

**Request for Proposals**

FRTA RFP #2019-0131

**Consulting and Project Management Services for Transit Communication System**

**ISSUED BY:**

Franklin Regional Transit Authority  
12 Olive St  
Greenfield, MA 01301

January 31, 2019

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## **Request for Proposals**

### **Consulting and Project Management Services for Transit Communication System**

#### **I. PUBLIC NOTICE**

The Franklin Regional Transit Authority (FRTA) is accepting qualification statements and proposals for consulting and project management services for a new transit communication system to replace its current low band two-way radio communication system. This project includes business communications between FRTA's Operations and Maintenance Facility and its fleet vehicles as well as communications between fleet vehicles. The contract for this project is to assess the current technologies and standard operating procedures for business communications; identify the most advantageous technology(ies) to pursue for business communications; to produce design documents and specifications for FRTA to put out to bid and construct; and oversee the bidding, award, and installation of a new communication system.

Interested parties may obtain a copy of RFP online at [www.frta.org](http://www.frta.org), by contacting the FRTA at 413-774-2262, or emailing Michael Perreault, Assistant Administrator at [michael@frta.org](mailto:michael@frta.org). The completed Acknowledgement of Receipt Form must be received at FRTA prior to February 27, 2019 in order to receive any addendums containing written questions and answers, and/or any schedule modifications.

Proposals are due back to the FRTA by 3:00 p.m., **March 15<sup>th</sup>, 2019**.

#### **II. GENERAL TERMS AND CONDITIONS**

##### **A. Introduction**

The Franklin Regional Transit Authority (FRTA) was established in 1978 under the provisions of the Massachusetts General Laws, Chapter 161B. The FRTA currently serves 41 communities throughout Franklin, Hampden, Hampshire and Worcester Counties. The FRTA is a political subdivision of the Commonwealth of Massachusetts and is funded by Federal, Local and State governments. Though not the biggest transit authority in Massachusetts, the FRTA covers the largest (over 1,100 square miles) and the most rural geographical area in the State. The Authority is given general responsibilities to develop, finance and contract for the operation of transportation facilities and services within its transit area. The day-to-day affairs of the Authority are managed by the Administrator, appointed by the Advisory Board. According to the statute, regional transit authorities cannot operate service directly, but instead must contract with private operators for the provision of service. The FRTA contracts with Franklin Transit Management, Inc. for their fixed route and some demand response service. Due to the rural area it serves, the FRTA also contracts with some of the local Councils on Aging to provide additional demand response transportation. Service is currently in operation Monday through Friday.

##### **B. Overview of Services Sought**

The FRTA is seeking a qualified individual, or firm, to provide professional consulting and project management services for its new transit communication system to replace its current low band two-way radio communication system. The successful individual, or firm, shall be familiar with all applicable federal, state and local code and permit requirements for this project. The specifics of the work to be performed and other documents relative to this RFP, are set forth in the Scope of Services and the Attachments hereto and made a part hereof.

### C. Project Schedule and Submission Instructions

Seven (7) hard copies of the completed proposal will be marked “FRTA Communication Consultant Proposal” and will be received at the office of the Franklin Regional Transit Authority, 12 Olive Street, Greenfield, MA 01301 until 3:00 p.m. on **Friday, March 15<sup>th</sup>, 2019**. Proposals received after that date and time will not be considered.

Please note that the costs associated with the preparation of this Proposal are the sole responsibility of the applicable Proposer. Proposers shall not include any such expenses as part of the price proposed in response to the RFP.

The FRTA’s timeline for this project is to be completed in such a manner as to allow for the purchase, construction, and/or installation of equipment related to this project to begin as soon as possible pending funding for said equipment. It is expected that the successful individual, or firm, shall stay on this project throughout the project life to ensure that all required services, equipment, permits, and agreements must be delivered, installed, and fully operational per the specifications. The awarded proposer shall work with FRTA to ensure that all deliverables are completed within a timeframe that will adhere to FRTA’s schedule.

A **Pre-Proposal Conference** will be held by the FRTA on Wednesday, February 20, 2019 beginning at 10:00 a.m. at the John W. Olver Transit Center, located at 12 Olive St. in Greenfield in the William B. Allen II Meeting Room 104. The pre-proposal conference will describe the project and its status; outline the requirements and service standards that the FRTA will expect of the consultant/project manager; and will provide the opportunity for questions and explanations. **Attendance at the Pre-Proposal Conference is not mandatory but is strongly encouraged.**

Communication by any Proposer with any agent or employee of the FRTA on the subject of this RFP, or the pending process may result in that Proposer being deemed ineligible with regard to RFP. All questions and requests for clarification regarding this solicitation or this RFP process must be submitted in writing to Michael Perreault, Assistant Administrator of the FRTA on or before 5:00 p.m., **February 27<sup>th</sup>, 2019**. Questions can be submitted by email to [michael@frta.org](mailto:michael@frta.org). **Any corrections or changes to this RFP will be made by written addendum only and will be distributed to all known recipients of record that have successfully returned the Acknowledgement Form.**

The FRTA reserves the right to issue addenda to this RFP or to make adjustments to its project schedule if it is deemed in the FRTA’s best interest to do so. The FRTA further reserves the right to reject any and all Proposals resulting from this RFP if it is deemed in the best interest of the FRTA to do so. The FRTA may award as a direct result of the Proposals received or opt to negotiate with Proposers. FRTA will not make an award to, or initiate negotiations with, any Proposer solely on the basis of financial terms offered by any Proposer.

Below is a timeline of key dates for this project:

RFP Release	<b>January 31, 2019</b>
Pre-Proposal Meeting	<b>February 20, 2019 @ 10:00 am</b>
Written Questions Submitted to FRTA	<b>February 27, 2019 @ 5:00 pm</b>
Answers/Clarifications Sent to Proposers	<b>March 4, 2019</b>
Proposals due	<b>March 15, 2019 @ 3:00 pm</b>
Contract award and Notice to Proceed by	<b>March 29, 2019</b>

#### **D. Limitation on Funding**

The Contract resulting from this RFP will be subject to the availability of funds from FRTA's funding sources. The Contract for this service is contingent upon receipt of these funds by FRTA. In the event that funding from these sources is eliminated or decreased, FRTA reserves the right to terminate the Contract or modify it accordingly.

#### **E. Proprietary Information**

All Proposals shall become the property of FRTA. If any proprietary information is contained in or attached to a proposal, it must be clearly identified as such. Please note that FRTA is subject to the provisions of Chapter 4, Section 7, Clause twenty-six, of the General Laws of Massachusetts, and other Chapters thereof related thereto. If more than twenty-five percent (25.00%) of the contents of the Proposal are specified as proprietary information, the Proposal may be deemed non-responsive by the FRTA.

#### **F. Amendments to the Contract**

The FRTA reserves the rights to negotiate mutually acceptable amendments to the Contract arising from the RFP and, in particular, with respect to the addition of services that are consistent with the services solicited by the RFP. The right to negotiate mutually acceptable amendments applies for the term of this Contract and any extensions; however, the successful proposer must be prepared to sign the Contract herein as presented.

### **III. SCOPE OF SERVICES**

#### **A. Project Objectives**

The FRTA seeks to procure a new communication system to replace its current low band two-way radio system. FRTA intends for the system to provide business communication, including both voice and data if possible, between FRTA's Operations and Maintenance Facility and its fleet vehicles as well as communications between fleet vehicles throughout our service area in greater Franklin County. In addition, FRTA would like a system that could be expanded in the future to include other transportation providers at satellite locations throughout FRTA's entire system which includes Franklin, Hamden, Hampshire, and Worcester Counties, and some additional operating areas which includes parts of Berkshire County as well as Windham County VT and Cheshire County NH. FRTA's objectives of this project are:

- Analysis of current communications technology available and identification of the best option(s) to pursue in meeting FRTA's communications needs.
- Preparation of bid specifications for all equipment, installation, and other services required for FRTA to incorporate into its final procurement and/or contract documents.
- Assist FRTA in procuring any new equipment, licenses, permits, and/or right of way agreements for new system in compliance with all necessary funding and other regulatory requirements.
- Manage the delivery, installation, testing, and system acceptance of all new systems and equipment in accordance with all procurement, funding, and other regulatory requirements.

#### **B. Existing Conditions**

The 41 member communities that the FRTA currently serves includes: Ashfield, Bernardston, Blandford, Buckland, Charlemont, Chester, Chesterfield, Colrain, Conway, Cummington, Deerfield, Erving, Gill, Goshen, Granville, Greenfield, Hatfield, Hawley, Heath, Huntington, Leyden, Middlefield, Montague,

Montgomery, New Salem, Northfield, Orange, Petersham, Phillipston, Plainfield, Rowe, Russell, Shelburne, Shutesbury, Southampton, Southwick, Warwick, Wendell, Westhampton, Whately, and Worthington.

The FRTA provides two main types of transportation services; fixed route and paratransit. Currently the FRTA operates eight fixed routes: Route 20 – within Greenfield; Route 21 – within Greenfield, Route 22 – within Montague; Route 23 – between Greenfield and Sunderland via Route 2a and Route 63; Route 24 – between Greenfield and Montague; Route 31 – between Greenfield and Northampton via Routes 5/10; Route 32 – between Greenfield and Athol via Route 2 and Route 2a; and Route 41 – between Greenfield and Charlemont via Route 2.

The FRTA’s paratransit services consist of ADA, demand response, and other contract transportation services. Paratransit services covers all 41 FRTA communities as described above and includes destinations in other communities in Franklin, Hamden, Hampshire, and Worcester Counties, and some additional operating areas which includes parts of Berkshire County (Pittsfield) as well as Windham County VT (Brattleboro) and Cheshire County NH (Hinsdale).

According to statute, regional transit authorities in Massachusetts cannot operate services directly, but instead must contract with a private operator(s) for the provision of service. Currently the FRTA contracts with First Transit for their fixed route and some paratransit transportation services. Due to the rural service area, the FRTA also contracts with six local Councils on Aging and four additional private providers for the remainder of its paratransit service.

FRTA currently owns and operates a fleet of forty-one (41) vehicles including both revenue transit vehicles and non-revenue support vehicles. Twenty-three transit vehicles are garaged and operate out of FRTA’s operations and maintenance facility with the remaining garaged and operated throughout the remainder of FRTA’s service area. In addition, four support vehicles are garaged at FRTA’s maintenance facility and two additional support vehicles are garaged at FRTA’s intermodal transit center and administrative offices.

FRTA owns its intermodal transit center and administrative offices located at 12 Olive St., Greenfield, MA and currently leases its operations and maintenance facility located at 382 Deerfield St., Greenfield, MA. In addition, FRTA has a repeater located on Old Albany Rd in Shelburne, MA (42-34-19.3 N, 072-38-41.3 W) and a repeater located on Mount Grace in Warwick, MA (42-41-27.3 N, 072-21-13.3 W).

FRTA’s current communications equipment includes both two-way radios and cell phones. First Transit operates Kenwood VHF Low Band mobile radio in its fleet of transit and support vehicles, along with two fixed dispatch stations, and three portable radios. The remaining paratransit contractors utilize cell phones with various national cell phone carriers (i.e. Verizon, AT&T, etc.).

### **C. Project Tasks and Deliverables**

The FRTA is seeking a firm with multiple disciplines and capabilities to create a functional and efficient business communication system for transit operations staff throughout FRTA’s operating area. The consultant and project manager, including any support staff, shall perform and complete the following list of tasks and deliverables in accordance with this project.

#### **Task 1 – Analysis of Current Operations**

- i. Compile a current list of FRTA equipment, licenses, agreements, etc. with regard to its current radio communication system.
- ii. Meet with FRTA representatives to discuss current and future communication needs.
- iii. Identify current communication technologies available and the best option(s) for FRTA.

- iv. Create a plan for FRTA to achieve desired business communication results, including any transition from the current system onto any new system.

Task 1 Deliverables:

1. Provide a complete listing of current communication system equipment and other related documents in a form that can be easily sorted and updated.
2. Provide meeting minutes from meeting(s) with FRTA representatives.
3. Provide a complete listing of current communication technologies available and identify strengths and weaknesses of each for FRTA to consider. Information for consideration shall include, but not be limited to coverage area, expansion capacity, reliability, capital costs, ongoing operating costs, system maintenance, and any other special features such as communication of GPS, text messaging, emergency/panic button, or other transit scheduling data.
4. Provide a road map identifying best communication system solution for FRTA, cost estimate for all equipment, licenses, maintenance, and any other fees associated with the procurement of a new communication system, including any other alternative solutions, and a transition plan for sunsetting FRTA's current communication system and establishing its new communication system.

Task 2 – Procurement of New Equipment

- i. Develop specifications for all equipment, including system delivery, installation, testing, and acceptance.
- ii. Assist with review of all bid proposals to verify that bid documents meet, or do not meet, required specifications, including alternates, approved equals, etc.
- iii. Assist FRTA in acquiring all licenses, agreements, permits, rights-of-way, etc. necessary

Task 2 Deliverables:

1. Provide a set of specifications that FRTA can insert into procurement and/or contract documents. Specifications must follow all FTA procurement regulations as described in Circular 4220.1E, or most recent version, including any best practices to ensure full, fair, and open competition. Assist the FRTA in answering and clarifying all questions during the project bidding phase.
2. Provide a written review for each bid submission detailing if bidder has met all required specifications, including any alternates, approved equals, etc.
3. Where appropriate, either deliver or assist FRTA in obtaining all licenses, agreements, permits, rights-of-way, etc. required by federal, state, and/or local organizations or regulatory bodies including, but not limited to, the Federal Communication Commission, Massachusetts Department of Conservation & Recreation, Franklin Regional Council of Governments, and Greenfield Montague Transit Area, or any private contracts, agreements, etc. for the installation and operation of the new communication system prior to installation.

Task 3 – Post-Award Project Management Delivery, Installation, Testing, and System Acceptance

- i. Oversee delivery and installation of new communication system.
- ii. Oversee testing of new communication system.
- iii. Oversee training and system acceptance of new communication system.

Task 3 Deliverables:

1. Manage and coordinate the delivery and installation of the new communication system, including verifying deliverables against project specifications.
2. Manage, coordinate, and verify successful testing of all equipment for new communication system.
3. Manage and coordinate training and system acceptance of new communication system with all FRTA operations and maintenance departments.

#### **D. Permitting**

All proposers must have knowledge and experience with federal, state and local permitting rules and requirements, including but not limited to the Federal Communications Commission, state and/or local building codes, and any applicable local zoning bylaws.

#### **E. Conflicts of Interest**

The FRTA intends for the future purchase, delivery, installation, testing, and system acceptance to be impartial and unbiased to provide the best communication system that meets the needs of FRTA and procured in such a manner to allow for full and open competition. To achieve this, the contract award for consultant and project manager, including all support staff, will not be allowed to submit a bid for the purchase of any equipment related to this procurement. In addition, all proposers must certify to the FRTA any and all past, present, or planned organizational, financial, contractual, or other interests with organizations whose products or services may be offered in the procurement of radio communication equipment as described in this document.

#### **F. Insurance**

All proposers shall be able to provide and maintain the following insurance requirements through two (2) years after the completion of the project:

The successful proposer, and any sub-contractors, shall provide commercial general liability insurance including products and completed operations with limits of at least \$1,000,000 for each occurrence and \$2,000,000 in the aggregate. The successful proposer shall also provide, at minimum, \$1,000,000 umbrella policy. The successful proposer shall provide professional liability insurance covering errors and omissions with limits of \$1,000,000 for each occurrence and at least \$2,000,000 in the aggregate. The successful proposer, and any sub-contractors, shall provide commercial auto liability insurance coverage with limits of at least \$1,000,000 combined single limit. In addition, the successful proposer, and any sub-contractors, shall provide worker's compensation insurance, as required by the laws of the Commonwealth of Massachusetts.

The successful proposer, and any sub-contractors, shall furnish to the FRTA Certificates of Insurance showing coverage as set forth above prior to performing the services for this project as described in this document. All insurance coverage required herein shall be issued by carriers with a financial rating of A or better. The successful proposer, and any sub-contractors, shall add the FRTA as the project owner and shall name the FRTA as an additional insured with respects to the general liability, the umbrella insurance, and auto liability insurance policies as outlined above.

The successful proposer, and any of their subcontractors, shall be required to provide proof of existing general liability insurance, umbrella insurance, professional liability insurance, auto liability insurance and worker's compensation insurance prior to FRTA authorizing a Notice to Proceed.

#### **G. Federal Clauses**

Attachment A attached hereto and made a part hereof sets forth Federal Clauses and Certifications placed upon vendors of FRTA who are participating in a project funded in whole or in part with Federal grants. Its provisions are hereby included as an integral part this RFP.

## **H. Disadvantaged Business Enterprise (DBE)**

The FRTA has created a program plan that outlines policies to implement a Disadvantaged Business Enterprise (DBE) program that encourages opportunities for DBE companies on Federal Transit Administration funded contracts which comply with all requirements established by CFR 49 part 26. While this specific project is being funded through Massachusetts Regional Transit Authority Capital Assistance Program without the use of any federal funds, the FRTA encourages participation from certified DBEs with this project.

## **I. Additional Information**

FRTA is exempt for all sales taxes and taxes must not be included in the price. The necessary exemption certificates shall be provided to the successful proposer.

Any addenda issued by FRTA will be emailed to interested parties that have completed and returned an Acknowledgement of Receipt Form.

While this project is being funding through Massachusetts Regional Transit Authority Capital Assistance Program, FRTA wants to ensure that the successful proposer is familiar with all federal regulations including Davis-Bacon and Copeland Anti-Kickback Acts (29 CFR), Disadvantaged Business Enterprise (DBE), as well as state regulations including Massachusetts General Law Chapter 149 as may be applicable to this project.

## **IV. REQUIRED SUBMISSIONS**

### **A. Contents of Proposal**

The proposal shall be organized in conformance with the format detailed within this section. Seven (7) hard copies of each proposal shall be submitted.

In awarding a contract, FRTA reserves the right to consider all elements which help to determine the best proposal. Any proposal which is incomplete, conditional, obscure, contains additions not called for, or includes irregularities of any kind may be rejected.

All required certifications must be completed, signed and submitted with each Proposal.

The proposal shall be signed by an individual authorized to bind the vendor and shall contain a statement to the effect that the bid price is a firm offer for a sixty (60) calendar day period from the date of the opening. FRTA reserves the right to negotiate price and services.

The successful proposer shall be the prime contractor and shall be solely responsible for all contractual performance. In the event of a subcontracting relationship, the successful proposer will assume all responsibility for the performance of the products and/or services that are supplied by the subcontractor.

Once FRTA has formally awarded the contract the successful proposer shall commence work once a written Notice to Proceed has been received.

The Proposal shall consist of two parts and include the following information for FRTA to consider:

**Part 1:**

**Minimum Qualifications**

The proposer must have at least the following minimum qualifications to be considered qualified for this project:

- Five (5) years of experience in designing & engineering projects similar in nature as described in this RFP
- Three (3) owner references that demonstrate the proposer's qualifications on similar projects
- Completed Acknowledgement of Receipt Form
- Completed Required Federal Clauses and Certifications (Attachment A)
- Completed General Information Form and W-9 Form (Attachment B)

**Part 2:**

**Evaluation Criteria**

The criteria used in evaluating the technical proposals will focus on the following areas:

- Statement of Project Understanding and Work Plan (15 points)
- Firm or Team Qualifications for Providing Consulting & Project Management Services (15 points)
- Qualifications and Experience of Key Staff (25 points)
- Project Schedule and Availability of Key Staff (25 points)
- Demonstrated Performance Record (15 points)
- Cost Proposal (40 points)
- Overall Quality of Proposal (5 points)
- Disadvantaged Business Enterprise (10 points)

**Statement of Project Understanding and Work Plan**

The proposer must provide a statement which demonstrates a clear understanding of the project and FRTA's expectations. This section shall provide a comprehensive understanding of this project and a detailed description and methodology to the approach of managing all of the requirements of this project through to completion as described in this RFP.

The proposal should include a comprehensive, detailed work plan describing the methodology and approaches to be used to accomplish this service by tasks. The proposal shall detail information for individual work phases including Analysis of Current Operations, Procurement of New Equipment, and Post-Award Project Management Delivery, Installation, Testing, and System Acceptance. Any recommendations for changes or additions to the Scope of Services contained in this RFP consistent with the objective of the FRTA's project must also be included. The work plan shall illustrate the proposer's capability to manage, coordinate, and integrate the work of its personnel and any proposed subcontractors; to interface with the FRTA's staff; and to provide the experienced personnel required for successful performance of the services requested.

**Firm or Team Qualifications for Providing Consulting & Project Management Services**

The proposer must provide a statement explaining their qualifications for providing Consulting and Project Management Services for this project. The proposal must include a statement regarding the experience and performance of the proposer in relation to the Scope of Work described in this RFP. The proposer must demonstrate they have the ability to fulfill the obligations of this contract in all task phase aspects. The proposer must demonstrate their experience and knowledge of prevailing wage as issued by the Executive Office of Labor and Workforce Development and related statutes covered within Massachusetts General Law, and the Davis-Bacon and Copeland Anti-Kickback Acts.

**Qualifications and Experience of Key Staff**

The proposer must provide detailed qualification and experience for all key staff for this project, including the project manager. Information in this section shall include job field specific experience.

**Project Schedule and Availability of Key Staff**

The proposer must include a project schedule as part of their proposal. The project schedule shall clearly indicate the estimated time to complete each of the project tasks as outlined in this RFP. The proposer must provide detailed information regarding the availability for all key staff in conjunction with the project schedule for all tasks related to this project. Any additional information that could impact the project schedule shall be identified and explained.

**Demonstrated Performance Record**

The proposer must provide a listing of past project with information related to past performance which may include, but is not limited to; project description, project cost, key staff, project schedules, quality control, change orders, and lessons learned. This section should include a list of at least three (3) references who have been customers of the proposer and who have been provided similar services. The reference list shall include the following:

- A. Name of Customer
- B. Project Description
- C. Contact Person
- D. Complete Address
- E. Telephone Number
- F. Email Address

**Cost Proposal**

The proposer shall include all costs associated with the completion of the project as described in this RFP. Proposers are encouraged to submit other information which may be pertinent to the cost or further explanation of costs related to the submission to this RFP. The Cost Proposals shall be scored by the following formula:

$$80 - \frac{[40 \times \text{Proposer's Cost Proposal}]}{[\text{Lowest Cost Proposal}]}$$

### **Overall Quality of Proposal**

The Evaluation Committee will be looking for things including, but not limited to the following:

- Is the outline/organization of the proposal correct?
- Is the proposal compliant with all RFP requirements?
- Are the proposed approaches cost-effective?
- Do the proposed approaches offer compelling benefits and value to the FRTA?
- Does the proposal reflect your full awareness of FRTA as the customer?
- Does the proposal demonstrate the relevance of your previous experience at every opportunity?
- Are the reasons why the FRTA should select you clear?
- Does the proposal discriminate you from the competition?
- Does the proposal have any typographical or grammatical errors?
- Are all assumptions well documented within the proposal?

### **Disadvantaged Business Enterprise**

The proposer shall indicate if the individual, or firm, and any subcontractors named in this proposal are a Disadvantaged Business Enterprise. The proposer shall include a copy of their certification letter from the Commonwealth of Massachusetts Supplier Diversity Office, or another State's Unified Certification Program equivalent. **DBE Clauses can be found in Attachment A of this RFP.**

## **B. Proposal Evaluation and Selection Process**

It is FRTA's intent to award the contract to the qualified proposer that is most responsible and responsive based on their qualifications, their approach to meet the requirements of this RFP, and their cost.

The Evaluation Committee shall review each proposal submitted and may invite some or all of the proposers to submit additional material to support or clarify their proposals. The Evaluation Committee will take all information provided into consideration in making their recommendation to award a contract to the successful proposal that is most beneficial to the Authority.

If determined necessary, the Evaluation Committee may invite any proposers for an interview. If interviews are conducted, the Evaluation Committee will be provided the opportunity to revise their original review to accurately reflect any additional information that may have been obtained through the interview process.

The Evaluation Committee shall select and recommended to the FRTA's Administrator the most responsible and responsive proposer for award of the project. The proposer with the highest-ranking proposal may be contacted regarding any potential areas to be negotiated. If negotiations are determined not necessary, a contract will be awarded to that company. If negotiations are conducted and not successful with the highest-ranking proposer, then negotiations may be conducted with the next highest ranking proposer and so on down the line until negotiations are successful.

FRTA reserves the right to contact proposer(s) regarding an interview, areas of concern, areas to be negotiated and/or request for best and final offers. FRTA reserves the right to award on the basis of initial proposal submitted without negotiations or discussions if such action is deemed to be in the best interest of FRTA.

### **C. Contract Award**

FRTA will not make an award to, or initiate negotiations with, any proposer solely on the basis of financial terms offered by any proposer. The proposals will not be opened in public. The proposals will not be made available to anyone other than the members of the Evaluation Committee. Respondents are advised that the Administrator of the FRTA, as Chief Executive Officer, is solely responsible for the award of a contract. The award will be made to the most highly qualified firm that is most responsible and responsive based on their qualifications, their approach to meet the requirements of this RFP, and their cost. All contract award communication shall be sent to the proposers in writing.

V. Acknowledgement of Receipt Form\*

Acknowledgement of Receipt of RFP\*



RFP #2019-0131

Consulting and Project Management Services

For

Transit Communication System

Name of Firm: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email: \_\_\_\_\_

PLEASE RETURN TO Michael Perreault at [Michael@frta.org](mailto:Michael@frta.org)

\*Addenda will only be forwarded to those firms that complete and submit the *RECEIPT OF RFP* form by **February 27<sup>th</sup>, 2019**

**VI. ATTACHMENTS A - D**

**ATTACHMENT A**

**RFP #2019-0131**

**Consulting and Project Management Services for Transit Communication System  
REQUIRED FEDERAL CLAUSES AND CERTIFICATIONS**

Required Federal Clauses

CERTIFICATION OF ELIGIBILITY

\_\_\_\_\_ hereby certifies that it  
(Name of Consultant)

is not included on the U.S. Comptroller General's Debarred Bidders List.

Signature: \_\_\_\_\_

Firm: \_\_\_\_\_

The Proposer certifies to the best of its knowledge and belief that it and its principals

- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by any Federal department or agency.
- B. Have not, within a three-year period preceding the date of this Proposal, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property.
- C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph B of this Certification.
- D. Have not, within a three-year period preceding the date of this Proposal, had one or more public transactions (Federal, State or local) terminated for cause or default.

\_\_\_\_\_ Where the Proposer \_\_\_\_\_ is unable to certify to any of the statements in this certification, such Proposer shall include an explanation in such regard with its Proposal.

(Check One)

I DO CERTIFY

I DO NOT CERTIFY

Date: \_\_\_\_\_ Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

**Required Federal Clauses**

**NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

(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.

Signed \_\_\_\_\_

Date \_\_\_\_\_

**PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS  
AND RELATED ACTS**

**31 U.S.C. 3801 et seq.  
49 CFR Part 31 18 U.S.C. 1001  
49 U.S.C. 5307**

(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.

Signed \_\_\_\_\_

Date \_\_\_\_\_

**Required Federal Clauses**

**ACCESS TO RECORDS AND REPORTS**

**49 U.S.C. 5325  
18 CFR 18.36 (i)  
49 CFR 633.17**

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 18.39(i)(11).
7. FTA does not require the inclusion of these requirements in subcontracts.

Signed \_\_\_\_\_

Date \_\_\_\_\_

**Required Federal Clauses**

**Requirements for Access to Records and Reports by Types of Contract**

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

**FEDERAL CHANGES**

**49 CFR Part 18**

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.

Signed \_\_\_\_\_

Date \_\_\_\_\_

**Required Federal Clauses**

**INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

**FTA Circular 4220.1E**

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 FRTA requests which would cause FRTA to be in violation of the FTA terms and conditions.

Signed \_\_\_\_\_

Date \_\_\_\_\_

**ENERGY CONSERVATION REQUIREMENTS**

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

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.

Signed \_\_\_\_\_

Date \_\_\_\_\_

Required Federal Clauses

**TERMINATION**

49 U.S.C.Part 18

**FTA Circular 4220.1E**

**Applicability to Contracts**

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

**Flow Down**

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

- a. **Termination for Convenience (General Provision)** The FRTA may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in their 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 FRTA to be paid the Contractor. If the Contractor has any property in its possession belonging to the FRTA, the Contractor will account for the same, and dispose of it in the manner the FRTA 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 FRTA 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 FRTA in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 30 days 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
- d. **Waiver of Remedies for any Breach.** In the event that FRTA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by FRTA shall not limit FRTA'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 FRTA, by written notice, may terminate this contract, in whole or in part, when it is in their best 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 FRTA may terminate this contract for default. The FRTA 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.

**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 FRTA may terminate this contract for default. The FRTA 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.

**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 FRTA may terminate this contract for default. The FRTA 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 FRTA 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 FRTA 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.

**j. Termination for Convenience of Default (Cost-Type Contracts)** The FRTA may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the FRTA 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 FRTA, or property supplied to the Contractor by the FRTA. If the termination is for default, the FRTA 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 FRTA and the parties shall negotiate the termination settlement to be paid the Contractor.

Signed \_\_\_\_\_

Date \_\_\_\_\_

Required Federal Clauses

**GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

**49 CFR Part 29**

**Executive Order 12549**

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

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

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

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

Signed \_\_\_\_\_

Date \_\_\_\_\_

Required Federal Clauses

**DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS**

**Davis-Bacon and Copeland Anti-Kickback Acts**

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

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

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

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

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

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

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount

designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

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

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

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

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

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

classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the FRTA for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations,

29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

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

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

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

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

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

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

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise

employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

the contract clauses in 29 CFR 5.5.

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

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

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

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

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

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

Signed \_\_\_\_\_

Date \_\_\_\_\_

**CERTIFICATION OF NON-COLLUSION**

The Undersigned certifies, under penalties of perjury, that this Proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union committee, club, or other organization, entity or group of individuals.

SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

FIRM: \_\_\_\_\_

DATE: \_\_\_\_\_

**Required Federal Clauses**

**CIVIL RIGHTS REQUIREMENTS**

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

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.

Signed \_\_\_\_\_

Date \_\_\_\_\_

Required Federal Clauses

# Buy America Requirements

49 U.S.C. 5323(j)  
49 CFR Part 661

## Applicability to Contracts

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

## Flow Down

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

## Mandatory Clause/Language

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

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

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

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

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

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

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

## Breaches and Dispute Resolution

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

### Applicability to Contracts

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

### Flow Down

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

### Model Clauses/Language

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

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

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

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

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

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

## Required Federal Clauses

### Lobbying

**31 U.S.C. 1352**  
**49 CFR Part 19**  
**49 CFR Part 20**

#### Applicability to Contracts

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

#### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

#### Flow Down

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

#### Mandatory Clause/Language

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

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

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)
- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

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

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

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

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

##### Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or

employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

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

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

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name and Title of Contractor's Authorized Official

\_\_\_\_\_ Date

Required Federal Clauses

## Clean Water Requirements

33 U.S.C. 1251

### Applicability to Contracts

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

### Flow Down

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

### Model Clause/Language

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

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

## CLEAN AIR

42 U.S.C. 7401 *et seq*  
40 CFR 15.61  
49 CFR Part 18

### Applicability to Contracts

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

### Flow Down

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

### Model Clauses/Language

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

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

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

## Required Federal Clauses

# Contract Work Hours and Safety Standards Act

## Background and Application

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

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

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

## Clause Language

### Contract Work Hours and Safety Standards

1. **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. **Withholding for unpaid wages and liquidated damages** - The (write in the name of the grantee) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

## Required Federal Clauses

# Bonding Requirements

## Applicability to Contracts

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

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
  1. 50% of the contract price if the contract price is not more than \$1 million;
  2. 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million;  
or
  3. \$2.5 million if the contract price is more than \$5 million.
- d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

## Flow Down

Bonding requirements flow down to the first tier contractors.

## Model Clauses/Language

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

### Bid Bond Requirements (Construction )

#### a. Bid Security

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

#### b. Rights Reserved

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

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

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

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

### **Performance and Payment Bonding Requirements (Construction)**

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

a. Performance bonds

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

b. Payment bonds

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

### **Performance and Payment Bonding Requirements (Non-Construction)**

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

a. The following situations may warrant a performance bond:

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

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

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

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

### **Advance Payment Bonding Requirements**

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

### **Patent Infringement Bonding Requirements (Patent Indemnity)**

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

### **Warranty of the Work and Maintenance Bonds**

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

**Required Federal Clauses**

## **Seismic Safety Requirements**

**42 U.S.C. 7701 et seq. 49  
CFR Part 41**

### **Applicability to Contracts**

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

### **Applicability to Micro-Purchases**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### **Flow Down**

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

### **Model Clauses/Language**

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

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

**DBE CLAUSES**

**DBE UTILIZATION FORM**

The undersigned Proposer has satisfied the requirements of the RFP specification in the following manner (please check the appropriate space):

\_\_\_\_\_ The Proposer is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract.

\_\_\_\_\_ The Proposer (if unable to meet the DBE goal of \_\_\_\_\_ %) is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

PROPOSER'S NAME: \_\_\_\_\_

AUTHORIZED SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**DBE PARTICIPATION SCHEDULE**

The Proposer shall complete the following information for all DBE's participating in the contract that comprises the DBE Utilization percent stated above. The Proposer shall also furnish the name and telephone number of the appropriate contact person should the FRTA have any questions in relation to the information furnished herein.

**DBE IDENTIFICATION AND INFORMATION FORM**

Name Address	Contact Name and Telephone Number	Participation \$ Of Total Contract Value	Description of Work To Be Performed	Category (Indicate MBE or WBE)

PRIME COMPANY NAME: \_\_\_\_\_

NAME OF CONTACT PERSON: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

**DBE LETTER OF INTENT**

**FRANKLIN REGIONAL TRANSIT AUTHORITY  
DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION  
(To be supplied if using DBE subcontractors)  
LETTER OF INTENT**

To: \_\_\_\_\_ (Name of Prime Contractor)

The undersigned intends to perform work in connection with this project as (check one):

- an individual  DBE  a partnership  a joint venture

The Disadvantaged Business Enterprise status of the undersigned is confirmed

- (a) On the most recent reference list of Disadvantaged Business Enterprises published by Massachusetts Supplier Diversity Office dated \_\_\_\_\_, or
- (b) On the attached Disadvantaged Business Enterprise Identification Statement

The undersigned is prepared to perform the following work in connection with the above project, (Specify in detail particular work items or parts thereof to be performed):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The proposer/bidder is committed to utilizing the above named DBE firm for the work described above. The estimated dollar amount if this work is \$ \_\_\_\_\_.

You have projected the following commencement date for such work and the undersigned is projecting completion of such work as follows:

<u>Items</u>	<u>Projected Commencement Date</u>	<u>Projected Completion Date</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

The above work will not be sublet to a non- Disadvantaged Business Enterprise at any tier. The undersigned will enter a formal agreement for the above work conditioned upon an execution of a contract with FRTA.

Date \_\_\_\_\_  
\_\_\_\_\_  
Name of Disadvantaged Business Enterprise

**(Proposer shall submit letter of intent for each DBE subcontractor.)**

**DBE CLAUSES**

STATE OF \_\_\_\_\_ Date: \_\_\_\_\_  
COUNTY OF \_\_\_\_\_ S.S.

The undersigned being duly sworn, deposes and says that he/she is the

\_\_\_\_\_  
(Sole owner, partner, president, treasurer or other duly authorized official of a corporation)

of \_\_\_\_\_ (Name  
of DBE)

certifies that since the date of its certification by

\_\_\_\_\_  
(SOMWBA or out-of-state certification agency)

the certification has not been revoked nor has it expired nor has there been any change in  
the minority status of

\_\_\_\_\_  
(Name of DBE)

\_\_\_\_\_  
(Signature and Title of Person Making Affidavit)

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Notary Public: \_\_\_\_\_

My commission expires: \_\_\_\_\_

NOTE: The Proposer must attach the DBE's most recent certification letter or document to this affidavit.

**ATTACHMENT B**

**RFP #2019-0131**

**Consulting and Project Management Services for Transit Communication System**

**GENERAL INFORMATION FORM**

**W9 FORM**

**Attestation of Tax Compliance**

**Statement on MGL/Building Code**

**Certificate of Corporate Authority**

**Authorized Signature Verification**

<b>GENERAL INFORMATION FORM</b>		
Name of Organization:		
Address:		
Telephone:	FAX:	
Authorized Contact:	Name:	
	Title:	
	Telephone:	
Organization is (check appropriate block):		
<input type="checkbox"/> Corporation <input type="checkbox"/> Joint Venture <input type="checkbox"/> Quasi-public Agency <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Other (explain) <input type="checkbox"/> Association <input type="checkbox"/> Public Agency		
Acknowledgment of received Addenda No(s):		
<p>The undersigned, being cognizant of the pages, documents and attachments concerned herewith agrees to provide the FRTA with the services described in the Request for Proposals dated January 31, 2019. The stated Proposal shall be firm for 60 days from the due date of this document.</p> <p>The Contractor agrees to comply with contractual requirements pertaining to Equal Employment Opportunity, Fair Employment Practices, DBE Participation goals, and other Federal and State requirements.</p>		
The Proposer hereby affirms that this Proposal is genuine, not a sham or collusive, and is not made in the interest of any person not therein named.		
Authorized Signature	Date	

## W 9 FORM - Taxpayer Identification Number (TIN) and Certification

---

Name (as shown on your income tax return)

---

Business name, if different from above

**Check appropriate box:**

Individual/Sole proprietor

Corporation

Partnership

Other

---

Address (number, street, and apt. or suite no.)

---

City, State, and ZIP Code

### Taxpayer Identification Number (TIN)

Enter your TIN on the appropriate line below. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the IRS instructions on filling out Form W-9. For other entities, it is your employer identification number (EIN).

SSN: \_\_\_\_\_

EIN: \_\_\_\_\_

### Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: a) I am exempt from backup withholding, or b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

**Certification Instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.

Signature of U.S. person: \_\_\_\_\_

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

**ATTESTATION OF TAX COMPLIANCE**

I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

\_\_\_\_\_  
\*Signature of Individual or  
Corporate Name (Mandatory)

\_\_\_\_\_  
\*\*Social Security Number or Federal  
Identification Number (Mandatory)

By: \_\_\_\_\_  
Corporate Officer  
(Mandatory, if Applicable)

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

\*Approval of a contract or other agreement will not be granted unless this certification clause is signed by the applicant.

\*\*Your social security number will be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing and tax payment obligations. Providers who fail to correct their non-filing or delinquency status will not have a contract or other agreement issued, renewed, or extended. This request is made under the authority of Mass. G.L.C.62c, Sec.49A.

**Statement on MGL/Building Code  
(To Be Signed by Principal Officer of Consultant)**

I certify that all information is submitted under penalties of perjury and that I am familiar with the State Building Code and also Massachusetts General Laws, Chapter 149, Section 44A-44H, Section 44M, Chapter 149A, Chapter 193 of the Acts of 2004 and Chapter 30, Section 39M.

---

Signed

---

Printed Name

---

Title

---

Company Name

**CERTIFICATE OF CORPORATE AUTHORITY**

At a duly authorized meeting of the Board of Directors of the \_\_\_\_\_  
(Name of corporation)

held on \_\_\_\_\_ Directors were present or waived notice, it was voted that \_\_\_\_\_  
(date)

\_\_\_\_\_ of this company be and hereby is authorized to execute contracts and bonds  
(Name and title)

in the name and behalf of said company, and affix its Corporate Seal thereto, and such execution  
of any contract or bond of obligation in this company's name on its behalf of such \_\_\_\_\_  
(OFFICER)

under seal of the company shall be valid and binding upon this company.

A TRUE COPY,

ATTEST: \_\_\_\_\_

Place of Business:

\_\_\_\_\_  
\_\_\_\_\_

I hereby certify that I am the \_\_\_\_\_ of the \_\_\_\_\_  
(Title) (Name of Corporation)

that \_\_\_\_\_ is the duly elected \_\_\_\_\_ of said  
(Name of Officer) (Title)

company, and the above vote has not been amended or rescinded and remains in full force and effect as of the  
date of this contract.

Signature: \_\_\_\_\_

Name/Title: \_\_\_\_\_

Date: \_\_\_\_\_  
(Corporate Seal)

COMMONWEALTH OF MASSACHUSETTS, SS. \_\_\_\_\_, 2017

Then personally appeared the above named \_\_\_\_\_ and acknowledged the foregoing  
instrument to be his/her free act and deed before me.

Notary Public \_\_\_\_\_  
My commission expires:

## CONTRACTOR AUTHORIZED SIGNATURE VERIFICATION FORM

**Individuals:** Individuals have two options to verify signature authorization.

1. **Official Sample of Signature.** Signature verification may be accomplished by submitting a copy of a driver's license, passport, social security card, business ID or other official form or identification containing the authorized signatory's signature, **OR**
2. **Notorization.** In the alternative, the Bidder can have their signature notarized in the space below.

**Corporations:** Corporations have two options to verify signature authorization.

1. **Authorization and Clerk Certification.** The Corporate Clerk may certify in the space below that they have witnessed the authorized signature (made in the Clerk's presence) **AND** that the signatory is authorized to execute contracts and other documents and legally bind the corporation. (**NOTE:** Clerks may not self-certify if they act as Clerk and as the authorized signatory. Alternative documentation should be submitted), **OR**
2. **Authorization and Official Sample of Signature or Notarization** (Complete both "a." and "b." below)
  - a. **Authorization.** The Bidder may attach a copy of a board of directors vote stating that each signatory is authorized to execute contracts and other documents and legally bind the corporation, **AND**
  - b. **Official Sample of Signature or Notarization.** (Select one option)
    - **Official Sample of Signature.** Attach a copy of a driver's license, passport, social security card, business ID or other form or identification containing an example of the authorized signatory's signature, **OR**
    - **Notarization.** Have each of the signatory's signature notarized (made in a notary's presence) below.

### **Partnership or Other Entities**

1. **Authorization.** Attach documentation for each signatory of authorization to execute contracts and other documents and legally bind the partnership or other entity, **AND**
2. **Official Sample of Signature or Notarization.** (Select one option)
  - a. **Official Sample of Signature.** Attach a copy of a driver's license, passport, social security card, business ID or other official form or identification containing the authorized signatory's signature, **OR**
  - b. **Notarization.** Have their signature notarized in the space below.

---

### THIS SECTION IS FOR NOTARIZATION OR CORPORATE CLERK CERTIFICATION

**PRINT SIGNATORY'S FULL LEGAL NAME:** \_\_\_\_\_

**SIGNATURE:** (as it will appear on documents) \_\_\_\_\_

(NOTARY) I, \_\_\_\_\_ as a notary public certify under the pains and penalties of perjury that I witnessed the signature of the aforementioned signatory on behalf of the Bidder, and the individual's identity was verified, on this date: \_\_\_\_\_, 20\_\_\_\_. My commission expires on:

**OR**

(CORPORATE CLERK) I, \_\_\_\_\_ as a notary public certify under the pains and penalties of perjury that I witnessed the signature of the aforementioned signatory on behalf of the Bidder, and the individual's identity was verified, on this date: \_\_\_\_\_, 20\_\_\_\_.

**AFFIX CORPORATE SEAL OR NOTARY SEAL HERE:**

**ATTACHMENT C**

**RFP #2019-0131**

**Consulting and Project Management Services for Transit Communication System  
BID/PROCUREMENT PROTEST POLICY**

## **Bid/Procurement Protest Policy**

The Franklin Regional Transit Authority (FRTA) will make every effort to issue requests for proposals (RFP/Qs), requests for qualifications (RFQs), and invitations to bid (IFBs) and to make awards relative to those procurements in a manner that will not spark a protest. If, however, a proposer or bidder, herein after called the "Protester", wishes to protest either the solicitation or the award of the procurement, the Protester may file a protest as described below.

### Protests Prior to Award of Contract

Any Protester that desires to protest any aspect of the contents of a FRTA procurement solicitation (RFP, RFQ, IFB) must file a written statement of protest with the Administrator of the FRTA (hereinafter referred to as the Administrator) within fifteen (15) business days prior to the deadline date specified for submitting a response to the procurement. The written protest should be as specific as possible in describing the Protester's objection to the procurement solicitation and include any supporting documentation. In this written protest, the Protester may request a hearing with the Administrator.

The Administrator will schedule any requested hearing to be held within ten (10) business days of receipt of the written protest.

The Administrator will issue a response in writing, within five (5) business days of receipt of the protest or following a hearing on the protest.

If a protest has been filed in accordance with the procedure specified hereinabove, the FRTA will not make a procurement award pending a resolution of the outstanding protest, unless, in the sole judgment of the Administrator:

- the items to be procured are urgently required
- delivery or performance will be unduly delayed by the FRTA's failure to make the award as scheduled
- the failure to make the procurement award will cause undue harm to the FRTA or interfere with the FRTA's fulfilling its responsibilities or obligations.

The protest will be considered outstanding until the Administrator has issued his response to the protest.

Protests received following the solicitation response due date will be considered only if they concern an issue, procedure, or other matter that could not have reasonably been protested by a proposer prior to the solicitation response due date; however, no protests about the solicitation will be entertained after ten (10) business days following the solicitation response due date.

Any protest may be withdrawn, in writing, prior to issuance of the Administrator's response.

### Protests Subsequent to Award of Contract

1. Proposers may file a protest about the procurement subsequent to the award of the contract. Such protests may not pertain solely to the solicitation, except if the provisions of Item 5 above apply.

Protestors of the procurement contract award must file a written statement of protest with the Administrator within five (5) business days following receipt of the notice of the award.

The written protest should be as specific as possible in describing the Protester's objection to the procurement contract award to a competing proposer. In this written protest, the Protester may request a hearing with the Administrator.

The Administrator will schedule any requested hearing to be held within five (5) business days of receipt of the written protest.

The Administrator will issue a response in writing, within five (5) business days of receipt of the protest or following a hearing on the protest.

Depending on the timing of the protest relative to the commencement of work activities under the awarded contract, the Administrator may or may not suspend the awarded contract while the protest is outstanding. The contract award will not be suspended if, in the sole judgment of the Administrator, the contract must be enforced because:

- the items to be procured are urgently required
- delivery or performance will be unduly delayed by the FRTA's failure to make the award as scheduled
- the failure to make the procurement award will cause undue harm to the FRTA or interfere with the FRTA's fulfilling its responsibilities or obligations.

The protest will be considered outstanding until the Administrator has issued his response to the protest.

#### Further Right of Appeal

Proposers protesting procurements supported with funds from the Federal Transit Administration (FTA) may, pursuant to FTA Circular 4220.1D and any applicable Federal Law, file a protest with the FTA after exhausting the following of FRTA protest procedures.

#### Judicial Remedies

The FRTA recognized that, under certain circumstance, the Protester may be entitled to seek the following judicial remedies:

- An action for monetary damages, where and if applicable, in the Court of Massachusetts
- An action for injunctive relief, as well as money damages, where and if applicable, in the Courts of Massachusetts
- Actions within the Federal Courts as a result of the pursuit of the remedies referred to in "Further Right of Appeal" hereinabove, as well as actions for money damages and/or injunctive relief, where and if applicable.

#### Notices

In each case where notice is required herein to be given to a Protester, the FRTA will cause similar notice to be given to each other respondent to the procurement solicitation.

**ATTACHMENT D**

**RFP #2019-0131**

**Consulting and Project Management Services for Transit Communication System  
SAMPLE CONTRACT**

**AGREEMENT BETWEEN  
THE FRANKLIN REGIONAL TRANSIT AUTHORITY AND (XXX, INC.)  
FOR  
CONSULTING AND PROJECT MANAGEMENT SERVICES**

THIS IS AN AGREEMENT made on the (\_\_\_<sup>st</sup> day of Month, 2019), by and between the Franklin Regional Transit Authority (FRTA) in the County of Franklin, Commonwealth of Massachusetts, a public entity, located at 12 Olive Street, Greenfield, Massachusetts (hereinafter referred to as “FRTA”), and ((XXX, Inc.), \_\_\_\_\_ located at \_\_\_\_\_ (hereinafter referred to as “Consultant”).

FRTA and Consultant agree to the performance and furnishing of certain professional services by Consultant for certain consideration to be paid to Consultant by FRTA, as set forth more specifically in the mutual covenants set forth below.

This Agreement will become effective on the date that the last party fully executes the same.

**1.0 CONTRACT DOCUMENTS**

This Agreement and the Exhibits identified in this Section, all of which are attached to and form a part of this Agreement, constitute the entire agreement between FRTA and Consultant and supersede any and all prior written or oral understandings between FRTA and Consultant.

Exhibits:

- A. Certificate(s) of Insurance and Licenses Required by this Agreement.
- B. Consultant’s Technical Proposal.
- C. Consultant’s Quote of Dispute Resolution Agreement.
- D. Consultant’s Corporate Authorization.
- E. Request for Proposals.

**2.0 CONSULTANT AND PROJECT MANAGEMENT SERVICES**

The full execution of this Agreement by FRTA and Consultant constitutes FRTA's written authorization for Consultant to proceed with the professional services described in the RFP.

**3.0 STANDARD OF CARE BY CONSULTANT**

In providing services under this Agreement, the Consultant will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

Except as otherwise specified, Consultant's Services shall be guaranteed by Consultant against any and all defects or damages caused thereby for a period of three (3) years from the date of completion of Consultant's Services. Consultant shall be responsible during such period, or within three (3) years of the time when the FRTA knew of or should have known of such defects or damages, if later, for any repair, changes, or remedial work necessitated by such defects or damages.

Otherwise, the standard of care for good consulting and project management; and related services shall apply to Consultant's Services rendered hereunder.

#### 4.0 RECORDS, REPORTS AND DATA

Consultant shall submit to FRTA such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, shop drawings, manufacturers' product specifications, records and other data as FRTA may request concerning Consultant's Services. All records shall be retained by the Consultant for a period of seven (7) years from completion of Consultant's Services.

#### 5.0 OWNERSHIP OF DOCUMENTS AND WORK PRODUCT

All documents produced pursuant to this Agreement shall be the property of FRTA. All information acquired from FRTA, or from others at the expenses of FRTA, in the performance of this Agreement shall be and remain the property of FRTA. This includes but is not limited to all records, data files, computer records, work sheets, deliverable products (complete and incomplete) and all other types of information prepared or acquired by Consultant in the performance of Consultant's Services. FRTA shall own and shall have all rights to the use of the drawings, specifications, and other documents prepared by Consultant for the completion, use and occupancy of this project. Any other use shall be at FRTA's sole risk without liability to Consultant.

#### 6.0 FRTA'S RESPONSIBILITIES

FRTA, acting by and through its Executive Director, shall appoint a person to serve as liaison between FRTA and Consultant with respect to the Project and Consultant's Services. In addition to serving as FRTA liaison, this person shall be responsible for scheduling all meetings between Consultant and FRTA's representatives. This person, however, shall have no authority to bind FRTA to make payments in excess of the specific appropriation for this Agreement. FRTA shall provide all information requested by Consultant that is necessary for the completion of Consultant's Services. However, FRTA shall not be required to provide information not readily available to it.

#### 7.0 PAYMENT BY THE FRTA FOR CONSULTANT SERVICES

In consideration for Consultant's Services, FRTA agrees to pay Consultant the maximum sum of **XXX Dollars (\$XXX) to be paid monthly, after receipt of invoice detailing the Scope of Services provided.** Payment is to be made by FRTA within forty-five (45) days of receipt of invoice from the Consultant. The acceptance by Consultant of its final payment under this Agreement shall operate as a release to FRTA of all claims and all liability from Consultant. No payment, however, final or otherwise, shall operate to release Consultant from its obligations under this Agreement.

No deductions shall be made from Consultant's compensation on account of penalty, liquidated damages or other sums withheld from payments, or on account of the cost of changes in Work other than those for which the Consultant has been found to be liable.

Remittance should be sent to the following address:

Franklin Regional Transit Authority  
12 Olive St.  
Greenfield, MA 01301

## 8.0 CONSULTANT RESPONSIBILITIES

### 8.1 Duties

Duties, responsibilities and limitations of authority of the Consultant shall not be restricted, modified, or extended without written agreement of FRTA, which consent shall not be unreasonably withheld. Consultant shall perform any and all duties and responsibilities necessary to fully and acceptably complete the work outlined in the RFP Consultant's proposal, as mentioned in **Exhibit B** of this document.

### 8.2 Site visits

The Consultant shall visit the site(s) at intervals appropriate to the stage of construction or as otherwise directed by the FRTA in writing to become familiar with the progress and quality of the Work completed and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents.

### 8.3 Employee Participation in Political Activity

All personnel rules and regulations of FRTA including restrictions barring any employee participation in political activity which utilizes any funds or any equipment, supplies, or employee time, paid for with funds under this Agreement shall be adhered to. Neither the FRTA, nor the personnel employed in the Administration of this project, shall in any way or to any extent engage in the conduct of political activities in contravention of Chapter 15 of Title 5 of the United States code (Hatch Act).

### 8.4 Conflict of Interest

Each party shall adhere to the provisions of Massachusetts General Laws, Chapter 268A, with respect to the Conduct of Public Employees. In addition, no member, officer, or employee of either party, or its designees or agents, no member of the governing body of the locality in which the project is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project during his tenure or for one (1) year thereafter (or such longer period as may be provided in Chapter 268A of the Massachusetts General Laws), shall have any interest in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Agreement. Each party shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest, pursuant to the purposes of this subsection. Further, each party shall adhere to the provisions of the Hatch Act (SD.S.C. 1501, et seq.), which limits political activities by employees whose principal employment is in connection with an activity which is financed in whole or in part with federal funds.

### 8.5 Personnel

The Consultant represents that it has, or will secure at its own expense, all personnel required in performing the services under the Agreement. Such personnel shall not be employees of or have any contractual relationship with FRTA.

All the services required, hereunder, will be performed by the Consultant or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under Federal, State, and local law to perform such services.

## 8.6 Further Contract Provisions

The Owner's rights and remedies provided in these clauses are in addition to any other rights and remedies provided by law or this Agreement.

The Consultant shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all duties and responsibilities performed under this Agreement. The Consultant shall without additional compensation, correct or revise any deficiencies in his reports and other services.

The Consultant shall perform such professional services as may be necessary to accomplish the work required to be performed under this Agreement, in accordance with this Agreement and applicable requirements in effect on the date of execution of this Agreement.

The Owner's approval of drawings, designs, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve the Consultant of responsibility for the adequacy of his work. Neither the Owner's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

The Consultant shall be and shall remain liable, in accordance with applicable law, for all damages to the Owner caused by the Consultant's negligent performance of any of the services furnished under this Agreement, except for errors, omissions or other deficiencies to the extent attributable to the Owner, owner-furnished data or any third party. The Consultant shall not be responsible for any time delays in the project caused by circumstances beyond the Consultant's control.

The services to be performed by the Consultant shall include all services required to complete the task or footprint in accordance with applicable regulations to the extent of the scope of work as defined and set out in the Consultant services agreement to which these provisions are attached.

The Owner may, at any time, by written order, make changes within the general scope of this Agreement in the services or work to be performed. If such changes cause an increase or decrease in the Consultant's cost of, or time required for, performance of any services under this Agreement, whether or not changed by any order, an equitable adjustment shall be made and this Agreement shall be modified in writing accordingly. The Consultant must assert any claim for adjustment under this clause in writing within 30 days from the date of receipt by the Consultant of the notification of change, unless the Owner grants a further period of time before the date of final payment under this Agreement.

No services for which an additional compensation will be charged by the Consultant shall be furnished without the written authorization of the Owner.

Except as this Agreement otherwise provides, all claims, counter-claims, disputes, and other matters in question between the Owner and the Consultant arising out of or relating to this Agreement or the breach of it will be decided by mediation if the parties hereto mutually agree, or in a court of competent jurisdiction.

The Consultant shall maintain books, records, documents, and other evidence directly pertinent to performance on eligible work under this Agreement in accordance with generally accepted accounting principles and practices consistently. The Consultant shall also maintain the financial information and data used by the Consultant in the preparation or support of the cost submission and a copy of the cost summary submitted to the Owner. FRTA, State Auditor's Office or any of their duly authorized representatives shall have access to such books, records, documents, and other evidence for inspection, audit, and copying. The Consultant will provide proper facilities for such access and inspection.

Audits conducted under this provision shall be in accordance with generally accepted procedures and guidelines of the reviewing or audit agency(ies).

#### 8.7 Procurement Standards

The Consultant shall adhere to the requirements set forth in 24 CFR 85.36 and MA CDBG regulations, procedures and guidelines with respect to standards governing procurement, and any applicable provisions of State laws and regulations relative thereto, including Chapter 30, section 39M; Chapter 149, section 44A through 44J; Chapter 484 of the Acts of 1984; and Chapter 30B. All procurement transactions without regard to dollar value shall be conducted in a manner that provides maximum free and open competition. It is national and state policy that the Consultant takes affirmative steps to award a fair share of contracts taken to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. The Consultant shall maintain records sufficient to detail the process of procurement.

#### 8.8 Labor Standards

Where applicable, the Consultant shall adhere to the provisions of section 110 of the Act, and M.G.L. Chapter 149 Sections 26 to 27D inclusive (as amended by Chapter 484 of the Acts of 1984). In the case of the rehabilitation of commercial property, or rehabilitation of residential property designed for residential use of eight or more families, the Consultant shall adhere to the Federal Labor Standards Provisions (HUD Handbook 1344.1), the requirements of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et.seq.) and the Copeland Anti-Kickback Act.

#### 8.9 Licenses

The Consultant shall procure and keep current any licenses, certifications, or permits required for any activity to be undertaken as part of the Scope of Services, as required by federal, state, or local laws or regulations, and shall comply with the provisions of 24 CFR Part 85.36 with respect to any bonding or other insurance requirements.

#### 8.10 Confidentiality

The Consultant shall protect the privacy of, and respect the confidentiality of information provided by, program participants, consistent with applicable federal and state regulations, including M.G.L., C.66, section 10, regarding access to public records.

#### 8.11 Copyright

No material prepared in whole or in part under this Agreement shall be subject to copyright in the United States of America or in any other country except with the prior written approval of FRTA.

#### 8.12 Closeout

The Consultant shall follow such policies and procedures with respect to closeout of any associated grant as may be required by FRTA.

#### 8.13 Certifications

The Certificate of Tax Compliance, Certificate of Non-Collusion, and Certification of Drug-Free Workplace must be completed and submitted as part of this contract.

#### 8.14 Compliance with Laws

The Consultant shall conduct operations under this Contract in compliance with all applicable laws, regulations, rules, by-laws and codes of the local, state and federal government, provided however, the General Specifications shall govern the obligations of the Consultant where there exists conflicting ordinances on the subject.

## 9.0 STATUTORY COMPLIANCE

9.1 This contract will be construed and governed by the provisions of applicable federal, state and local laws and regulations; and wherever any provision of the contract or contract documents shall conflict with any provision or requirement of federal, state or local law or regulation, then the provisions of law and regulation shall control. Where applicable to the contract, the provisions of General Laws are incorporated by reference into this contract, including but not limited to the following:

General Laws Chapter 30B – Procurement of Goods and Services

General Laws Chapter 30, section 39 et. seq. – Public Works Contracts

General Laws Chapter 149, section 44A et. seq. – Public Buildings Contracts

General Laws Chapter 25A – Division of Energy Resources

9.2 Wherever applicable law mandates the inclusion of any term and/or provision into a municipal contract, this section shall be understood to import such term or provision into this contract. To whatever extent any provision of this contract shall be inconsistent with any law or regulation limiting the power or liability of cities and towns, such law or regulation shall control.

9.3 The Consultant shall give all notices and comply with all laws and regulations bearing on the performance of the contract. If the Consultant performs the contract in violation of any applicable law or regulation, the Consultant shall bear all costs arising therefrom.

9.4 The Consultant shall keep itself fully informed of all existing and future State and National Laws and Municipal By-laws and regulations and of all orders and decrees of any bodies or tribunals having jurisdiction in any manner affecting those engaged or employed in the work, of the materials used in the work or in any way affecting the conduct of the work, if any discrepancy or inconsistency is discovered in the Drawings, Specifications or Contract for this work in violation of any such law, by-law, regulation, order or decree, it shall forthwith report the same in writing to the FRTA. It shall, at all times, itself observe and comply with all such existing and future laws, by-laws, regulations, orders and decrees; and shall protect and indemnify FRTA and its duly appointed agents against any claim or liability arising from or based on any violation whether by its agents, employees or Subcontractors or any such law, by-law, regulation or decree.

## 10.0 AVAILABILITY OF FUNDS

The compensation provided by this Agreement is subject to the continued availability of federal and state funds for the Program, and to the continued eligibility of the Commonwealth and the FRTA to receive such funds.

### 10.1 Suspension of Work

If FRTA is unable to proceed with the Project or its obligations under this Agreement either before or after the execution of this Agreement for any reason, regardless of whether such inability is caused by or is within the control of FRTA, Consultant shall not be entitled to make or assert any claim for damage by reason of said delay; however, the time for completion of Consultant's Services shall be extended to such reasonable time as the FRTA may determine that will compensate for time lost by such delay, with such determination to be set forth by FRTA in writing.

## 11.0 TERMINATION

### 11.1 By FRTA

11.1.1. In the case of any default due to negligence on the part of Consultant for non-performance of professional services, with respect to any of the terms of this Agreement, FRTA shall give written notice thereof and if said default is not remedied by Consultant within such time as FRTA shall specify in writing, but not less than fifteen (15) working days, FRTA shall notify Consultant in writing that there has been a breach of this Agreement, and thereafter FRTA shall have the right to secure the completion of Consultant's Services remaining to be done on such terms and in such manner as FRTA shall determine, and Consultant shall pay FRTA any money that FRTA shall pay another Consultant for the completion of Consultant's Services, in excess of what FRTA would have paid Consultant for the completion of Consultant's Services, and Consultant shall reimburse FRTA for all expenses incurred by reason of said breach, including attorney's fees incurred by the FRTA. In case of such breach, Consultant shall be entitled to receive payment only for work satisfactorily completed prior to said breach in good faith and the amount of any balance due Consultant shall be determined by FRTA in good faith.

11.1.2. Notwithstanding any other provision of this Agreement, FRTA reserves the right at any time to suspend or terminate this Agreement in whole or in part for its convenience or due to an unavailability of funds upon fourteen (14) days written notice to Consultant. FRTA shall incur no liability by reason of such termination for convenience except for the obligation to pay for work performed and accepted accruing through the date of termination less any offset or claim of FRTA. Such obligation shall not exceed the available appropriation. Consultant shall have no right to recover other amounts, including but not limited to amounts for lost profits, indirect, incidental, or consequential damages.

11.1.3. In the event of termination by FRTA, all finished work and documentation, complete and incomplete, shall be delivered to FRTA. Consultant shall be entitled to receive payment for any work performed and accepted under this Agreement, which was completed prior to the date of termination. In the event of termination prior to the completion of the work, Consultant shall have no right to recover other amounts, including but not limited to amounts for lost profits, indirect, incidental, or consequential damages.

11.1.4. If after the notice of termination for cause under Section 11.1.1 above, it is determined that said cause was invalid, the termination shall be deemed to have been affected for the convenience of FRTA under Section 11.1.2. In such event, a payment adjustment shall be made as provided in Section 11.1.2.

11.1.5. Any termination or suspension of this Agreement shall not impair FRTA's right to recover damages occasioned by the fault of Consultant. Any suspension shall not limit the right of FRTA to terminate this Agreement.

### 11.2 By Consultant

Consultant shall have no damages for delay or hindrance. In the event of delay or hindrance not the fault of the Consultant, an extension of time shall be the Consultant's sole remedy. Consultant also shall have the right to terminate this Agreement if FRTA fails to make timely payment of the amounts due to Consultant under this Agreement.

### 11.3 Force Majeure

Neither party shall be liable to the other or deemed to be in breach under this agreement for any failure to perform, including, without limitation, a delay in rendering performance due to causes beyond its reasonable control, such as an order, injunction, judgment, or determination of any Court of the United States or the Commonwealth of Massachusetts, an Act of God, war, civil disobedience, extraordinary

weather conditions, labor disputes, or shortages, or fluctuation in electric power, heat, light, or air conditioning. Dates or time of performance shall be extended automatically to the extent of such delays, provided that the party whose performance is affected promptly notifies the other of the existence and nature of such delay.

## 12.0 INSURANCE

Consultant shall provide and maintain insurance at its own expense until two (2) years following the completion of Consultant's Services as set forth below:

12.1 Worker's compensation insurance, as required by the laws of the Commonwealth of Massachusetts.

12.2 Commercial general liability insurance with limits of at least \$1,000,000 for each occurrence and at least \$2,000,000 in the aggregate. The Consultant shall also maintain an excess umbrella policy of at least \$1,000,000.

12.3 Automobile bodily injury and property damage liability insurance with limits of at least \$1,000,000 combined single limit. The Consultant shall also maintain an excess umbrella policy of at least \$1,000,000.

12.4 Professional liability insurance covering Consultant's errors and omissions with limits of \$1,000,000 for each occurrence and at least \$2,000,000 in the aggregate.

12.5 Consultant shall furnish to FRTA a Certificate(s) of Insurance showing coverage as set forth above prior to performing Consultant's Services. All insurance coverages required herein shall be issued by carriers with a financial rating of A or better. The FRTA shall be named as project owner on all coverages set forth above with the additional requirement that the FRTA be named as an additional insured under the commercial general liability insurance coverage, excess umbrella coverage, and automobile liability coverage required under sections 12.2 and 12.3 herein. The FRTA's status as additional insured and/or certificate holder for each coverage shall be referenced on the Certificate of Insurance issued to the FRTA. The Certificate Holder shall be the FRTA, 12 Olive Street, Greenfield, MA 01301. The Certificate(s) of Insurance shall be attached to this Agreement within **Exhibit A**.

## 13.0 INDEMNIFICATION

Consultant hereby agrees to indemnify, defend, and hold harmless FRTA, and its officers, attorneys, employees, and agents from and against any and all claims (including workers' compensation and wage claims) demands, suits, actions, liabilities, damages, penalties, judgments, and costs and expenses, including without limitation the costs and expenses of litigation and attorney's fees, of or by anyone that in any way is caused by, arises out of, or is occasioned by, the acts, omissions, or provision of Consultant's services, or any activities, operations, conducts, negligence, or omissions of Consultant or its agents.

## 14.0 MISCELLANEOUS PROVISIONS

### 14.1 Entire Agreement

Unless contained in this Agreement, or the Exhibits incorporated into and made a part of this Agreement, no warranties, statements, promises, or representations shall be considered a part of this Agreement or a basis upon which Consultant or FRTA entered into this Agreement.

### 14.2 Amendments

This Agreement may be amended, supplanted, modified, or canceled only by prior written amendment executed by both parties upon FRTA Accountant's certification as to the availability of appropriate funds.

#### 14.3 Agreement Binding Upon Others

This Agreement shall be binding upon FRTA and Consultant, and the partners, successors, heirs, executors, administrators, assigns and legal representatives of FRTA and Consultant.

#### 14.4 Assignment of Interest

Consultant shall not assign, transfer, or convey any interest in this Agreement without the prior written consent of FRTA, which consent shall not be unreasonably withheld.

#### 14.5 Subcontractors

Consultant shall not assign, subcontract, or delegate the performance of its services to any person, corporation, or entity without the prior written consent of FRTA. Provided that such consent is obtained, it is understood and agreed that any such persons, corporations, or entities hired by Consultant shall be deemed agents of Consultant and that Consultant shall be responsible for the methods, means, and materials used in connection with the performance of any such services, and for any breach of this Agreement or any delays or damages occasioned by such work.

#### 14.6 Inspection by FRTA

The authorized representatives and agents of FRTA shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials and other relevant data and records of Consultant upon demand.

#### 14.7 Incorporation of Applicable Law

Each and every applicable provision of law required to be included in this Agreement shall be deemed to be included in this Agreement, and this Agreement shall be read and enforced as though such provisions were included herein. If through mistake or otherwise any such provision has not been included in this Agreement, or is not correctly inserted, then upon the application of either party to this Agreement, the Agreement shall forthwith be physically amended to make such inclusion or insertion.

#### 14.8 Equal Opportunity

FRTA is an Equal Opportunity Employer. Consultant shall not discriminate on account of race, color, religion, ancestry, national origin, age, gender, handicap, sexual orientation, gender identity, veterans status, or other protected class, as identified by law, in its performance of this Agreement. Violation of this paragraph shall be deemed a material breach of this Agreement and FRTA may terminate this Agreement as a result of same.

#### 14.9 Non-Discrimination

The Consultant shall adhere to the requirements set forth in Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and the regulations issued pursuant thereto by HUD; Title VIII of the Civil Rights Act of 1968 (P.L. 90-284), as amended; Section 109 of the Housing and Community Development Act of 1974, and the HUD regulations issued pursuant thereto (24 CFR 570.601); Federal Executive Order 11063, as amended by Executive Order 12259 and the HUD regulations issued pursuant thereto (24 CFR 107); The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); Section 402 of the Veterans of the Vietnam Era Act (for projects of \$10,000 or more); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Americans with Disabilities Act 42 U.S.C. 1210-1, 28 CFR Part 356, or as amended, 29 U.S.C. 3791 et seq.; Massachusetts General Laws Chapter 151B Section 1 et seq.; State Executive Order 74, as amended and revised by Executive Orders 116, 113, and 227; and Mass. CDBG regulations, procedures or guidelines.

14.9.1 The Consultant shall not discriminate against any person because of race, color, religious creed, national origin, gender, age, ancestry, handicap, veteran's status, gender identity, or sexual orientation or any other protected categories under the law. The Consultant shall take affirmative action to ensure that applicants for employment are employed, and employees are treated during employment, without regard to

race, color, religious creed, national origin, gender, age, ancestry, handicap, veteran's status, gender identity, or sexual orientation or any other protected categories under the law. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. The Consultant shall state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, national origin, gender, age, ancestry, handicap, veteran's status, gender identity, or sexual orientation or any other protected categories under the law.

#### 14.10 Governing Law

FRTA and Consultant shall perform its services in conformity with the requirements and standards of FRTA, and with all applicable laws and regulations of the Commonwealth of Massachusetts and its political subdivisions, and with all applicable laws and regulations of the Federal Government. In the event of any dispute concerning the meaning or application of this Agreement, any such dispute shall be resolved pursuant to law of the Commonwealth of Massachusetts and, if necessary, by a Court of the Commonwealth of Massachusetts. Both parties hereby consent to the jurisdiction of any such Court.

#### 14.11 Licensure and Compliance with Massachusetts Tax Law

By executing this Agreement, Consultant agrees and certifies that it is licensed to perform the services required by this Agreement, and that it will secure such licensure for so long as it is bound to perform services under this Agreement. Documentation of such licensure shall be attached to this Agreement as part of **Exhibit A**. Consultant also agrees and certifies that it has filed all state tax returns and paid all state taxes required under the laws of the Commonwealth of Massachusetts. Violation of this paragraph shall be deemed a material breach of this Agreement and FRTA may cancel, terminate, or suspend this Agreement as a result of same.

#### 14.12 Interpretation & Severability

For purposes of interpreting this Agreement in the context of a dispute over its terms or otherwise neither party shall be considered the drafter of this Agreement and neither party shall have any provision of this Agreement construed in its favor as a result of its role in drafting this Agreement or its bargaining power with respect to this Agreement, Consultant's Services, the Project, or otherwise.

Should any provision of this Agreement be held illegal or unenforceable, then such provision shall be stricken from this Agreement and the remainder of this Agreement shall remain in full force and effect.

#### 14.13 Consultant's Participation in Dispute Resolution Proceedings

Consultant is obligated to prepare for or appear in any litigation or other dispute resolution proceeding at the request of, and upon behalf of, FRTA in connection with any disputes arising from or related to the Project. Consultant will be paid a reasonable fee based on its usual and ordinary charges for providing such assistance.

IN WITNESS WHEREOF the parties hereto have executed copies of this Agreement on the \_\_\_\_ day of \_\_\_\_ 2019.\*

\* If Consultant is a corporation, then an attested copy of the vote of the corporation authorizing the signing of this Agreement must be attached hereto as **Exhibit D**.

CONSULTANT: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Corporate Seal

\_\_\_\_\_  
**Signature, Title, Date**

*Approved As To Form*

\_\_\_\_\_  
**Tina Cote, FRTA Executive Director**

\_\_\_\_\_  
**FRTA Counsel**

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

*Approved as to Funds Availability*

\_\_\_\_\_  
**FRTA Accountant**

Dated: \_\_\_\_\_

EXHIBIT A

Of Agreement Between The FRTA and Consultant

CERTIFICATE(S) OF INSURANCE AND LICENSES REQUIRED BY THIS AGREEMENT

EXHIBIT B

Of Agreement Between The FRTA and Consultant

A/E DESIGNER'S TECHNICAL PROPOSAL

## EXHIBIT C

### Of Agreement Between The FRTA and Consultant

#### CONSULTANT'S QUOTE OF DISPUTE RESOLUTION

In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the FRTA and Consultant agree that all disputes between them arising out of or relating to this Agreement or the Project may be submitted to nonbinding mediation.

The FRTA and Consultant further agree to include a similar mediation provision in all agreement with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between the parties to all those agreements.

EXHIBIT D

Of Agreement Between The FRTA and Consultant

CONSULTANT'S CORPORATE AUTHORIZATION

EXHIBIT E

Of Agreement Between The FRTA and A/E

REQUEST FOR PROPOSALS