and constructed in accordance with the National Earthquake Hazards Reduction Program Reauthorization Action of

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2004 and its regulations. The Contractor will certify to compliance to the extent required by the regulations. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the Act and its regulations and the certification of compliance issued on the Project.

ARTICLE FTA-10. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS

10.1 *National Intelligent Transportation Systems Architecture and Standards.* To the extent applicable, the VENDOR agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23 U.S.C. §section 502 note, and to comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and other Federal requirements that may be issued.

Applicability

This article applies to all federally funded purchase orders over \$3,000 and contracts.

ARTICLE FTA-11. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

11.1 *Program Fraud and False or Fraudulent Statements or Related Acts.* The VENDOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. section 3801 et seq., and USDOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Contract. Upon execution of this Contract, the VENDOR 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 this Contract or the FTA-assisted project for which this work is being performed. In addition to other penalties that may be applicable, the VENDOR 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 VENDOR to the extent the Federal Government deems appropriate.

The VENDOR 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. chapter 53, the Federal Government reserves the right to impose the penalties of 18 U.S.C. section 1001 and 49 U.S.C. section 5323(l) on the VENDOR, to the extent the Federal Government deems appropriate.

The VENDOR agrees to include the above language in each subcontract under this contract, modified only to identify the Subcontractor that will be subject to the provisions.

Applicability

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ARTICLE FTA-12. CIVIL RIGHTS

Under this Contract, the VENDOR shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part hereof.

12.1 *Nondiscrimination.*

12.1.1 Nondiscrimination in Employment. 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 VENDOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex (including gender identity), age, or disability. In addition, the VENDOR agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.

12.1.2 Nondiscrimination in Contracting. The VENDOR agrees and assures that it will abide by the following conditions, and that it will include the following assurance in every sub-agreement and third-party contract it signs: (1) The VENDOR must not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted sub agreement, third party contract, or third party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 C.F.R. part 26; and (2) the VENDOR must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted sub-agreements, third party contracts, and third party subcontracts, as applicable.

12.2 *Equal Employment Opportunity.* The following equal employment opportunity requirements apply to this Contract:

12.2.1 Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. section 2000e et seq., and federal transit laws at 49 U.S.C. § 5332, the VENDOR 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. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. section 2000e note, as further amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. section 2000e note. The VENDOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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 VENDOR agrees to comply with any implementing requirements FTA may issue.

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12.2.2 *Age.* In accordance with the Age Discrimination in Employment Act, 29 U.S.C. sections 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. section 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90 and Federal transit law at 49 U.S.C. section 5332, the VENDOR agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the VENDOR agrees to comply with any implementing requirements FTA may issue.

12.2.3 *Disabilities.* In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. section 794, the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. section 4151 *et seq.*, and Federal transit law at 49 U.S.C. section 5332, the VENDOR agrees that it will not discriminate against individuals on the basis of disability. In addition, the VENDOR agrees to 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, and any implementing requirements FTA may issue. The VENDOR will also ensure that accessible facilities (including vehicles and buildings) and services are made available to individuals with disabilities in accordance with the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. section 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. section 4151 *et seq.*, and any applicable implementing regulations.

12.3 *Inclusion in Subcontracts.* The VENDOR agrees to include the requirements of this article FTA-12 in each subcontract under this contract, modified only to identify the Subcontractor that will be subject to the provisions.

Applicability

This article applies to all federally funded purchase orders over \$3,000 and contracts for architectural & engineering, operations/management, rolling stock purchases and construction contracts.

ARTICLE FTA-13. GENERAL PROVISIONS

13.1 *Federal Changes.* The VENDOR shall comply with the required FTA clauses set forth in this contract and with all applicable FTA regulations, policies, procedures and directives including, without limitation, those listed directly or by reference in the agreement between the COUNCIL and FTA. The VENDOR's failure to comply with applicable FTA regulations, policies, procedures, and directives, as they may be amended or promulgated from time to time during the term of this contract, shall constitute a material breach of this contract.

13.2 *No Obligation by the Federal Government.* The COUNCIL and the VENDOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal

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Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the COUNCIL, VENDOR, or any other party (whether or not a party to the Contract) pertaining to any matter resulting from this Contract.

The VENDOR agrees to include the preceding clause in each subcontract under this Contract, modified only to identify the Subcontractor that will be subject to the provisions.

- 13.3** *Incorporation of FTA Terms.* Specific provisions in this Contract include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the contract provisions. All contractual provisions required by USDOT, as set forth in the most recent addition and any revisions of FTA Circular 4220.1 "Third Party Contracting Guidance," to the extent consistent with applicable federal laws, and in Appendix II of 2 C.F.R. part 200 are hereby incorporated by reference. Notwithstanding anything to the contrary in this contract, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this contract. The VENDOR shall not perform any act, fail to perform any act, or refuse to comply with any COUNCIL requests which would cause the COUNCIL to be in violation of the FTA terms and conditions.

Applicability

This article applies to all federally funded purchase orders over \$3,000.

ARTICLE FTA-14. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

- 14.1** *Nondiscrimination.* Pursuant to 49 CFR part 26, the VENDOR, sub-recipient or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The VENDOR shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the VENDOR 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 the COUNCIL deems appropriate. The VENDOR shall include this requirement in all subcontracts pursuant to this contract.
- 14.2** *Prompt Payment.*
- 14.2.1 Reserved.
- 14.2.2 The VENDOR agrees to pay Subcontractors within ten (10) calendar days of the VENDOR's receipt of payment from the COUNCIL for undisputed services provided by the Subcontractor. The VENDOR agrees to pay Subcontractors all undisputed retainage payments within ten (10) calendar days of completion of the work regardless of whether the VENDOR has received any retainage payment from the COUNCIL. The VENDOR shall not postpone or delay any undisputed payments owed Subcontractors without good cause and without prior written consent of the COUNCIL.
- 14.2.3 The VENDOR shall not, by reason of said payments, be relieved from responsibility for Work done by the Subcontractor and shall be responsible for the entire Work under this contract until the same is finally accepted by the COUNCIL.

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- 14.2.4 The VENDOR agrees to include in all subcontracts a provision requiring the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes.
- 14.2.5 The VENDOR will not be reimbursed for work performed by Subcontractors unless and until the VENDOR ensures that Subcontractors are promptly paid for work they have performed. Failure to comply with the provisions of this section FTA-14.2 may result in the COUNCIL finding the VENDOR in noncompliance with the DBE provisions of this Contract.
- 14.3** *DBE Good Faith Efforts* During the term of this contract, the VENDOR will continue to make good faith efforts to ensure that DBEs have maximum opportunity to successfully perform under the contract, and that the VENDOR meets its DBE commitment as set forth in its bid. These efforts shall include, without limitation, the following:
- 14.3.1 If the VENDOR requests substitution of a DBE subcontractor or supplier listed in its **Disadvantaged Business Enterprise Information and Certifications** form, the VENDOR shall exert good faith efforts to replace the DBE firm with another DBE firm subject to approval of the COUNCIL.
- 14.3.2 The VENDOR shall not terminate for convenience any DBE Subcontractor or supplier listed in its **Disadvantaged Business Enterprise Information and Certifications** form (or an approved substitute DBE firm) and then perform the work itself or with its affiliates without prior written consent of the COUNCIL.
- 14.3.3 If a DBE subcontractor or supplier is terminated or fails to complete its work on the contract for any reason, the VENDOR shall make good faith efforts to find another DBE firm to substitute for the original DBE firm.
- 14.3.4 The dollar amount of amendments or any other contract modifications will be entered into the DBE Contract Monitoring System (CMS)..
- 14.3.5 The VENDOR will identify a “DBE and Workforce Liaison” who will serve as a single point of contact for all VENDOR DBE and Workforce issues.
- 14.3.6 Failure to comply with the provisions of this section FTA-14.3 may result in the COUNCIL finding the VENDOR in noncompliance with the DBE provisions of this Contract and the imposition of Administrative Sanctions described in section FTA-14.6.
- 14.4** *Reporting.*
- 14.4.1 The VENDOR will submit monthly progress reports to the Council reflecting its DBE participation through the CMS.
- 14.4.2 Upon award of a contract a representative from the Council will assign the DBE and Workforce Liaison a CMS user account and provide a CMS User Manual detailing the following guidelines.

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- 14.4.3 All committed DBE Subcontractors to be used on the contract must be entered into the CMS system.
 - 14.4.4 All DBE billing, submitted during the reporting period, must be finalized and entered into CMS prior to submission of the VENDOR'S payment application.
 - 14.4.5 Any changes to the DBE Subcontractor list or their amounts must be entered into CMS. Changes include; DBE firms removed, DBE firms added, changes to subcontract amounts, and DBE credit adjustments.
 - 14.4.6 All payments made to DBE firms must be finalized and entered into CMS within 10 days of receipt of payment from the Council.
 - 14.4.7 Failure to submit this report in a timely manner will result in a penalty of \$10 per late day per report and may also result in the imposition of Administrative Sanctions under section FTA-14.6, pursuant to the Council's DBE policy and USDOT regulations. For the purposes of this section FTA-14.4, timely submittal means receipt in the contract compliance function of the Council's Office of Diversity and Equal Opportunity by the close of business on the fifteenth (15th) of the following month.
- 14.5** *Review of Good Faith Efforts.*
- 14.5.1 The COUNCIL's Office of Equal Opportunity will review the VENDOR's DBE progress reports to monitor and determine whether the utilization of DBE firms is consistent with the commitment of the VENDOR as stated in its bid.
 - 14.5.2 If it is determined that the VENDOR's DBE utilization under the contract is not consistent with its commitment, the VENDOR will be requested, in writing, to submit evidence of its good faith efforts to meet the commitment. The VENDOR shall be given ten (10) working days to submit this documentation. Failure to respond shall place the VENDOR in non-compliance and subject to imposition of Administrative Sanctions as described in section FTA- 14.6.
 - 14.5.3 The VENDOR's good faith efforts documentation will then be reviewed for accuracy, sufficiency and internal consistency. COUNCIL staff shall make a determination as to the adequacy of the VENDOR's good faith efforts documentation and so inform the VENDOR. If it is determined that the VENDOR's good faith efforts documentation is acceptable, the VENDOR will be deemed to be in compliance with the DBE program.
 - 14.5.4 If it is determined that the VENDOR's good faith efforts documentation is not acceptable, the VENDOR will be notified and be deemed to be in non-compliance with the DBE program.
 - 14.5.5 Non-compliance by the VENDOR with the requirements of federal DBE regulations (49 CFR part 26) constitutes a breach of contract and may result in imposition of Administrative Sanctions as described in section FTA-14.6.
- 14.6** *Administrative Sanctions.*

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- 14.6.1 If the COUNCIL deems the VENDOR to be in non-compliance with the DBE requirements of this contract, the COUNCIL will inform the VENDOR in writing, by certified mail, that sanctions shall be imposed for failure to meet DBE utilization goals and/or failure to submit documentation of good faith efforts. The notice will state the specific sanction to be imposed.
- 14.6.2 The VENDOR has five (5) working days from the date of the notice to file a written appeal to the COUNCIL's Regional Administrator. Failure to respond within the five (5) day period shall constitute a waiver of appeal. The Regional Administrator or designee, at his or her sole discretion, may schedule a hearing to gather additional facts and evidence and shall issue a final determination on the matter within five (5) working days of receipt of the written appeal. There shall be no right of appeal to the COUNCIL's governing board.
- 14.6.3 Sanctions may include, without limitation: suspension of any payment or part due to the VENDOR for work that was identified to be performed by a DBE at the time of contract award, or of any monies held by the COUNCIL as retained on the contract; denial to the VENDOR (including its principal and key personnel) of the right to participate in future contracts of the COUNCIL for a period of up to three years; and/or termination of the contract for cause

Applicability

This article applies to all federally funded purchase orders over \$3,000 and contracts.

ARTICLE FTA-15. VETERANS PREFERENCE

Contractors working on a federally funded project give a hiring preference, to the extent practicable, to veterans (as defined in 5 USC §2108) who have the requisite skills and abilities to perform the construction work required under the contract. This provision shall not be understood, construed, or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member any racial or ethnic minority, female, an individual with a disability, or former employee.

**ARTICLE FTA-16. EXECUTIVE ORDER – SPECIAL DEPARTMENT OF LABOR EQUAL EMPLOYMENT
OPPORTUNITY FOR CONSTRUCTION PROJECTS**

This article applies to all federally funded construction contracts, rolling stock purchases and operations/management contracts (except transportation services) over \$100,000.

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

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2. *Violation*; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. *Withholding for unpaid wages and liquidated damages* – BSOOB TRANSIT shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the *Contract Work Hours and Safety Standards Act*, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. *Subcontracts* - The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.
5. *Disputes* - Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and BSOOB TRANSIT, the U.S. Department of Labor, or the employees or their representatives.
6. **Bonding**. The Recipient agrees to comply with the following bonding requirements and restrictions as provided in federal regulations and guidance:
 - a. Construction. As provided in federal regulations and modified by FTA guidance, for each Project or related activities implementing the Underlying Agreement that involve construction, it will provide bid guarantee bonds, contract performance bonds, and payment bonds.
 - b. Activities Not Involving Construction. For each Project or related activities implementing the Underlying Agreement not involving construction, the Recipient will not impose excessive bonding and will follow FTA guidance.

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ARTICLE FTA-17. INTELLECTUAL PROPERTY RIGHTS

Patent Rights.

1. Depending on the nature of the Underlying Agreement, the Federal Government may acquire patent rights when the Recipient or Third-Party Participant produces a patented or patentable invention, improvement, or discovery;
2. The Federal Government's rights arise when the patent or patentable information is conceived or reduced to practice with federal assistance provided through the Underlying Agreement; or
3. When a patent is issued or patented information becomes available as described in the preceding section 17(a)(2) of this Master Agreement, the Recipient will notify FTA immediately and provide a detailed report satisfactory to FTA

Federal Rights. The Recipient agrees that:

1. Its rights and responsibilities and each Third-Party Participant's rights and responsibilities in that federally assisted invention, improvement, or discovery will be determined as provided in applicable federal laws, regulations, requirements, and guidance, including any waiver thereof; and
2. Unless the Federal Government determines otherwise in writing, irrespective of its status or the status of any Third Party Participant as a large business, small business, state government, state instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual, the Recipient will transmit the Federal Government's patent rights to FTA, as specified in 35 U.S.C. § 200, et seq., and U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

License Fees and Royalties. Consistent with the applicable U.S. DOT Common Rules, the Recipient agrees that license fees and royalties for patents, patent applications, and inventions produced with federal assistance provided through the Underlying Agreement are program income, and must be used in compliance with applicable federal requirements.

Rights in Data and Copyrights

ARTICLE FTA-18. SAFE OPERATION OF MOTOR VEHICLES

18.1 *Seat Belt Use.* The VENDOR agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:

- (1) Adopting and promoting 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; and

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(2) Including a “Seat Belt Use” provision in each third-party agreement related to this Contract.

18.2 *Distracted Driving, Including Text Messaging While Driving.* The VENDOR agrees to implement Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225); U.S. DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009; and U.S. DOT Special Provision pertaining to Distracted Driving by:

(1) The VENDOR 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 the VENDOR owns, leases, or rents, or a privately-owned vehicle when on official business in connection with this Contract or when performing any work for or on behalf of this Contract.

(2) The VENDOR agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(3) The VENDOR agrees to include the preceding “Distracted Driving, Including Text Messaging While Driving” provisions in each third-party agreement related to this Contract

Applicability

This article applies to all federally funded purchase orders over \$3,000 and contracts for transit operations.

ARTICLE FTA-19. TELECOMMUNICATIONS CERTIFICATION

The VENDOR certifies through the signing of this contract that, consistent with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 (Aug. 13, 2018), the VENDOR does not and will not use any equipment, system, or service that uses “covered telecommunications equipment or services” (as that term is defined in Section 889 of the Act) as a substantial or essential component of any system or as critical technology as part of any system. The VENDOR will include this certification as a flow down clause in any contract related to this Contract.

ARTICLE FTA-20. RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION

20.1 When applicable contracts in excess of \$175,000, and all non-procurement transaction, as defined in 2 C.F.R. §§ 180.220 and 1200.220, in excess of \$25,000 will contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where VENDORS violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures. Specific language for dispute resolution will be provided in any resultant contract of the successful proposer.

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20.2 Notification to FTA; Flow Down Requirement. If a current or prospective legal matter that may affect the Federal Government emerges, the VENDOR must promptly notify the Council and FTA's Region 1 Office's FTA Chief Counsel and Regional Counsel. The VENDOR must include these requirements as a flow down clause in any subcontract related to this Contract.

20.2.1 The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

Right of the Federal Government to Terminate.

1. *Justification.* After providing written notice to the Recipient, the Recipient agrees that the Federal Government may suspend, suspend then terminate, or terminate all or any part of the federal assistance for the Award if:
 - a. The Recipient has failed to make reasonable progress implementing the Award
 - b. The Federal Government determines that continuing to provide federal assistance to support the Award does not adequately serve the purposes of the law authorizing the Award; or
 - c. The Recipient has violated the terms of the Underlying Agreement, especially if that violation would endanger substantial performance of the Underlying Agreement.
2. *Financial Implications.* In general, termination of federal assistance for the Award will not invalidate obligations properly incurred before the termination date to the extent that those obligations cannot be canceled. The Federal Government may recover the federal assistance it has provided for the Award, including the federal assistance for obligations properly incurred before the termination date, if it determines that the Recipient has misused its federal assistance by failing to make adequate progress, failing to make appropriate use of the Project property, or failing to comply with the Underlying Agreement, and require the Recipient to refund the entire amount or a lesser amount, as the Federal Government may determine including obligations properly incurred before the termination date.
3. *Expiration of the Period of Performance.* Except for a Full Funding Grant Agreement, expiration of any period of performance established for the Award does not, by itself, constitute an expiration or termination of the Award; FTA may extend the period of performance to assure that each Formula Project or related activities and each Project or related activities funded with "no year" funds can receive FTA assistance to the extent FTA deems appropriate.
4. *Uniform Administrative Requirements.* These termination rights are in addition to and in no way limit the Federal Government's rights to terminate described in 2 CFR § 200.340.

Applicability

This article applies to all federally funded purchase orders over \$3,000 and contracts.

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State of Maine Procurement Information

Maine’s Freedom of Access Act (FOAA). Under this law, BSOOB Transit is required to make public information that we receive in the solicitation of proposals. FOAA does, however have an exception applicable to proprietary information. In the event that you believe that the proposal you submit such information in a separate sealed envelope to BSOOB Transit along with your sealed proposal. The outside of this email must be identified as “Proprietary Information/Confidential.” Such proprietary information will only be reviewed by BSOOB Transit, and only on a “need to know” basis. BSOOB Transit will not disclose such information to a third party without your consent, unless it determines that such disclosure is required by law. Prior to disclosing such information, BSOOB Transit will provide you with a reasonable opportunity to seek an injunction or other court order, at your own expense, to prevent such disclosure. BSOOB Transit will not be liable to any proposer or any third party for any disclosure of confidential information.