RFP2026-01
Request for Proposals to provide
“Security Services”

for

The New Mexico Rail Runner Express and Rio Metro Regional Transit District

Issue Date: August 01, 2025
Procurement No. RFP2026-01

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Request for Proposals “Security Services”

For

New Mexico Rail Runner Express
And Rio Metro Regional Transit District

Procurement No. RFP2026-01

Issue Date: August 01, 2025

Pre-Submission Conference: None

Submission Due Time/Date: Tuesday September 02, 2025, 2:00 p.m.

(MDT)

Rio Metro Regional Transit District
809 Copper Ave. NW, Albuquerque, New Mexico 87102
Phone: (505) 247-1750
www.mrcog-nm.gov

1.0 INTRODUCTION

The Rio Metro Regional Transit District ("RMRTD") invites Security firms ("Offerors") to submit Proposals for a contract to provide Security Services for the work indicated on the title page of this solicitation in accordance with the specifications contained in this RFP. This RFP contains specific requests for information.

The purpose of this procurement is to select a Security firm to serve as the provider of Security Services on the New Mexico Rail Runner and other facilities within the Rio Metro Regional Transit District.

Contingent upon RMRTD's satisfaction with the performance of selected Contractor and accepted outcome of Security Services under a contract negotiated for such services as described in this RFP, the RMRTD may consider extending or renewing the Contract. The Contract, including any extensions or renewals, and per State Law may not exceed four (4) years in total.

This project will be funded in part through federal and state funds. As such, applicable federal and state laws, regulations, and guidelines shall be adhered to by the contractor as part of the contract. Federal and state certifications are required for Submissions to be deemed responsive. Submissions should also include an active SAMS.GOV registration.

This RFP does not commit the RMRTD to enter into a contract and the RMRTD is not responsible for any costs incurred in preparation and submission of Submissions or in anticipation of a contract.

The RMRTD reserves the right to:

1. *Reject any or all submittals*
2. *Issue subsequent Requests for Proposals*
3. *Alter the Selection Process Dates*
4. *Remedy technical errors in the RFP process*
5. *Investigate the qualifications of all firms under consideration*
6. *Confirm any part of the information furnished by a Proposer*
7. *Obtain additional evidence of managerial, financial or other capabilities*
8. *Approve or disapprove the use of particular subcontractors*
9. *Negotiate with any, all, or none of the Proposers*
10. *Solicit best and final offers from all or some of the Proposers*
11. *Award a contract to only one Proposer*
12. *Accept other than the lowest Submission*
13. *Waive informalities and irregularities in Submission*

1.1 Purpose of this Request for Proposal

The purpose of this procurement is to select a Security Firm to assist RMRTD with "Security Services on the New Mexico Rail Runner and other facilities within the Rio Metro Regional Transit District.

1.2 Scope of Work

The Scope of Work ("SOW") for this procurement is to provide Security Services for the New Mexico Rail Runner and other Facility Locations of the RMRTD as prescribed in the sections below:

A. General Requirements that you must include in your response to this RFP2026-01:

- All security guards must be Level I or Level II certified in State of New Mexico.

Level I Reference:

https://www.rld.nm.gov/wp-content/uploads/2021/11/Level-One-Training-Final.pdf

Level II Reference:

https://www.rld.nm.gov/wp-content/uploads/2022/01/Level-Two-Training-Final.pdf

- All responses will need to provide the hourly rate per security guard.

-RMRTD will award the resulting contract for (4) four years with no extensions available. When submitting your proposal response, please include your rates as follows:

Year 1 Rate:
Year 2 Rate:
Year 3 Rate:
Year 4 Rate:

- Preferred Qualifications for Security Services: Security Company should preferably have at least 2 years of transit (railroad) experience and provide history. History and Experience will be validated via reference check.

- Requirements for all Security Services: As part of the security services provided; during each shift, all security guards must use body cameras provided you as the responsible party. Buy America requirements and Use of Certain Technology Federal Requirements do apply to this. The cost of the cameras will be the responsibility of the security company and must be included in their proposal cost.

B. Requirement for Security Guard Coverage:

-RMRTD requires that one guard will be needed on every revenue New Mexico Rail Runner Train (weekday and weekends). Lapel cameras, video and voice recordings must be used by all security guards while on duty. Security Guards on any train, site or location must promptly respond to all and any incidents.

-Responsive Proposals will need to provide proposed schedule of guard coverage and proposed cost break down. Guard coverage needs to be present 20 minutes before train initial terminal departure, and 10 minutes after train final arrival (please see attached on page 9 and 10 for full Rail Runner train schedule).

-RMRTD will need on site yard-patrol security guard at 716 Commercial St. and will need to make specified patrol route of the yard via motorized cart, provided by contractor. This is to ensure efficient response time

and safety. Patrols are to be made every two hours and respond to any additional issues in person as safety permits. This post will also be responsible for monitoring the cameras in the security office and responding or dispatching local law and EMS as needed. This site will need to be covered 24/7/365 (shifts should be specified in the proposal response).

- RMRTD will need a yard-patrol for the Valencia bus office and yard by a level 1 guard, Monday through Friday from 8pm – 6am.

- RMRTD will need a yard-patrol for the Sandoval bus office and yard by a level 1 guard, Monday through Friday from 8pm – 6am.

- RMRTD will need two ATC guards for over-night platform security, every day (Monday through Sunday) from 4pm until 11am.

- RMRTD may require additional services as needed at other locations and made available for the specified hourly/guard rate provided in the proposal response.
"Other Facility Locations Can Be Described as Shown Below"; the RMRTD reserves the right to add, change or delete locations as business needs are required.

Locations:

Bus – Valencia County Transit Facility
3437 Lambros Loop SE
Los Lunas NM 87031

Bus – Sandoval County Transit Facility
1804 Idalia Rd.NE
Rio Rancho NM 87144

Train – Alvarado Transportation Center Platform
100 First St. SW
Albuquerque, NM 87102

Train – Security Office
716 Commercials Street St. SE
Albuquerque, NM 87102Bus – Valencia

Mid Region Council of Governments Administration (RMRTD)
809 Copper Ave. NW
Albuquerque, NM 87102

NEW MEXICO RAIL RUNNER EXPRESS

Weekday Schedule

Schedule Effective **October 7th, 2024**

*Horario efectivo a partir del **7 de octubre del 2024***

N Northbound Schedule **S** Southbound Schedule

How to read the schedule

1. Decide whether you are going north (at top) or south (at bottom).
2. On the left-hand side, find the station from which you are leaving.
3. Read across to find the times the Rail Runner departs from that station.
4. From there, read down to find what time the Rail Runner will arrive at the station to which you are traveling.

Legend

" – " ..... **Means train does not stop** *Significa que el tren no se detiene*

0:00 ..... **Train arrives and does not continue** *El tren llega a destino pero no continúa*

..... **Express Train**

#525 FRIDAYS ..... **Friday Train Only**

Weekday *De lunes a viernes* N

	TRAIN STATIONS *Estaciones de tren*	#502	#504	#102 EXPRESS	#506	#508	#510	#512	#514	#104 EXPRESS	#516	#518	#520	#522	#524
ZONE	Belen	–	–	5:36A	6:35A	8:04A	–	9:45A	–	–	3:35P	–	5:51P	7:01P	8:03P
	Los Lunas	–	–	5:46A	6:46A	8:15A	–	9:56A	–	–	3:46P	–	6:01P	7:12P	8:14P
ZONE	Isleta Pueblo	–	–	5:59A	6:59A	8:27A	–	10:08A	–	–	3:59P	–	6:20P	7:33P	8:28P
	Bernalillo Co.	–	–	6:07A	7:06A	8:35A	–	10:16A	–	–	4:06P	–	6:29P	7:41P	8:36P
	Downtown ABQ	4:32A	5:02A	6:19A	7:19A	8:43A	9:35A	10:24A	12:24P	2:19P	4:26P	5:34P	6:48P	7:50P	8:45P
	Montaño	4:41A	5:11A	6:28A	7:29A	–	9:44A	–	12:33P	2:32P	4:35P	5:43P	6:58P	–	–
	Los Ranchos / JC	4:47A	5:17A	6:34A	7:36A	–	9:50A	–	12:39P	2:38P	4:41P	5:49P	7:06P	–	–
	Sandia Pueblo	4:52A	5:22A	–	7:42A	–	9:55A	–	12:44P	–	4:46P	5:54P	7:12P	–	–
ZONE	Downtown Bernalillo	5:01A	5:31A	–	7:52A	–	10:03A	–	12:53P	–	4:54P	6:07P	7:23P	–	–
	Sandoval Co. / US 550	5:05A	5:35A	6:46A	7:56A	–	10:08A	–	12:58P	2:49P	4:59P	6:12P	7:28P	–	–
ZONE	Kewa	5:25A	5:55A	7:05A	8:18A	–	10:28A	–	1:18P	3:09P	5:19P	6:34P	7:50P	–	–
ZONE	Santa Fe Co. / NM 599	5:48A	6:18A	7:25A	8:39A	–	10:51A	–	1:43P	3:29P	5:43P	6:57P	8:13P	–	–
	Zia Road	6:03A	6:28A	–	8:49A	–	11:01A	–	1:54P	–	5:55P	7:09P	8:23P	–	–
ZONE	South Capitol	6:13A	6:38A	7:43A	8:56A	–	11:11A	–	2:03P	3:47P	6:02P	7:19P	8:33P	–	–
	Santa Fe Depot	6:18A	6:43A	7:48A	9:01A	–	11:16A	–	2:08P	3:52P	6:07P	7:24P	8:38P	–	–

READ DOWN
LEA HACIA ABAJO

Weekday *De lunes a viernes* S

	TRAIN STATIONS *Estaciones de tren*	#501	#503	#507	#509	#511	#513	#515	#517	#101 EXPRESS	#519	#521	#523	#525 FRIDAYS
	Santa Fe Depot	–	–	5:39A	7:08A	10:11A	1:02P	2:46P	4:15P	5:04P	5:30P	6:46P	9:00P	10:05P
ZONE	South Capitol	–	–	5:44A	7:13A	10:17A	1:07P	2:52P	4:20P	5:09P	5:35P	6:51P	9:05P	10:10P
	Zia Road	–	–	5:51A	7:20A	10:23A	1:14P	3:00P	4:27P	–	5:42P	6:58P	9:12P	10:17P
ZONE	Santa Fe Co. / NM 599	–	–	6:01A	7:37A	10:35A	1:26P	3:11P	4:39P	5:26P	5:54P	7:10P	9:24P	10:29P
ZONE	Kewa	–	–	6:19A	7:55A	10:52A	1:44P	3:34P	4:57P	–	6:12P	7:28P	9:42P	10:47P
ZONE	Sandoval Co. / US 550	–	–	6:38A	8:14A	11:11A	2:03P	3:54P	5:16P	6:02P	6:31P	7:47P	10:01P	11:06P
	Downtown Bernalillo	–	–	6:43A	8:18A	11:15A	2:07P	3:58P	5:20P	–	6:35P	7:51P	10:05P	11:10P
	Sandia Pueblo	–	–	6:52A	8:27A	11:24A	2:16P	4:07P	5:29P	–	6:44P	8:00P	10:14P	11:19P
	Los Ranchos / JC	–	–	6:57A	8:32A	11:29A	2:21P	4:13P	5:34P	6:16P	6:49P	8:05P	10:19P	11:24P
ZONE	Montaño	–	–	7:02A	8:37A	11:35A	2:26P	4:19P	5:39P	6:21P	6:54P	8:10P	10:24P	11:29P
	Downtown ABQ	4:45A	5:27A	7:10A	8:48A	11:44A	2:42P	4:43P	5:50P	6:32P	7:03P	8:18P	10:32P	11:37P
	Bernalillo Co.	4:54A	5:38A	7:19A	8:57A	–	2:51P	4:52P	6:00P	–	7:12P	–	–	–
	Isleta Pueblo	5:01A	5:46A	7:27A	9:04A	–	2:58P	4:59P	6:07P	–	7:20P	–	–	–
ZONE	Los Lunas	5:13A	6:03A	7:39A	9:17A	–	3:11P	5:12P	6:23P	–	7:34P	–	–	–
	Belen	5:24A	6:14A	7:50A	9:29A	–	3:23P	5:24P	6:35P	–	7:46P	–	–	–

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NEW MEXICO RAIL RUNNER EXPRESS

Weekend Schedule

Schedule Effective **October 7th, 2024**
*Horario efectivo a partir del **7 de octubre del 2024***

N Northbound Schedule **S** Southbound Schedule

How to read the schedule

1. Decide whether you are going north (at top) or south (at bottom).
2. On the left-hand side, find the station from which you are leaving.
3. Read across to find the times the Rail Runner departs from that station.
4. From there, read down to find what time the Rail Runner will arrive at the station to which you are traveling.

Legend

" – " ..... **Means train does not stop** *Significa que el tren no se detiene*

0:00 ..... **Train arrives and does not continue** *El tren llega a destino pero no continúa*

	TRAIN STATIONS *Estaciones de tren*	Saturday *Sábado* N							Sunday *Domingo* N			
		#702	#704	#706	#708	#710	#712	#714	#702	#706	#708	#710
ZONE	Belen	7:24A	9:20A	12:30P	–	5:40P	7:43P	10:40P	7:24A	12:30P	–	5:40P
	Los Lunas	7:34A	9:30A	12:40P	–	5:50P	7:53P	10:50P	7:34A	12:40P	–	5:50P
ZONE	Isleta Pueblo	7:45A	9:41A	12:51P	–	6:01P	8:04P	11:02P	7:45A	12:51P	–	6:01P
	Bernalillo Co.	7:53A	9:49A	12:59P	–	6:09P	8:12P	11:08P	7:53A	12:59P	–	6:09P
	Downtown ABQ	8:04A	10:08A	1:14P	3:11P	6:20P	8:23P	11:16P	8:04A	1:14P	3:11P	6:20P
	Montaño	8:13A	10:17A	1:23P	3:20P	6:29P	8:32P	–	8:13A	1:23P	3:20P	6:29P
	Los Ranchos / JC	8:19A	10:23A	1:29P	3:26P	6:35P	8:38P	–	8:19A	1:29P	3:26P	6:35P
	Sandia Pueblo	8:24A	10:28A	1:34P	3:31P	6:40P	8:43P	–	8:24A	1:34P	3:31P	6:40P
ZONE	Downtown Bernalillo	8:32A	10:37A	1:42P	3:40P	6:48P	8:51P	–	8:32A	1:42P	3:40P	6:48P
	Sandoval Co. / US 550	8:36A	10:41A	1:46P	3:45P	6:52P	8:55P	–	8:36A	1:46P	3:45P	6:52P
ZONE	Kewa	8:54A	11:04A	2:04P	4:10P	7:10P	9:13P	–	8:54A	2:04P	4:10P	7:10P
ZONE	Santa Fe Co. / NM 599	9:15A	11:25A	2:25P	4:31P	7:31P	9:34P	–	9:15A	2:25P	4:31P	7:31P
	Zia Road	9:26A	11:36A	2:36P	4:42P	7:42P	9:45P	–	9:26A	2:36P	4:42P	7:42P
ZONE	South Capitol	9:34A	11:44A	2:44P	4:50P	7:50P	9:53P	–	9:34A	2:44P	4:50P	7:50P
	Santa Fe Depot	9:39A	11:50A	2:49P	4:56P	7:55P	9:58P	–	9:39A	2:49P	4:56P	7:55P

READ DOWN
LEA HACIA ABAJO

	TRAIN STATIONS *Estaciones de tren*	Saturday *Sábado* S								Sunday *Domingo* S				
		#703	#705	#707	#709	#711	#713	#715	#717	#701	#705	#709	#713	#719
	Santa Fe Depot	–	10:00A	12:57P	3:05P	–	6:03P	8:10P	10:14P	–	10:00A	3:05P	6:03P	8:10P
ZONE	South Capitol	–	10:05A	1:03P	3:10P	–	6:09P	8:15P	10:19P	–	10:05A	3:10P	6:09P	8:15P
	Zia Road	–	10:13A	1:11P	3:18P	–	6:17P	8:23P	10:27P	–	10:13A	3:18P	6:17P	8:23P
ZONE	Santa Fe Co. / NM 599	–	10:22A	1:21P	3:27P	–	6:27P	8:32P	10:36P	–	10:22A	3:27P	6:27P	8:32P
ZONE	Kewa	–	10:40A	1:40P	3:45P	–	6:46P	8:50P	10:54P	–	10:40A	3:45P	6:46P	8:50P
ZONE	Sandoval Co. / US 550	–	11:02A	2:04P	4:03P	–	7:10P	9:13P	11:13P	–	11:02A	4:03P	7:10P	9:08P
	Downtown Bernalillo	–	11:05A	2:08P	4:06P	–	7:14P	9:16P	11:16P	–	11:05A	4:06P	7:14P	9:11P
	Sandia Pueblo	–	11:14A	2:17P	4:15P	–	7:23P	9:25P	11:25P	–	11:14A	4:15P	7:23P	9:20P
	Los Ranchos / JC	–	11:19A	2:23P	4:20P	–	7:28P	9:30P	11:30P	–	11:19A	4:20P	7:28P	9:25P
ZONE	Montaño	–	11:25A	2:28P	4:26P	–	7:34P	9:36P	11:36P	–	11:25A	4:26P	7:34P	9:31P
	Downtown ABQ	8:21A	11:35A	2:38P	4:39P	6:51P	7:44P	9:46P	11:45P	6:30A	11:35A	4:39P	7:44P	9:41P
	Bernalillo Co.	8:31A	11:45A	–	4:50P	7:01P	–	9:56P	–	6:40A	11:45A	4:50P	–	–
	Isleta Pueblo	8:39A	11:53A	–	4:58P	7:09P	–	10:04P	–	6:48A	11:53A	4:58P	–	–
ZONE	Los Lunas	8:50A	12:04P	–	5:10P	7:20P	–	10:15P	–	6:59A	12:04P	5:10P	–	–
	Belen	9:00A	12:14P	–	5:20P	7:30P	–	10:25P	–	7:09A	12:14P	5:20P	–	–

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1.3 Background

The New Mexico Rail Runner Express began operating between Downtown Albuquerque and the US 550 Station in the Town of Bernalillo in July 2006. Service expanded south to the City of Belen and, in December 2008, the system was completed and trains began running north to Santa Fe. Also in 2008, voters in the three counties approved a 1/8-cent gross receipts tax ("GRT") to fund RMRTD. This was followed closely by the commitment of the NCRTD to contribute GRT funds to RMRTD to offset the costs of service in Santa Fe County. GRT is by far RMRTD's primary source of local funding.

The RMRTD's Board of Directors is responsible for carrying out the functions assigned by the Regional Transit District Act, including establishing financial, management, service operation, fare, and other policies that support the operations of the transit system. The day-to-day operations of the RMRTD are the responsibility of the agency Director and program staff.

The Rail Runner system serves 15 stations on a 96-mile, north-south corridor and today functions as the spine of central New Mexico's transit network and features 50+ connections with RMRTD, ABQ RIDE, NMDOT, North Central Regional Transit District and Santa Fe Trails bus routes and demand response services. The Rail Runner and RMRTD's connecting bus services alone reach 4 counties, 14 incorporated urban and rural communities, 8 Native American pueblos and several unincorporated places. In FY2019 (July 2018-June 2019), the Rail Runner served 763,428 passenger trips and 35.4 million passenger miles.

The RMRTD is responsible for managing, operating, maintaining, and improving the Rail Runner through a memorandum of agreement (MOA) with NMDOT, the owner of all Rail Runner corridor property, equipment, and infrastructure. The RMRTD, in turn, contracts with Herzog Transit Services, Inc. to operate and maintain all Rail Runner vehicles and infrastructure except stations.

1.4 Project Information and Goals

As described in section 1.2 Scope of Work, RMRTD's goals for the project are as follows:

(a) complete procurement process and recommend a Security Company to provide Security Services on and for the New Mexico Rail Runner and for other entities within the Rio Metro Regional Transit District.

(b) the resulting contract may be used by other Government Bodies such as: Mid Region Council of Governments, Workforce Connections of Central New Mexico and other Local Public Bodies within the RMRTD.

1.5 Procurement Officer

The RMRTD has designated a Chief Procurement Officer who is responsible for the conduct of this procurement. The Chief Procurement Officer is:

Phil Pino, CPO
RMRTD Chief Procurement Officer
809 Copper Ave., N.W.
Albuquerque, NM 87102
Phone : (505) 724-3634 Fax : (505) 247-1753
E-mail : rfp@mrcog-nm.gov

Any inquiries or requests regarding this procurement shall be submitted to the Procurement Officer in writing via email. Offerors may contact ONLY the Chief Procurement Officer regarding the procurement. Other employees do not have the authority to respond on behalf of this RFP.

1.6 Definitions

This section contains definitions and abbreviations that are used throughout this RFP.

"Close of business" means 5:00 p.m. MDT.

"Contract" means a written agreement for the procurement of items of tangible personal property or services.

"Contractor" means a successful Offeror who enters into a binding Contract.

"Determination" means the written documentation of a decision by the Chief Procurement Officer or Procurement Officer including findings of fact supporting a decision. A determination becomes part of the procurement file.

"Desirable" The terms "may", "can", "should", "preferably", or "prefers" identifies a desirable or discretionary item or factor (as opposed to "mandatory").

"Evaluation Committee" means a body appointed by the Director to evaluate Offertory Submissions.

"Evaluation Committee Report" means a document prepared by the Chief Procurement Officer and the Evaluation Committee for Submission to the Director for Contract award. It contains all written determinations resulting from the procurement.

"Finalist Offeror" is defined as an Offeror whose offer complies with all the mandatory specifications of this RFP and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

“Grant” means funding available for governments or organizations that is awarded based on a defined criteria for a specific purpose.

"Mandatory" The terms "must, "shall", "will", "is required", or "are required", identify a mandatory item or factor (as opposed to "desirable"). Failure to comply with a mandatory item or factor will result in the rejection of the Offerors Submission.

"RMRTD" means the Rio Metro Regional Transit District of New Mexico.

"Offeror" is any person, corporation, or partnership who submits a Submission.

"Chief Procurement Officer" or “Procurement Officer” means the person or designee authorized by the Executive Director to manage, administer and oversee all procurements and Contracts.

"RFP" means all documents, including those attached or incorporated by reference, used for soliciting Submissions.

"Request for Qualifications" or "RFQ" means all documents, including those attached or incorporated by reference, used for soliciting proposals.

"Responsible Offeror" means an Offeror who submits a responsive Submission and who has furnished, when required, information and data to prove that the Offeror's financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the Submission.

"Responsive Offer" or "Responsive Submission" means an offer or Submission that conforms in all material respects to the requirements set forth in the Quality Based Bid. Material respects of a Quality Based Selection include, but are not limited to, quality, quantity or delivery requirements. Upon the recommendation of staff, the Director will make the final determination as to whether an Offer is considered to be responsive.

2.0 CONDITIONS GOVERNING PROCUREMENT

This section of the RFP contains the schedule for the procurement, describes the major procurement events and the conditions governing the procurement.

2.1 Sequence of Events

The Procurement Officer will make every effort to adhere to the Procurement Schedules shown in this RFP. The time frames shown may be subject to change at the discretion of the RMRTD.

Issue RFP	August 01, 2025
Written Questions Due	August 15, 2025, 12:00 p.m. (MST)
Submissions Due	September 02, 2025, 2:00 p.m. (MST)
Evaluation Committee	Week of September 08, 2025
Orals (if Necessary)	Week of September 15, 2025
Selection of Finalist(s)	Week of September 22, 2025

2.2 Explanation of Events

2.2.1 Pre-Submission Conference

There will be no pre-submission conference associated with this RFP.

2.2.2 Deadline to Submit Additional Questions

Potential Offerors may submit additional written questions as to the intent or clarity of this

solicitation to the Procurement Officer. All written questions must be **emailed** to the Procurement Officer at the address specified in this solicitation. The Procurement Officer will provide a written response only to written requests that are received at least five (5) working days prior to the submittal due date.

2.2.3 Notification of Written Responses and Amendments

In order to receive notification of written responses to written questions and solicitation amendments, if any, potential Offerors must complete and submit Appendix 2 Acknowledgement of RFP Receipt as contained herein. The Acknowledgement of RFP Receipt must be emailed to the Procurement Officer. Offerors **must include an email address** on the Acknowledgement of Receipt. The Acknowledgement of RFP Receipt must be received at least five (5) days prior to the Submission submittal due date for a potential Offeror to be placed on the procurement distribution.

2.2.4 Procurement Distribution List for Written Responses and Amendments

Only Offerors who submit the Acknowledgement of RFP Receipt as provided in Appendix 2 will be included on the procurement distribution list. Written responses to written questions and any solicitation amendments will be **emailed** to all potential Offerors whose organization appears on the procurement distribution list.

2.2.5 Submission of Submission

At this time, only electronic submission is allowed. Do not submit hard copies until further notice. All Submissions must be received electronically via email by the Chief Procurement Officer or designee no later than 2:00 p.m. (MDT) on September 02, 2025, as defined in Section 3.0 of this RFP. Submissions received after this deadline will not be accepted. The date and time will be noted on each Submission as it is received via electronic email.

An electronic log will be kept of the names of all Offeror organizations that submitted proposal responses (Submissions). Pursuant to Section 13-1-116 NMSA 1978, the contents of any Submission shall not be disclosed to competing Offerors prior to Contract award.

Offers will be considered to be responsive if they conform to the requirements set forth herein. All offers must include certifications that are made a part of this solicitation.

2.2.6 Submission Evaluation

An Evaluation Committee will evaluate submissions. During this time, the Procurement Officer may initiate discussions with Offerors who submit responsive or potentially responsive Submissions for the purpose of clarifying aspects of the Submissions, but Submissions may be accepted and evaluated without such discussion. The Offerors **SHALL NOT** initiate discussions. Potentially responsive Submissions are Submissions that could reasonably be anticipated as capable of being made responsive.

2.2.7 Selection of Finalists

The Procurement Officer will provide the list of finalists to the Executive Director. The Procurement Officer will notify the finalist Offerors of their selections. Only finalists will be invited to participate in the subsequent steps of the procurement. The final schedule for the oral presentations (if necessary) will be determined at this time.

2.2.8 Oral Presentation by Finalists (Optional)

Finalist Offerors may be required to present their Submissions to the Evaluation Committee. The Procurement Manager will schedule the time for each Offeror presentation. All Offeror presentations will be held at the RMRTD address noted herein. Each presentation will be limited to one hour with an additional fifteen minutes for questions and answers.

2.2.9 Best and Final Offers from Finalists

Finalist Offerors may be asked to submit revisions to their Submissions for the purpose of obtaining best and final offers.

2.2.10 Contract Negotiations

A draft Contract is made a part of this solicitation as evidenced in Exhibit B. The Contract is subject to change and shall be negotiated with the Finalist Offerors selected for award by the Executive Director. In the event that mutually agreeable terms cannot be reached within a reasonable time, defined herein as within fifteen (15) calendar days from the date that the Finalist Offeror is notified of the award, the RMRTD reserves the right to negotiate a Contract with another Finalist Offeror without undertaking a new procurement process. RMRTD also reserves the right to make multiple Contract awards per element.

2.2.11 Contract Award

The Contract shall be awarded to the Finalist Offeror or Offerors whose scores on the evaluation factors specified herein is sufficiently high and who negotiates a Contract of mutually agreeable terms with the RMRTD within a reasonable time as defined in this solicitation. Contract award may be to multiple Offerors.

Contracts are not valid until signed by all parties to the Contract issued in response to this RFP.

2.2.10 Protest of Award

An Offeror who has submitted a responsive Offer on this RFP may protest the award of a Contract resulting from the RFP. The protest must be timely and in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations. The protest period will begin on the day following the Contract award and will end at close of business on the following fifteenth calendar day. Protests must be written and must include the name and address of the protestor and the RFP number. It must also contain a statement of grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the Procurement Officer. The protest must be delivered to the Chief Procurement Officer.

Phil Pino, Chief Procurement Officer
Mid-Region Council of Governments
809 Copper Ave., N.W.
Albuquerque, NM 87102
Phone : (505) 724-3634, Fax : (505) 247-1753
E-mail : rfp@mrcog-nm.gov

Protests received after the deadline will not be accepted.

2.3 General Requirements

This procurement will be conducted in accordance with the RMRTD procurement policy, the New Mexico Procurement Code and applicable Federal regulations.

RMRTD requires that all Offerors agree to be bound by the "General Requirements" contained in this RFP. Any Offeror concerns must be promptly brought to the attention of the Procurement Officer.

2.3.1 Acceptance of Conditions Governing the Procurement

Offerors should indicate their acceptance of the "Conditions Governing the Procurement" section in the letter of transmittal. However, submission of a Submission constitutes acceptance of the evaluation factors specified in this RFP.

2.3.2 Incurring Cost

Any cost incurred by the Offeror in preparation, transmittal, presentation of any Submission or material submitted in response to this RFP shall be borne solely by the Offeror.

2.3.4 Prime Contractor Responsibility

Any Offeror awarded a Contract as a result of this RFP will be solely responsible for fulfillment of the Contract with RMRTD. RMRTD will make Contract payments only to the prime Contractor.

2.3.5 Subcontractors

Intended use of subcontractors must be clearly explained in the Submission, and major subcontractors must be identified by name. The prime Contractor shall be solely responsible for the entire performance of the Contract whether or not subcontractors are identified in the Submission or used in the performance of the Contract.

2.3.6 Amended Submissions

An Offeror may submit an amended Submission before the deadline for receipt of Submissions. Such amended Submissions must be complete replacements for a previously submitted Submission and must be clearly identified as such in the transmittal letter. RMRTD personnel will not merge, collate, or assemble Submission materials.

2.3.7 Offeror's Rights to Withdraw Submission

Offerors will be allowed to withdraw their Submissions at any time prior to the deadline for receipt of Submissions. The Offeror must submit a written withdrawal request signed by the Offeror's duly authorized representative addressed to the Procurement Officer.

2.3.8 Submission Offer Firm

Responses to this RFP will be considered firm in that revisions, alteration or changes will not be considered, other than Best and Final Offers solicited by the Evaluation Committee, for a period of ninety (90) calendar days after the due date for receipt of Submissions.

2.3.9 Disclosure of Submission Contents

The Submissions will be kept confidential until a Contract is awarded. At that time, all Submissions and documents pertaining to the Submissions will be open to the public, except for the material that is proprietary or confidential. The Procurement Officer will not disclose or make public any

pages of a Submission on which the Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements.

Proprietary or confidential data shall be readily separable from the Submission in order to facilitate eventual public inspection of the non-confidential portion of the Submission.

Confidential data is normally restricted to confidential financial information concerning the Offerors organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, 57-3A-1 to 57-3A-7 NMSA 1978. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the Procurement Officer shall examine the Offerors request and make a written determination that specifies which portions of the Submission should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the Submission will be so disclosed. The Submission shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential or proprietary data.

2.3.10 No Obligation

This procurement in no manner obligates RMRTD to the use of any proposed professional services until a valid written Contract is awarded and approved by the appropriate authorities.

2.3.11 Termination of RFP

This RFP may be canceled at any time and any and all Submissions may be rejected in whole or in part when RMRTD determine such action to be in the best interest of RMRTD.

2.3.12 Sufficient Appropriation

Any Contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Sending written notice to the Contractor will affect such termination. The Contractor will accept RMRTD's decision as to whether sufficient appropriations and authorizations are available as final.

2.3.13 Governing Law

The laws of the state of New Mexico and applicable Federal regulations shall govern this procurement and any agreement with Offerors that may result. In the case where there is disparity among applicable regulations, the most stringent regulations, those that supersede all other regulations pertaining to this RFP, shall control in the first order under this solicitation.

2.3.14 Basis for Submission

Only information supplied by RMRTD in writing through the Chief Procurement Officer or in this RFP should be used as the basis for the preparation of Offeror Submissions.

2.3.15 Contract Terms and Conditions

The contract to be executed between the RMRTD and Contractor will include language similar to that put forth in Exhibit B of this RFP. The Contract between RMRTD and a Contractor will follow the format specified by the RMRTD. RMRTD reserves the right to negotiate with a successful Offeror Contract provisions in addition to those contained in this RFP.

Should an Offeror object to any of the terms and conditions as contained in this Section, the Offeror should propose specific alternative language. RMRTD may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at substantive or complete substitutions are not acceptable to the RMRTD and will result in disqualification of the Offerors Submission.

Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

2.3.16 Approval of Contractor Personnel

Personnel proposed in the Contractor's written Submission are considered material to any work performed under this RFP and subsequent Contract.

During the course of this procurement and after the Contract has been signed, no changes of personnel will be made by the Contractor without prior written consent of the Procurement Officer. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive immediately upon receiving assignments. Approval of the replacement personnel shall not be unreasonably withheld.

RMRTD shall retain the right to request the removal of any of the Contractor's personnel at any time.

2.3.17 Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between RMRTD and the selected Offeror and shall not be deemed an opportunity to amend the Offerors Submission.

2.3.18 Offeror Qualifications

The Procurement Officer may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified within this RFP. The Procurement Officer will reject the Submission of any Offeror who is not a responsible Offeror or fails to submit a responsive offer as defined in Sections 13-1-83 and 13-1-85 NMSA 1978.

2.3.19 Right to Waive Technical Irregularities

The Procurement Officer reserves the right to waive technical irregularities. The Procurement Officer also reserves the right to waive mandatory requirements provided that all of the otherwise responsive Submissions failed to meet the mandatory requirements and/or doing so does not otherwise materially affect the procurement. This right is at the sole discretion of RMRTD.

2.3.20 Project Team Prohibited Activities

RMRTD employees, members or volunteers and its affiliates' employees, members or volunteers are prohibited from participating directly or indirectly in the preparation of this procurement when the employee knows that the individual or any member of the individual's family has a financial interest in the business seeking or obtaining a Contract.

2.3.21 Notice – Civil and Criminal Penalties

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

2.3.22 RMRTD Rights

The RMRTD reserves the right to accept all or a portion of the Submission of an Offeror selected for award.

2.3.23 Right to Publish

Throughout the duration of this procurement process and Contract term, potential Offerors, and Contractors must secure from RMRTD written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or the subsequent Contract. Failure to adhere to this requirement may result in disqualification of the Offerors Submission or termination of the Contract.

2.3.24 Ownership of Submissions

All documents submitted in response to this RFP shall become the property of RMRTD. However, any technical or user documentation submitted with the Submissions of non-selected Offerors shall be returned upon written request to the Chief Procurement Officer after the expiration of the protest period. Offerors not selected for award of a Contract may pick up the documentation at RMRTD office within a fifteen (15) day period following the close of the protest period.

2.3.25 Electronic Mail Address Required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence.

2.3.26 Electronic and Web Site Versions of this RFP

This RFP is available by electronic means upon request to the Procurement Officer and from the following website:

https://www.riometro.org/

https:www.mrcog.org/

If accepted by such means, the Offeror acknowledges and accepts full responsibility to ensure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by RMRTD, the version maintained by the RMRTD shall govern.

2.4. Special Provisions

This procurement may be supported in part or in whole from time to time with federal and state funds. Therefore, the following certifications and requirements apply to this solicitation:

2.4.1 Prohibition Against Use of Federal Funds for Lobbying

In accordance with Federal Acquisition Regulations (FAR) 52.203-12, neither the Contractor nor any subcontractor may use Federal assistance funds for publicity or propaganda purposes designed to support or defeat legislation pending before Congress. Certification of Restrictions on Lobbying is required for this solicitation as provided in Appendix 3 of this solicitation.

2.4.2 Debarment and Suspension

Pursuant to FAR 52.209-6, the Contractor shall provide certification to protect the RMRTD's interests related to Government-wide Debarment and Suspension, and otherwise comply with the requirements of those regulations. Certification is required as provided in Appendix 4 of this solicitation.

2.4.3 Affirmative Action/Civil Rights Compliance

In accordance with FAR 52.222-21/36, the Contractor shall adhere to Affirmative Action / Equal Employment Opportunity policies. Certification for Affirmative Action/Civil Rights Compliance as provided in Appendix 6 of this solicitation provides that assurance.

2.4.4 Campaign Contribution Disclosure

Pursuant to the State of New Mexico Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective Contractor seeking to enter into a Contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. Certification is required as provided in Appendix 5 of this solicitation.

2.5. Federal Provisions

RMRTD anticipates that Federal funds will be used for this project, therefore, all, and any Federal Regulations will apply. Federal Provisions as set forth in this Section 2.5 and all Federal Requirements on Exhibit A of this RFP2026-01. Exhibit A has the requirements for applicable forms and/or disclosures that **MUST** be submitted with your proposal response. Appendix 1, 2, 3 and 4 are all requirements, Exhibit E SAMS.GOV registration is a requirement.

A. No Government Obligations to Third Parties.

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

B. Program Fraud and False or Fraudulent Statements and Related Acts.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC. § 3801 *et seq*. and U.S. DOT regulations, Program Fraud Civil Remedies, 49 CFR. Part 31, apply to its actions pertaining to this Agreement. Upon execution of the underlying Agreement, 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 Agreement or the FTA assisted project for which this 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 USC § 5307, the Government reserves the right to impose the penalties of 18 USC. § 1001 and 49 USC. § 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. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

C. Access to Records and Reports.
Pursuant to 49 CFR 18.36(i), the Contractor agrees to provide RMRTD, the FTA Administrator, the Comptroller General of the United States or any other authorized representative access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor agrees to permit the reproduction by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Contractor agrees to maintain all books, records, accounts, and reports required under this Agreement for a period of not less than three (3) years after the date of termination or expiration of this Agreement, in which case, the Contractor agrees to maintain same until RMRTD, 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.

D. Federal Changes.
The 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 RMRTD and FTA, as they may be amended or promulgated from time to time during the term of this Agreement. The Contractor's failure to so comply shall constitute a material breach of this contract.

E. Termination.
This Agreement may be terminated without cause by either of the Parties and for the convenience of the terminating Party upon written notice delivered to the other Party at least ninety (90) days prior to intended termination and specifying the effective date of such termination. A termination pursuant to this provision does not nullify a Party's obligations for performance or liabilities for failure to perform Services already incurred prior to the date of termination.

F. Civil Rights Compliance.

(1) Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 USC § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 USC § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 USC § 12132, and Federal transit law at 49 USC § 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 or other implementing regulations that FTA may issue.

(2) Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying Agreement:

a. *Race, Color, Creed, National Origin, Sex* - In accordance with Title VI of the Civil Rights Act, as amended, 42 USC § 2000e, and Federal transit laws at 49 USC § 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 CFR. 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 USC. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies undertaken in the course of the Project.

b. *Affirmative Action* - 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 Federal implementing requirements.

c. *Age* - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC § 623 and Federal transit law at 49 USC § 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 further Federal implementing requirements.

d. *Disabilities* - In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 USC § 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 CFR. Part 1630, pertaining to employment of persons with disabilities.

(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.

G. Disadvantaged Business Enterprise

(1) This Agreement is subject to the requirements of 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. A list of certified Disadvantage Business Enterprise (DBE) businesses can be obtained from the New Mexico State Highway and Transportation Department, Office of Equal Employment Opportunity Programs website: https://nmdot.dbesystem.com. A separate contract goal has not been established for this Agreement.

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

(3) The Contractor agrees to pay each subcontractor under the Agreement for satisfactory performance no later than thirty (30) days from the receipt of each payment the Contractor receives from RMRTD. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the RMRTD. This clause applies to both DBE and non-DBE subcontracts.

(4) If applicable, the Contractor is required to pay all retainage owed to each subcontractor for satisfactory completion of accepted work within thirty (30) days from the receipt of each payment the Contractor receives from the RMRTD. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the RMRTD. This clause applies to both DBE and non-DBE subcontracts.

(5) The Contractor may be required to report its DBE participation obtained through race-neutral means throughout the period of the Agreement. For this purpose, the Contractor may be requested to create a subcontractors list, consisting of information about all DBE and non-DBE firms under this Agreement.

H. Incorporation of Federal Transit Administration (FTA) Terms.

All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F, 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 Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests that would cause the agency to be in violation of the FTA terms and conditions.

I. Debarment and Suspension.

This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor verifies that none of the subcontractors, principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, engaged under this Agreement are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The Contractor agrees to and assures that its third-party contractors and sub recipients will review the Excluded Parties Listing System (EPLS) at https://www.sam.gov/ before entering into any contracts.

J. Fly America.

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

K. 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. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)I and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content. Contractor must submit the appropriate Buy America certification with all bids or offers on FTA-funded contracts exceeding $100,000, except those subject to a general waiver. Certification is not required for this procurement due to lack of applicability per the scope of work detailed herein.

L. Energy Conservation Requirements.

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 USC 6321 *et seq*.

M. Prohibition Against Use of Federal Funds for Lobbying

Neither the Contractor nor any subcontractor may use Federal assistance funds for publicity or propaganda purposes designed to support or defeat legislation pending before Congress. Certification of Restrictions on Lobbying is required. Certification is required.

N. Breaches and Dispute Resolutions

(1) Disputes. Disputes arising in the performance of this Agreement, which are not resolved by agreement of the parties, shall be decided in writing by an authorized representative of RMRTD. 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 authorized representative of RMRTD. 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 authorized representative of RMRTD shall be binding upon the Contractor and the Contractor shall abide be the decision.

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

(3) Remedies. If any controversy or claim arising out of this Contract cannot be settled by the Parties directly, the Parties will submit the controversy or claim to mediation using a mediator mutually acceptable to the Parties or, if the Parties cannot agree on a mediator, a mediator chosen by mediators chosen by each Party. If the Parties are unable, after a

reasonable period of time, to produce through such mediation a mutually satisfactory resolution on the matter, the dispute will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the RMRTD is located.

(4) Right and Remedies. The duties and obligations imposed by this Agreement 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 RMRTD or the Contractor shall constitute a waiver of any right or duty afforded any of them under the Agreement, 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.

O. Clean Air

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

P. Clean Water

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. The Contractor agrees to report each violation and understands and agrees that the RMRTD will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. 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.

Q. Cargo Preference

The Contractor agrees to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.

R. Access Requirements for Individuals with Disabilities

The Contractor shall, at all times, be in compliance with all statutory requirements imposed by or pursuant to Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990 at 49 CFR Parts 27, 37 and 38, as well as any additional requirements which may be placed into effect during this Contract.

S. 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 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.

T. Recycled Products

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

U. Rights in Data

The following requirements apply to each contract involving experimental, developmental or research work:

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

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

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

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

i. Any subject data developed under that contract, whether or not a copyright has been obtained; and

ii. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

c. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the

Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects. (d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government. (e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent. (f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work. (g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those NYSDOT - December 2009 Federal Government Required Clauses & Certifications (FTA Procurements) Page 22 of 24 rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401. (4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

V. Patent Rights

The following requirements apply to each contract involving experimental, developmental, or research work:

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

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

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

W. Preliminary Engineering/Construction Engineering

(1) Preliminary Engineering/Construction Engineering consultant selection procedures shall be in accordance with 23 CFR Part 172 and the State Procurement Code, NMSA 1978, §§ Chapter 13-1-1 et. seq.

(2) Engineering consultants shall prepare a final fee estimate of any work to be performed, indicating each element or task with estimated personnel-hours and associated unit costs to be kept on file for five (5) years.

X. Seat Belt Use

(1) The Subrecipient agrees to implement Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by: 90 (1) Adopting and promoting on-the- job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles

Y. Safe Operation of Motor Vehicles

(1) The Subrecipient agrees to comply with: (1) Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225); (2) U.S. DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009; and (3) The following U.S. DOT Special Provision pertaining to Distracted Driving Safety. The Subrecipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban

text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Subrecipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award; Recipient Size. The Subrecipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving; and

(2.) Extension of Provision. The Subrecipient agrees to encourage its contractors to comply with this Special Provision and include this Special Provision in each third-party contract at each tier supported with federal assistance.

Z. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

Public Law 115-232, section 889, prohibits entering into a contract (or extending or renewing a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).Telecommunications or video surveillance services provided by such entities or using such equipment, telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

AA. Federal Grant Reporting Requirements.

Under the Federal Funding Accountability and Transparency Act, the Department is required to report on projects or activities, which are awarded federal grants of $25,000 or more. This information will be made available to the public on www.USASpending.gov. The type of information the Department is required to report includes:

- Name of Subrecipient receiving the award
- Amount of Award
- Funding Agency
- NAICS code for contracts or the Catalog of Federal Domestic Assistance program number or grants
- Program source
- Award title descriptive of the purpose of the funding action
- Location of the Subrecipient, which includes the Congressional District
- Place of performance of the program or activity, which includes the Congressional District
- Unique identifier—DUNS—of the Subrecipient and its parent organization, if one exists

- Total compensation and names of the top five executives of the Subrecipient. This information is required, if the Subrecipient in the preceding year received eighty (80) percent or more of its annual gross revenues in federal awards, which exceeds $25 million annually, and the public has no access to this information under the Securities Exchange Act or the Internal Revenue Code.

The Department will extract as much information as possible from the Subrecipient's grant application and standard reports. However, the Subrecipient will be required to provide additional information, which includes the total compensation and names of the Subrecipient's top five executives, if applicable. The Subrecipient shall register with www.SAM.gov and DUNS and provide that information to the Department.

BB. Notification Related to Fraud, Waste, Abuse, or Other Legal Matters

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify [recipient] so that it can notify the Federal Government. The Contractor must include a similar notification requirement in its Third-Party Agreements and must require each Third-Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation o a legal disagreement in any forum for any reason. Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

3.0 RESPONSE FORMAT AND ORGANIZATION

3.1 Number of Responses

Offerors shall submit only **one** (1) Submission for contracts associated with this RFP.

3.2 Number of Copies

ELECTRONIC SUBMISSION ONLY

Submissions in response to this RFP must be submitted via email to: rfp@mrcog-nm.gov

Offerors need only submit one single electronic copy of each portion of its Submission as outlined below. EXCEPTION: Single electronic files that exceed 20mb may be Emailed as multiple Emails, which must be the least number of emails necessary to fall under the 20mb limit. Separate the Submissions as described below into separate electronic files for Submission.

Submissions must be submitted in the manner outlined below.

The RMRTD Chief Procurement Officer will provide electronic copies to the evaluation committee.

3.3 Submission Format

All Submissions must be typewritten on standard 8 ½ x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) with tabs delineating each section. Submissions shall be no longer than 15 pages (single-sided) excluding front and back covers.

Pages may be single spaced with a font of no less than number 10.

3.3.1 Submission Organization

The Submission must be organized and indexed in the following format and must contain, as a minimum, all listed items in the sequence indicated.

Tab 1. Appendix 1: Submission Form
Tab 2. Project Understanding
Tab 3. Technical Approach
Tab 4. Team and Resources
Tab 4. Experience and References
Tab 5. Cost Proposal
Tab 6. Certifications
As required from Exhibit A Federal Clauses
Appendix 3: Certification Restrictions on Lobbying
Appendix 4: Certification Debarment, Suspension
Appendix 5: Campaign Contribution Disclosure
Appendix 6: Certification Affirmative Action

Note that Appendix 2: Acknowledge of RFP Receipt is not an optional form as per section 2.2.3, submitted by Offerors who wish to receive written responses to written questions and solicitation amendments as specified in this solicitation. Certifications to be included in Tab 6 are required to ensure that an Offeror has completed a responsive Submission. The completed certifications will not count toward the page limits of the Submission.

Within each section of the Submission, Offerors shall address the items in the order in which they appear in this RFP. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the Submission.

Any Submission that does not adhere to these requirements may be deemed nonresponsive and rejected on that basis.

3.3.2 Submission Form

Each Submission must contain - as the first item in the organized and indexed sequence – the fully executed Submission Form as presented in Appendix 1 of this solicitation. Failure to provide the form with all the information indicated will result in rejection of the Submission as non-responsive.

4.0 SPECIFICATIONS

Submission narratives along with required supporting materials will be evaluated and awarded points as detailed in the Evaluation Section of this solicitation. Responses to the evaluation factors will be examined and used in the scoring of responsive Submissions.

4.1 Key Elements

Offerors should respond in the form of a thorough narrative to the mandatory specification as prescribed Section 1.2 of the Scope of Work.

4.2 Evaluation Factors

Five (5) evaluation factors, including Project Understanding; Technical Approach; Team and Resources; Experience and References and Cost Proposal will be examined in the scoring of responsive Submissions. Offerors should respond in the form of a thorough narrative, graphics and tables to each evaluation factor as it applies to the Scope of Work and other information contained in the RFP.

4.2.1 Project Understanding

Offerors shall demonstrate an understanding of all security needs, functions, capacity, and eventual operations of commuter rail operations and maintenance facilities or other locations withing the RMRTD that may require Security Services. Offerors shall demonstrate an understanding of the Rail Runner system, operations; the RMRTD agency; additional involved agencies, partners and stakeholders (such as the NMDOT, BNSF, Amtrak, and the City of Albuquerque).

4.2.2 Technical Approach

Offerors shall describe their specific approach to providing Security Services on Commuter Rail, technical and or safety approach practices to the SOW and shall identify any notable considerations in related to the Scope of Work. Offeror shall show how to minimize risks, provide excellent quality security to provide a safety and friendly Commuter Rail experience.

Offerors shall also describe quality control/quality assurance procedures that will ensure excellent quality security to provide a safety and friendly Commuter Rail experience.

4.2.3 Project Team and Resources:

Offerors shall list each individual on their prospective Security team and shall provide their professional licensure, registrations and/or certifications, and qualifications (ie. Level I or Level II Certifications for Security in the State of New Mexico). For all key positions, Offerors shall describe primary responsibility and role, home office location, and specify expected level of participation as portion of Offeror effort. Offerors are strongly encouraged to describe project team members' experience as if related to the Scope of Work. Offerors shall provide an organization chart(s) for the prospective team.

Offerors shall also identify the Manager(s) who will be responsible for overseeing the security team and communicating with RMRTD throughout the Contract Period, and if necessary, describe the hierarchy and relationships between the prime contractor and subcontractors.

If Necessary, Offerors shall identify the managers for all subcontractors. Offerors shall indicate the projects/services for which they have used the proposed subcontractors in the past.

4.2.4 Experience and References

Offerors shall describe their past or current experience in providing Security Services. Security Company must have at least 2 years of transit (railroad) experience and provide history and references.

Offerors shall provide the name, title, agency, phone number, and email address for the reference to Transit/Commuter (railroad) experience.

4.2.5 Cost - Provide your complete cost proposal.

5.0 EVALUATION

The Procurement Officer will review all Submissions for completeness. Complete Submissions will be scored by a selection committee consisting of **five** members.

5.1 Evaluation Point Summary

The selection committee will review all complete Submissions against the following evaluation criteria, which are described more fully below:

Evaluation Criteria	Possible Points
1 Project Understanding	15
2 Technical Approach	15
3 Project Team and Resources	20
4 Experience and References	25
5 Cost Proposals	25
Total Available Points	100
5. Oral Interview (If Necessary)	30
6. Best & Final Offers (If Necessary)	20
TOTAL AVAILABLE	150

The selection committee will score all complete Submissions that are received.

5.2 Evaluation Process

The evaluation process will follow the steps listed below:

5.2.1 Submission Compliance

All Offeror Submissions will be reviewed for compliance with the mandatory requirements stated within the solicitation. At the discretion of RMRTD, Submissions deemed non-responsive will be eliminated from further consideration.

5.2.2 Contacting Offerors

The Chief Procurement Officer may contact the Offeror for clarification of the response as specified in in this solicitation.

5.2.3 Finalist Selection

Responsive Submissions will be evaluated on the factors specified herein that have been assigned a point value. The responsible Offerors with the highest scores will be selected as Finalist Offerors based upon the Submissions submitted. Finalist Offerors may then be asked to participate in Oral Interviews. At the conclusion of the Oral Interviews additional points may be awarded in accordance with this section. The Evaluation Committee may then make a recommendation to the Executive Director for award or solicit Best and Final Offers from any or all of the finalists. If Best and Final Offers are solicited, the Evaluation Committee will award additional points in accordance with this section and then make a final recommendation for award to the Executive Director. Finalist Offerors providing the most advantageous Submission taking into consideration the evaluation factors specified herein will be recommended for Contract award. Please note, however, that a serious deficiency in the response of any one factor may be grounds for rejection regardless of **overall score.**

APPENDIX 1

SUBMISSION FORM

RFP#: 2026-01

SUBMISSION FORM

Proposing Organization
Mailing Address
City/State/Zip Code
Head of Organization
Title
Telephone Number Fax Number
Bid Contact Person
Title
Telephone Number E-Mail Address

Contract Signatory Authority
Title
Telephone Number

Tax/Legal Status [ ] Corporation [ ] For Profit [ ] Not-for-Profit [ ] Government
[ ] Individual
Federal ID Number State ID Number

1. I (We) am submitting on the procurement titled: _____

2. I (We) accept the Conditions Governing the Procurement stated in Section 2.3.1.

3. I (We) acknowledge receipt of any and all amendments to this RFP, Nos. _____ to _____.

Signature of Officer _____ Date _____

APPENDIX 2

ACKNOWLEDGEMENT OF RFP RECEIPT
RFP#: 2026-01

ACKNOWLEDGEMENT OF RFP RECEIPT

(Optional)

In acknowledging the receipt of this Qualifications Based Selection, the undersigned agrees that a complete solicitation has been received, beginning with the title page and table of contents, and ending with Appendix 6.

The acknowledgement of receipt should be signed and returned to the Procurement Officer. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a bid for the procurement checked below at least five (5) working days prior to the bid due date, will receive copies of all potential Offeror written questions and the RMRTD's written responses to those questions as well as solicitation amendments, if any, that are issued.

Firm / Individual _____

Represented by _____ Title _____

Phone No. _____ Fax No. _____

E-mail Address _____

Address _____

City/State/Zip Code _____

Signature * _____ Date _____

* Formal signature required - e-mail transmittal with scanned signature is acceptable.

This name and address will be used for all correspondence related to the Quality Based Selection.

Firm □ does □ does not (**check one**) intend to respond to this Quality Based Selection.

Return to: Phil Pino
Procurement Officer
809 Copper Ave. N.W., Albuquerque, NM 87102
Phone : (505) 724-3634 ; Fax : (505) 247-1753
E-mail : rfp@mrcog-nm.gov

APPENDIX 3
CAMPAIGN CONTRIBUTION DISCLOSURE FORM
RFP#: 2026-01

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, 13-1-191.1 (2006), as amended by Laws of 2007. Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars ($250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

The state agency of local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

THIS FORM MUST BE INCLUDED IN THE QUALITY BASED SELECTION AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATAIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

"**Applicable public official**" means any person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

"**Campaign Contribution**" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

"**Family member**" means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

"Pendency of the procurement process" means the time period commencing with the public notice of the Quality Based Selection and ending with the award of the contract or the cancellation of the Quality Based Selection. "Prospective contractor" means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or a small purchase contract.

"Representative of a prospective contractor" means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

RMRTD - Board of Directors Roster (March 2024)

Member Government	Name	Title
City of Albuquerque	Joaquín Baca	Councilor, District 2
	Dan Champine	Councilor, District 8
	Tammy Fiebelkorn, Vice Chair	Councilor, District 7
	Renée Grout	Councilor, District 9
	Tim Keller	Mayor
	Nichole Rogers	Councilor, District 6
City of Belen	*Steven Tomita, Chair*	Planning and Economic Dev. Mgr.
Bernalillo County	Adriann Barboa	Commissioner, District 3
	Walt Benson	Commissioner, District 4
	Steven Michael Quezada	Commissioner, District 2
Town of Bernalillo	Jack Torres	Mayor
Village of Bosque Farms	Vacant	--
Village of Corrales	Mel Knight	Councilor, District 3
Village of Los Lunas	Michael Jaramillo	Public Works Director
Village of Los Ranchos de Albuquerque	Lawrence Rael	Mayor
City of Rio Communities	Thomas Nelson	Councilor
City of Rio Rancho	Jim Owen	Councilor, District 1
	Robert Tyler	Councilor, District 3
	Vacant	--
Sandoval County	Michael Meek	Commissioner, District 3
Valencia County	Joseph Bizzell	Commissioner, District 4

Associate Members (Non-Voting)

Member Government	Name	Title
Isleta Pueblo	Vacant	--
North Central Regional Transit District	Anthony Mortillaro	Executive Director

Name(s) of Applicable Official(s) if any:

_____

Completed by State Agency or Local Public Body)

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____ Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

_____ _____

Signature Date

_____

Title (position)

-OR

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS ($250) WERE MADE TO AN APPLICABLE PUBLIC OFFICIAL BY ME, A FAMILY MEMBER OR REPRESENTATIVE.

_____ _____

Signature Date

_____

Title (Position)

APPENDIX 4

AHRO Form CC 2
QUALIFICATIONS BASED SELECTION RFP
RFP#: 2026-01

CERTIFICATION REGARDING
AFFIRMATIVE ACTION/EQUAL EMPLOYMENT OPPORTUNITY
AND NONDISCRIMINATION

AHRO Form CC 2

The Bidder hereby acknowledges and agrees to abide by the Special Provisions for Affirmative Action/Equal Employment Opportunity and Nondiscrimination and all other provisions, regulations and/or requirements of the Owner for Affirmative Action/Equal Employment Opportunity and Nondiscrimination.

The Bidder has participated with any agency in a previous contract or subcontract subject to any Equal Employment Opportunity and Nondiscrimination in Employment requirements.	Yes □ No □
Compliance reports were required to be filed in connection with such contract or subcontract.	Yes □ No □
The Bidder has filed all compliance reports due under applicable instructions. If answer to this statement is "No", explain in detail on reverse side of this certification.	Yes □ No □

_____ _____
Company Name of Bidder Telephone Number

_____ _____
Signature FAX Number

_____ _____
Printed Name E-Mail Address

_____ _____
Title Date

Address:

_____

_____

_____

EXHIBIT A

Supplemental Federal Clauses and Requirements

For Federally Funded Contracts.

Exhibit A
Federal Clauses

for

Federal Contracts

Prepared by the Rio Metro Regional Transit District

Date: February 1, 2025

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Overview: All Federal Clauses in this document apply to this solicitation and subsequent award, in addition to the *Terms and Conditions* specified in this solicitation. By submitting a response to this solicitation, the Bidder is agreeing to all Federal Clauses included in this document.

Instructions: Review all the Federal Clauses and sign the Federal Clauses that require a "Bidder Signature". Bidders must attach this Federal Clauses document to the bid submission, along with the required signatures specified in the table below.

No.	TITLE	BIDDER SIGNATURE REQUIRED
1	SPECIAL NOTIFICATION REQUIREMENTS FOR STATES	-
2	**LOBBYING**	**YES**
3	**GOVERNMENT-WIDE DEBARMENT AND SUSPENSION**	**YES**
4	**TAX LIABILITY CERTIFICATION**	**YES**
5	**PROHIBITION ON PROVIDING OR USING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**	**YES**
6	**BUY AMERICA COMPLIANCE CERTIFICATION**	**YES**
7	NOTIFICATION TO FEDERAL TRANSIT ADMINISTRATION (FTA)	-
8	DISADVANTAGED BUSINESS ENTERPRISE (DBE)	-
9	FLY AMERICA REQUIREMENTS	-
10	CHARTER BUS REQUIREMENTS	-
11	SCHOOL BUS REQUIREMENTS	-
12	CARGO PREFERENCE REQUIREMENTS	-
13	SEISMIC SAFETY REQUIREMENTS	-
14	ENERGY CONSERVATION REQUIREMENTS	-
15	CLEAN WATER REQUIREMENTS	-
16	ACCESS TO RECORDS AND REPORTS	-
17	FEDERAL CHANGES	-
18	BONDING REQUIREMENTS	-
19	CLEAN AIR	-
20	RECYCLED PRODUCTS	-
21	DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS	-
22	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT	-
23	EQUAL EMPLOYMENT OPPORTUNITY	-
24	NO GOVERNMENT OBLIGATION TO THIRD PARTIES	-
25	PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS	-
26	TERMINATION	-
27	PRIVACY ACT	-
28	CIVIL RIGHTS REQUIREMENTS	-
29	BREACHES AND DISPUTE RESOLUTION	-
30	PATENT AND RIGHTS IN DATA	-
31	TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS	-

32	INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS	-
33	DRUG AND ALCOHOL TESTING	-
34	SAFE OPERATION OF MOTOR VEHICLES	-
35	ADA ACCESS	-
36	VETERANS EMPLOYMENT	-
37	FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES	-
38	TRAFFICKING IN PERSONS	-
39	SOLID WASTES (RECOVERED MATERIALS)	-
40	SEAT BELT USE	-
41	SAFE OPERATONS OF MOTOR VEHICLES	-
42	NOTIFICATION RELATED TO FRAUD, WASTE, ABUSE OR OTHER LEGAL MATTERS	-

1. SPECIAL NOTIFICATION REQUIREMENTS FOR STATES

FTA Master Agreement

Federal grant monies ($XXXX) fund this contract, in whole or in part (Section 53XX – CFDA 20.XX). As such, agencies receiving such funds and contractors awarded contracts that use such funds must comply with certain Federal certifications and clause requirements. This includes, for purchases of rolling stock over $150,000, compliance with Buy America Act requirements, including pre-award and post-delivery audit requirements and certifications, as well as requirements and certifications applicable under the Federal Motor Vehicle Safety Standard (FMVSS). It is the contractor's responsibility to be aware of the pertinent certifications and contract clauses, as identified by the Issuing Agency for the instant procurement and ensure compliance with such requirements prior to award and throughout the term of any resultant contract.

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2. 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 over $100,000.

Flow Down Requirement: 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.

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 $50,000 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:

A. 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.

B. 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* .)]

C. 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

Date	
Name of Contractor's Authorized Official	
Signature of Contractor's Authorized Official	
Title of Contractor's Authorized Official	
Company Name	

3. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

CFR part 180
CFR part 1200
CFR § 200.213
CFR part 200 Appendix II (I) Executive Order 12549
Executive Order 12689

Background and Applicability

A contract award (of any tier) in an amount expected to equal or exceed $25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.

Flow Down

Recipients, contractors, and subcontractors who enter into covered transactions with a participant at the next lower level, must require that participant to: (a) comply with subpart C of 2 C.F.R. part 180, as supplemented by 2 C.F.R. part 1200; and (b) pass the requirement to comply with subpart C of 2 C.F.R. part 180 to each person with whom the participant enters into a covered transaction at the next lower tier.

Debarment, Suspension, Ineligibility and Voluntary Exclusion

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180.

These provisions apply to each contract at any tier of $25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

A. Debarred from participation in any federally assisted Award;
B. Suspended from participation in any federally assisted Award;
C. Proposed for debarment from participation in any federally assisted Award;
D. Declared ineligible to participate in any federally assisted Award;
E. Voluntarily excluded from participation in any federally assisted Award; or
F. Disqualified from participation in ay federally assisted Award.

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 the Recipient. If it is later determined

by the Recipient that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Recipient, 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 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, 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.

Date	
Name of Contractor's Authorized Official	
Signature of Contractor's Authorized Official	
Title of Contractor's Authorized Official	
Company Name	

4. TAX LIABILITY CERTIFICATION

This certificate applies to all contracts. Offers that do not include this completed certification will be rejected as nonresponsive.

The Proposer certifies that:

1. It has no unpaid federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability;
2. It has not been convicted of a felony criminal violation under any federal law within the preceding 24 months; and
3. It shall require that the language of this certification be included in the award documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Date	
Name of Contractor's Authorized Official	
Signature of Contractor's Authorized Official	
Title of Contractor's Authorized Official	
Company Name	

5. PROHIBITION ON PROVIDING OR USING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT
Section 889

Consistent with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 (Aug. 13, 2018), CONTRACTOR must not:

(a) provide "covered telecommunications equipment or services" (as that term is defined in Section 889 of the Act) as part of its performance under this Contract, if such equipment or services will be used as a substantial or essential component of any system or as critical technology as part of any system;or

(b) use such covered telecommunication equipment or services as a substantial or essential component of any system or as critical technology as part of any system, regardless of whether that use is in connection with performance of work under this Contract, subject only to the exception that covered telecommunications equipment or services may be provided or used if the equipment or services cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

Date	
Name of Contractor's Authorized Official	
Signature of Contractor's Authorized Official	
Title of Contractor's Authorized Official	
Company Name	

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6. BUY AMERICA COMPLIANCE

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. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)I and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content. Contractor must submit the appropriate Buy America certification with all bids or offers on FTA-funded contracts exceeding $100,000, except those subject to a general waiver. Certification is not required for this procurement due to lack of applicability per the scope of work detailed herein.

BUY AMERICA CERTIFICATION

Instructions:

Bidder to complete the Buy America Certification listed below. Bidder shall certify EITHER COMPLIANCE OR NON-COMPLIANCE (not both). This Certification MUST BE submitted with the Bidder's bid response.

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 and any amendments thereto.

Signature_____

Company Name_____

Title _____

Date _____

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.

Signature _____

Company Name _____

Title _____

Date _____

Special Note: Make sure you have signed only one of the above statements -- either Compliance OR Non-Compliance (not both).

7. NOTIFICATION TO FEDERAL TRANSIT ADMINISTRATION(FTA)

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third-Party Agreements and must require each Third Party Participant to include an equivalent provision in its sub agreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§180.220 and 1200.220.

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

b) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

c) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has

knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this 18

Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

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8. DISADVANTAGED BUSINESS ENTERPRISE(DBE)

49 CFR Part 26

Applicability to Contracts: The Disadvantaged Business Enterprise (DBE) program provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all U.S. DOT- assisted contracting activities. A formal clause such as that below **must** be included in all contracts and subcontracts above the micro-purchase level ($10,000 except for construction contracts over $2,000).

Clause Language

Each contract the **Recipient** signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following Federal Clause language:

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.* . The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. RMRTD DBE goal for **FFY 2023-2025 is 1.61%**. For this procurement, a separate contract specific goal (check one)

has ☐ % Or Has not ☐

b. The **RECIPIENT**, contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this U.S. DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the **RECIPIENT** deems appropriate, which may include, but is not limited to:

   i. Withholding monthly progress payments
   ii. Assessing sanctions
   iii. Liquidated damages, and/or
   iv. Disqualifying the contractor from future bidding as non-responsible.

c. The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains written consent from the **RECIPIENT**.

d. The contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the DBEs as listed in its written documentation of its commitment to the **RECIPIENT**.

e. **PROMPT PAYMENT** The contractor is required to pay subcontractors for satisfactory performance of their contracts no later than 30 calendar days from receipt of each payment the **RECIPIENT** makes to the contractor.

   The contractor may withhold payment to a subcontractor if, within 10 calendar days of receipt of that progress payment, the contractor provides written notification to the subcontractor and the **RECIPIENT** documenting "just cause" for withholding payment. The contractor is not allowed to withhold retainage from payments due subcontractors.

f. The contractor will be required to report its DBE participation obtained throughout the period of performance.

g. The contractor shall not terminate a DBE subcontractor listed in its written documentation of its commitment to the **RECIPIENT** to use a DBE subcontractor (or an approved substitute DBE firm) without the **RECIPIENT's** prior written consent per 49 CFR Part 26.53(f). This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBEfirm.

h. The contractor must promptly notify the **RECIPIENT** whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work. The contractor must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work under contract as the DBE that was terminated, to the extent needed to meet the contract goal established for the procurement. The good faith efforts shall be documented by the contractor.

i. The contractor may provide written consent only if the **RECIPIENT** agrees, for reasons stated in the concurrence document, that it has good cause to terminate the DBE Firm. For purposes of thisparagraph, good cause includes the following circumstances:

   I. The listed DBE subcontractor fails or refuses to execute a written contract.
   II. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor.
   III. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.
   IV. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

V. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;

VI. **RECIPIENT** determined that the listed DBE subcontractor is not a responsible contractor;

VII. The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;

VIII. The listed DBE is ineligible to receive DBE credit for the type of work required;

IX. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;

X. Other documented good cause that compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE

contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

j. Before transmitting to the **RECIPIENT** its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the **RECIPIENT**, of its intent to request to terminate and/or substitute, and the reason for the request.

Commercially Useful Function Monitoring

Per 49 CFR 26.55 A DBE performs a commercially useful function (CUF) when the DBE is responsible for execution of their work under the contract and the DBE is carrying out its responsibilities by actually performing, managing, and supervising their work. A DBE firm does not perform a CUF if the DBE role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

On federal aid contracts, the signature of the Project Manager on the DT1582 Completion Certificate serves as certification that the Project Engineer and/or project staff effectually monitored the DBE work performance and contract records to verify that the DBE firms were responsible for the execution of their work under the contract having performed a CUF.

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9. FLY AMERICA REQUIREMENTS

49 U.S.C. §40118
41 CFR Part 301-10

Applicability to Contracts

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

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under 10,000. These requirements do not apply to micro-purchases; except for construction contracts over $2,000.

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

Model Clause/Language: The relevant statutes and regulations do not mandate any specified clause or language. FTA proposes the following language.

Fly America Requirements - The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act.

The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

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10. CHARTER BUS REQUIREMENTS

49 U.S.C. 5323(d)
49 CFR Part 604

Applicability to Contracts

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

Micro-Purchases: Micro-purchases are defined as those purchases under $10,000.
These requirements do not apply to micro-purchases.

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

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

Charter Service Operations - The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9.

Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

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11. SCHOOL BUS REQUIREMENTS

49 U.S.C. 5323(F)
49 CFR Part 605

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

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

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

School Bus Operations - Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

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12. CARGO PREFERENCE REQUIREMENTS

46 U.S.C. 1241
46 CFR Part 381

Applicability to Contracts: The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases; except for construction contracts over $2,000.

Flow Down Requirements: The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

Model Clause/Language: The MARAD regulations at 46 CFR 381.7 contain suggested contract clauses. The following language is proffered by FTA.

Cargo Preference - Use of United States-Flag Vessels - The contractor agrees:

A. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

B. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of -lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.)

C. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

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13. 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 $10,000. These requirements do not apply to micro-purchases; except for construction contracts over $2,000.

Flow Down Requirements: 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.

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14. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.
2 CFR Part 1201

Applicability to Contracts: The Energy Conservation requirements are applicable to all contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases; except for construction contracts over $2,000.

Flow Down Requirements: The Energy Conservation requirements extend to all Third-Party contractors and their contracts at every tier and subrecipients and their sub agreements at every tier.

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

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

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15. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

Applicability to Contracts: The Clean Water requirements apply to each contract and subcontract which exceeds $150,000.

Flow Down Requirements: 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 –

A. 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 RegionalOffice.

B. The Contractor also agrees to include these requirements in each subcontract exceeding $50,000 financed in whole or in part with Federal assistance provided by FTA.

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16. ACCESS TO RECORDS AND REPORTS

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

Applicability to Contracts: Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases; except for construction contracts over $2,000.

Flow Down Requirement: FTA does not require the inclusion of these requirements in subcontracts.

Model Clause/Language: The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

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

A. 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 18 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.

B. 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 $250,000.

C. 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.

D. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordancewith 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.

E. 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.

F. 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 18 CFR 18.39(i)(11).

G. FTA does not require the inclusion of these requirements in subcontracts.

REQUIREMENTS FOR ACCESS TO RECORDS AND REPORTS BY TYPES OF CONTRACT

	Operational Service Contract	**Turnkey Contract**	**Construction Contract**	**Arch. or Engineering Contract**	**Rolling Stock Contract**	**Professional Service Contract**
State Grantees						
Contracts below Simplified Acquisition Threshold (Small Purchase) ($250,000)	None	Those imposed on state pass thru to Contractor	None	None	None	None

Contracts above $100,000/Capital Projects	None unless[1] non-competitive award	Those imposed on state pass thru to contractor	Yes, if non-competitive award or if funded thru[2] 5307, 5309, 5311	None unless non-competitive award	None unless non-competitive award	None unless non- competitive award
Non-State Grantees						
Contracts below Simplified Acquisition Threshold (Small Purchase) ($250,000)	Yes	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
Contracts above $100,000/Capital Projects	Yes	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes

Sources of Authority:49 USC 5325 (a), 49 CFR 633.17, 18 CFR 18.36 (i)

17. FEDERAL CHANGES

2 CFR Part 1201

Applicability to Contracts: The Federal Changes requirement applies to all contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases; except for construction contracts over $2,000.

Flow Down Requirement: The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Model Clause/Language: No specific language is mandated. The following language has been developed by FTA.

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

18. BONDING REQUIREMENTS

Applicability to Contracts: For those construction or facility improvement contracts or subcontracts exceeding $250,000, 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, certifies check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, executesuch 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 Requirement: 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 increasethe 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

A. 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.

B. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty

workmanship during the period of the guarantee at no cost to **(Recipient).** As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment **[as provided in Item X below],** furnish separate Maintenance (or Guarantee) Bonds in form acceptable to **(Recipient**) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract.

These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

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19. CLEAN AIR

42 U.S.C. 7401 et seq
40 CFR 15.61
2 CFR Part 1201

Applicability to Contracts: The Clean Air requirements apply to all contracts exceeding $150,000, including indefinite quantities where the amount is expected to exceed $150,000 in any year.

Flow Down Requirement: The Clean Air requirements flow down to all subcontracts which exceed $150,000.

Model Clauses/Language: No specific language is required. FTA has proposed the following language.

A. 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.

B. The Contractor also agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FTA.

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20. RECYCLED PRODUCTS

42 U.S.C. 6962
40 CFR Part 247
Executive Order 12873

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

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases.

Flow Down Requirement: These requirements flow down to all to all contractor and subcontractor tiers.

Model Clause/Language: No specific clause is mandated, but FTA has developed the following language.

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

21. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

Background and Application

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

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

Clause Language - Davis-Bacon and Copeland Anti-Kickback Acts

(1) Minimum wages

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

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

(ii)

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

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

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

(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 thewritten 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)(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 wagedetermination.

(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 Recipient 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 Recipient 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)(ii)

(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Recipient 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 C (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 StatesCode.

(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 wagedetermination.

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 CFR5.5.

(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

Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility

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

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

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

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22. 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), 18 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 18 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.

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23. EQUAL EMPLOYMENTOPPORTUNITY

41 CFR §60-1.4

Applicability to Contracts: Applicable to all contracts except micro-purchases (except for construction contracts over

$2,000.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases.

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

Model Clause/Language:

Federal Requirements and Guidance. The Recipient agrees to prohibit, and assures that each Third Party Participant will prohibit, discrimination on the basis of race, color, religion, sex, or national origin, and:

A. Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq*.,

B. Facilitate compliance with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and as further amended by Executive Order 13672, "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity," July 21, 2014,

C. Comply with Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 13.a of this Master Agreement, and

D. Follow Federal guidance pertaining to Equal Employment Opportunity laws and regulations, and prohibitions against discrimination on the basis of disability,

Specifics. The Recipient agrees:

A. Prohibited Discrimination. As provided by Executive Order 11246, as amended, and as specified by U.S. Department of Labor regulations, to ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their:
    1. Race,
    2. Color,
    3. Religion,
    4. National origin,
    5. Disability,
    6. Age,
    7. Sexual origin,
    8. Gender identity, or
    9. Status as a parent, and

B. Affirmative Action. Take affirmative action that includes, but is not limited to:
    1. Recruitment advertising, recruitment, andemployment,
    2. Rates of pay and other forms ofcompensation,
    3. Selection for training, including apprenticeship, and upgrading, and
    4. Transfers, demotions, layoffs, and terminations, but

C. Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer," and **Equal Employment Opportunity Requirements for Construction Activities.**

In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures that each Third-Party Participant will comply, with:

A. U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity,

Department of Labor," 41 C.F.R. chapter 60, and

B. Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note.

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24. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts: Applicable to all contracts

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases; except for construction contracts over $2,000.

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

Model Clause/Language: While no specific language is required, FTA has developed the following language.

No Obligation by the Federal Government.

A. 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.

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

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25. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

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

49 U.S.C. 5307

Applicability to Contracts: These requirements are applicable to all contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases; except for construction contracts over $2,000.

Flow Down Requirement: These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Model Clause/Language: These requirements have no specified language, so FTA proffers the following language.

Program Fraud and False or Fraudulent Statements or Related Acts.

A. 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.

B. 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.

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

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26. TERMINATION

2 CFR Part 1201
2 CFR 200

FTA Circular 4220.1F

Applicability to Contracts: All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of $10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be affected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is $250,000.) 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 Requirement: The termination requirements flow down to all contracts in excess of $10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

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

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

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

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

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

   If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or

conditions of this Contract within **[ten (10) days**] after receipt by Contractor of written notice from (**Recipient)** setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

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

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

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

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

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

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

H. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the **(Recipient)** may terminate this contract for default. The **(Recipient)** shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

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

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the

fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. The contractor, **within [10] days** from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the **(Recipient),** the delay is excusable, the time for completing the work shall be extended. The judgment of the **(Recipient)** shall be final and conclusive on theparties, but subject to appeal under the Disputes clauses.

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

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

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

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

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

J. Termination for Convenience of Default (Cost-Type Contracts) The (Recipient) may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the (Recipient) or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the **(Recipient),** or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Recipient) and the parties shall negotiate the termination settlement to be paid theContractor.

If the termination is for the convenience of the (Recipient), the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

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27. PRIVACY ACT

5 U.S.C. 552

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

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases; except for construction contracts over $2,000.

Flow Down Requirement: The Federal Privacy Act requirements flow down to each Third Party contractor and their contracts at every tier.

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

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

A. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

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

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28. CIVIL RIGHTS REQUIREMENTS

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

Applicability to Contracts: The Civil Rights Requirements apply to all contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases; except for construction contracts over $2,000.

Flow Down Requirement: The Civil Rights requirements flow down to all third-party contractors and their contracts at every tier.

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

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

The following requirements apply to the underlying contract:

A. 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 becauseof 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.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

   1) 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.

2) 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.

3) 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 theAmericans 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 requirementsFTA may issue.

C. 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.

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29. BREACHES AND DISPUTERESOLUTION

2 CFR Part 1201
FTA Circular 4220.1F

Applicability to Contracts: All contracts in excess of $250,000 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.

A. **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 the Recipient. 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 Recipient.

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 Recipient shall be binding upon the Contractor and the Contractor shall abide be the decision.

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

C. **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 of damage.

D. **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.

E. **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.

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30. PATENT AND RIGHTS IN DATA

2 CFR Part 1201

37 CFR Part 401
49 CFR Part 19

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

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases; except for construction contracts over $2,000.

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

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

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

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

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

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

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

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

(1) Any subject data developed under that contract, whether or not a copyright has been obtained; and

(2) Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained.

If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

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

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

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

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

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

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

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

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

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

   Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

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

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31. TRANSIT EMPLOYEEPROTECTIVEARRANGEMENTS

49 U.S.C. § 5310, § 5311, and §5333
29 CFR Part 215

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

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases, except for construction contracts over $2,000.

Flow Down Requirement: These provisions are applicable to all contracts and subcontracts at every tier.

Model Clause/Language: Since no mandatory language is specified, FTA had developed the following language. Transit Employee Protective Provisions. (1) The Contractor agrees to comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and

equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection

(1) however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a) or

(2) for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

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

(c) **Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.§ 5311 in Nonurbanized Areas** - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

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

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32. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1F

Applicability to Contracts: The incorporation of FTA terms applies to all contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases; except for construction contracts over $2,000.

Flow Down Requirement: The incorporation of FTA terms has unlimited flow down.

Model Clause/Language: FTA has developed the following incorporation of terms language:

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions.

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

33. DRUG AND ALCOHOL TESTING

49 U.S.C. §5331
49 CFR Part 655

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

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases, except for construction contracts over $2,000.

Flow Down Requirements: Anyone who performs a safety-sensitive function for the recipient or subrecipient is required to comply with FTA regulation 49 CFR 655 "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations" and DOT regulation, 49 CFR Part 40 "Procedures for Transportation Workplace Drug and Alcohol testing Programs".

Explanation of Model Clause/Language

Federal regulations 49 CFR 655 includes the following elements.

A. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with 49 CFR Part 655.

B. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules.

C. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

Explanation of Model Contract Clauses - Drug and Alcohol Testing

The contractor agrees to:

A. Establish and implement a drug and alcohol testing program that complies with Federal Transit Administration (FTA) regulation, 49 CFR Part 655 "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations" and US DOT regulation, 49 CFR Part 40 "Procedures for Transportation Workplace Drug and Alcohol Testing Program".

B. Participate in the Drug and Alcohol Testing Consortium administered by RMRTD approved Third Party Administrator that complies with 49 CFR Part 655.

C. Provide documentation and reports necessary to establish its compliance with Part 655, as amended, and permit any authorized representative of the United States Department of Transportation or its operating administrations and/or the State of New Mexico, Department of Transportation or its authorized agents, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 as amended and review the testing process.

34. SAFE OPERATION OF MOTORVEHICLES
23 U.S.C. part 402
Executive Order No. 13043 Executive Order No. 13513
U.S. DOT Order No. 3902.10

Applicability to Contracts

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

Flow Down Requirements: The Safe Operation of Motor Vehicles requirements flow down to all Third Party contractors at every tier.

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

Safe Operation of Motor Vehicles Requirements -

Seat Belt Use: The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company A-60 rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or AGENCY.

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

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35. ADA ACCESS
49 USC 531 (d)

Applicability to Contracts: The ADA Access Requirements apply to all contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases; except for construction contracts over $2,000.

Flow Down Requirement: The ADA Access Requirements flow down to all Third Party contractors and their contracts at every tier.

Model Clause/Language: ADA Access. The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination and ensures equal opportunity and access for persons with disabilities.

Access Requirements for Persons with Disabilities

Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made

in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

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36. VETERANS EMPLOYMENT

FTA Circular 4220.1F (Chapter IV) 49 USC §5325(K)

Applicability to Contracts: The Veterans Employment provisions apply to all construction contracts.

Veterans Employment. Recipients and subrecipients of Federal financial assistance under this chapter shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract.

This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

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37. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

The **AGENCY** and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation of this 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 **AGENCY**, Contractor or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the Contract.

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

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38. TRAFFICKING IN PERSONS

Contractor and its subcontractors or their employees shall not:

A. Engage in severe forms of trafficking in persons during the Contract Term;

B. Procure a commercial sex act during the Contract Term; or

C. Use forced labor in the performance of the Contract. Contractor shall inform **AGENCY** immediately of any information Contractor receives from any source alleging a violation of a prohibition in this section**. AGENCY** may terminate this Contract for any violation of this section; such right of termination is in addition to all other remedies for noncompliance that are available to the **AGENCY**

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39. SOLID WASTES (RECOVERED MATERIALS)

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

40. SEAT BELT USE

The Subrecipient agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by: 90 (1) Adopting and promoting on-the- job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles

41. SAFE OPERATON of MOTOR VEHICLES

(1) The Subrecipient agrees to comply with: (1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225);(2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009; and (3) The following U.S. DOT Special Provision pertaining to Distracted Driving Safety. The Subrecipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Subrecipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award; Recipient Size. The Subrecipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re- evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving; and

(2.) Extension of Provision. The Subrecipient agrees to encourage its contractors to comply with this Special Provision and include this Special Provision in each third-party contract at each tier supported with federal assistance.

42. NOTIFICATION RELATED TO FRAUD, WASTE, ABUSE OR OTHER LEGAL MATTERS

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify [recipient] so that it can notify the Federal Government. The Contractor must include a similar notification requirement in its Third-Party Agreements and must require each Third-Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation o a legal disagreement in any forum for any reason. Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

EXHIBIT B
DRAFT CONTRACT
RFP#: 2026-01

RIO METRO REGIONAL TRANSIT DISTRICT OF NEW MEXICO
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made by and between the **Rio Metro Regional Transit District ("RMRTD"),** an association of local governments within New Mexico State Planning and Development District Three with offices located at: 809 Copper Ave NW, Albuquerque, N.M. 87102 and _____ ("Contractor").

WITNESSETH:

WHEREAS, the RMRTD issued a Request for Proposals for Security Services related to New Mexico Rail Runner Express and other facilities within the RMRTD (RFP2026-01): and

WHEREAS, the terms and conditions of RMRTD Request for Proposals 2026-01 are incorporated by reference into this Agreement; and

WHEREAS, the RMRTD desires to engage the contractor to provide Security Services for the New Mexico Rail Runner and other Facilities within the RMRTD region; and

WHEREAS, the Contractor is qualified and experienced in providing such services and is willing to provide such services.

NOW, THEREFORE, in consideration of the premises and mutual obligations herein, the parties do mutually agree as follows:

1. **Miscellaneous Representations**
   a. The contractor is licensed or otherwise authorized to conduct the business activities described in this Agreement by all governmental agencies having jurisdiction over contractor, and Contractor has the experience and expertise to perform the work or services required in this agreement.
   b. RMRTD has the right and power to enter into this Agreement.
2. **Scope of Work.**
   a. The Contractor shall personally perform services as described in the SOW below in a satisfactory and proper manner, and perform all matters necessary or incidental to the described services as determined by RMRTD:
      i. Security Services for the New Mexico Rail Runner.
      ii. Security Services for the other Facilities within the RMRTD.
   b. Staffing. RMRTD designates Robert Gonzales as RMRTD's Project Manager. The Contractor shall keep the Project Manager fully informed on all aspects of its Performance of services. The Project manager will review and approve Contractor's invoices prior to payment. In the absence of the Project Manager, the RMRTD Director shall serve as the project manager.

3. **Compensation.**
   a. For and in consideration of all services performed under the terms of this Agreement, the total amount payable by the RMRTD to the Contractor shall be an amount not to exceed $ TBD This amount shall constitute full and complete compensation for the Contractor's services described in the SOW, including all expenditures made and expenses incurred, including applicable gross receipts tax, by the Contractor in performing such services.
   b. The RMRTD shall reimburse the Contractor within 30 days after receiving a written request for payment containing a summary report and invoice for work completed, unless causes beyond the reasonable control and without the fault or negligence of the RMRTD prevent timely payment.
   c. Verification of Invoices. RMRTD shall be entitled to verify the personnel time and other costs charged to RMRTD pursuant to the provisions of this agreement.

4. **Sufficient Appropriations**
   a. Any agreement as a result of this RFP 2026-01 may be terminated if sufficient appropriations or authorizations do not exist. Sending written notice to the Contractor will affect such termination. The Contractor will accept RMRTD's decision as to whether sufficient appropriations and authorizations are available as final.

5. **Reports, Information, and Ownership of Documents**
   a. Reports and Information. During the performance of this Agreement and upon the completion or earlier termination of the services required under this Agreement, Contractor shall furnish RMRTD such statements, records, reports, data and information as requested by RMRTD pertaining to matters covered by this Agreement.
   b. Release of Information. Contractor shall not release any data, reports, or other information of any nature whatsoever to any entity or person other than to RMRTD.
   c. Publication, Reproduction and Use of Materials. No materials or documents produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The RMRTD shall have the unrestricted authority and right to copyright, publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials (hereafter "Materials) prepared under this agreement. Contractor may use Materials created under this Agreement as reference and research materials and as representations of the services performed under this agreement only after the Materials are completed and accepted by the RMRTD, provided that such Materials shall not include the RMRTD's confidential or proprietary information, to the extent the RMRTD provides Contractor with notice that such materials are considered confidential or proprietary by the RMRTD. The RMRTD shall provide professional credit for Contractor in promotional materials for services rendered pursuant to this Agreement, if so, requested in writing by Contractor.

6. **Establishment and Maintenance of Records**
   a. Records shall be maintained by Contractor in accordance with applicable law and requirements prescribed by RMRTD with respect to all matters covered by this Agreement. Except as otherwise authorized by RMRTD, such records shall be

maintained for a period of three (3) years after receipt of final payment under this agreement.

7. **Term**. This Agreement is effective on the date signed by the RMRTD Executive Director and shall continue for (4) four years and remain in effect until_____, unless it is terminated earlier pursuant to Section 4 of this agreement. In the event of early termination of this Agreement, provisions of a renewal agreement shall be the same as the provisions of this Agreement except for the term and compensation provisions.
8. **Termination.** This Agreement may be terminated without cause by either of the parties upon ten days written notice to the other party. A termination pursuant to this provision does not nullify a party's obligations for performance or liabilities for failure to perform already incurred prior to the date of termination.
9. **Status of Contractor.** The Contractor is an independent contractor and is not an employee of the RMRTD.
10. **Assignment.** The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the RMRTD. An approved assignment or transfer shall include a provision that binds the assignee or transferee to all terms and conditions of this Agreement.
11. **Subcontracting**. The Contractor shall not subcontract any portion of the services performed under this Agreement without prior approval of the RMRTD.
12. **Insurance**
    a. Professional Liability Insurance. If the Contractor will be performing any work related to Security Services for the New Mexico Rail Runner and for any RMRTD Facility within the RMRTD as prescribed in RFP 2026-01, the Contractor shall, at its own cost and expense, procure and maintain in full force and effect during the term of this Agreement, Professional Liability (errors and omissions) insurance in the amount not less than Two Million Dollars ($2,000,000) combined single limit of liability per occurrence with a general aggregate of ($2,000,000).
13. **Indemnification Agreement**
    a. General Indemnification. The Contractor agrees to indemnify and hold harmless the RMRTD, including its officers, employees or agents, against all liability, claims, damages, losses or expenses, including attorney fees, only to the extent that the liability, claims, damages, losses or costs are caused by, or arise out of, the acts or omissions of the Contractor or its officers, employees or agents.
    b. Insurance. The indemnity required herein shall not be limited by the specification of insurance coverages in this Agreement.
    c. Survives the Term. This indemnification agreement shall survive the term of this agreement.
    d. Scope of Indemnification. With respect to any liability, claims, damages, losses or costs that are caused by, or arise out of, the acts or omissions of the Contractor or its officers, employees or agents, the Contractor shall: (a) investigate or cause the investigation of such liability, claims, damages, losses or costs, (b) negotiate or cause to be negotiated all claims made, even when Contractor considers such claims to be groundless, false or fraudulent in the name of the RMRTD and on behalf of the RMRTD, (c) and satisfy judgements finally establishing the liability of the RMRTD in all actions for which the Contractor is obligated to indemnify the RMRTD including its officers, employees or agents, pursuant to this section, and

(d) pay, or cause to be paid: (1) all costs assessed against RMRTD in any such legal proceeding, (2) any interest accruing up to the date of payment by Contractor, (3) all premiums charged upon appeal bonds required in such proceedings, and (4) all expenses incurred by RMRTD for investigation, negotiation, and defense, including but not limited to expert witnesses' and attorneys' fees incurred.

e. Miscellaneous. RMRTD shall, promptly upon receipt, give Contractor every demand, notice, summons, or other process received in any claim or legal proceeding for which contractor is required to indemnify RMRTD. In the event RMRTD fails to give Contractor notice of any such demand, notice, summons, or other process received by RMRTD, and such failure to give said notice shall result in prejudice to Contractor in its defenses of any action or legal proceeding in which Contractor is required to indemnify the RMRTD, then such failure or delay shall release Contractor of its liability as set forth in this indemnification agreement, but only insofar as the particular claim or legal proceeding is concerned, and only to the extent of such prejudice. Nothing in this section shall be deemed a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim or legal liability against RMRTD. This section shall not be construed as a waiver of the RMRTD's immunity. The provisions of this section shall not be construed to prohibit Contractor from seeking contribution or indemnity from any third party which may have caused or contributed to the event for which Contractor indemnifies the RMRTD.

14. **Records and Audit.** The Contractor shall maintain detailed time records that indicate the date, time and nature of services rendered. These records shall be provided by the Contractor for inspection by the RMRTD, or the entity's designee upon written request of the RMRTD. The RMRTD has the right to audit both before and after payment. Payment under this Agreement is not a waiver of the right of the RMRTD to recover excessive or illegal payments.
15. **Release.** Upon receipt of final payment of the amount due under this Agreement, the Contractor shall release the RMRTD, its employees and the RMRTD from all liabilities, claims and obligations arising from or under this Agreement.
16. **Authority.** The Contractor agrees not to purport to bind the RMRTD to any obligation not assumed in this Agreement by the RMRTD, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.
17. **Compliance with Laws**. In performing services pursuant to this Agreement, the Contractor shall comply with the laws of the State of New Mexico and the policies of the RMRTD.
18. **Conflict of Interest.** The Contractor warrants that the Contractor currently has no interest and shall not acquire any interest, direct or indirect, that does or would conflict in any manner or degree with the performance of services required under this Agreement.
19. **Amendment.** This Agreement shall not be changed or supplemented except by a written instrument executed by the parties.
20. **Scope of Agreement.** This Agreement incorporates all the agreements and understandings between the parties concerning its subject matter, and all agreements and understandings have been merged into this Agreement. No prior or contemporaneous agreement or understanding, verbal or otherwise, of the parties or

their agents concerning the subject matter of this Agreement is valid or enforceable unless included in this Agreement.

21. **Notice.** This Agreement is subject to the applicable provisions of the Procurement Code. That act imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, illegal gratuities and kickbacks.
22. **Equal Opportunity Compliance**. The Contractor agrees to comply with all federal and state laws pertaining to equal employment opportunity. In accordance with all such laws, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, color, national origin, gender, sexual orientation, age or handicap, be excluded from employment or participation in, be denied the benefits of or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If the Contractor is found to be not in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

IN WITNESS WHEREOF, the RMRTD and the Contractor have executed this Agreement as of the date of signature by the RMRTD Executive Director written below.

By: _____ **Date:** _____

Dewey V. Cave,
MRCOG Executive Director

_____ **Date:** _____

Contractor
Name Here

APPROVED AS TO FORM:

By: _____ **Date:** _____

Larry Horan,
MRCOG General Counsel

EXHIBIT C

SCOPE OF SERVICES

EXHIBIT D

SAMPLE FORM: CERTIFICATE OF INSURANCE FORM

CERTIFICATE OF INSURANCE	ISSUE DATE (MM/DD/YY)

PRODUCER	THIS CERTIFICATE DOES NOT AMEND< EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW
	COMPANIES AFFORDING COVERAGE
	COMPANY LETTER A
	COMPANY LETTER B
	COMPANY
INSURED	COMPANY LETTER D
	COMPANY LETTER E

COVERAGES: THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED FOR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO. LTR.	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	LIMITS	
	GENERAL LIABILITY*				GENERAL AGGREGATE	$
	_____ COMMERCIAL GENERAL LIABILITY				PRODUCTS-COMP/OP A	$
	_____ CLAIMS MADE _____ OCCUR.				PERSONAL & ADV. INJURY	$
	_____ OWNER'S & CONTRACTOR'S PROTECT.				EACH OCCURRENCE	$
					FIRE DAMAGE (Any one fire)	$
					MED. EXPENSE (Any one person)	$
	_____ SELF INSURANCE RETENTION				SELF INSURANCE AMOUNT	$
	AUTOMOBILE LIABILITY *				COMBINED SINGLE LIMIT	$
	_____ ANY AUTO				BODILY INJURY (Per Person)	$
	_____ ALL OWNED AUTOS					
	_____ HIRED AUTOS				BODILY INJURY (Per Accident)	$
	_____ NON-OWNED AUTOS				PROPERTY DAMAGE	$
	_____ GARAGE LIABILITY				SELF INSURANCE AMOUNT	$
	EXCESS LIABILITY *				EACH OCCURRENCE	$
	_____ UMBRELLA FORM					
	OTHER THAN UMBRELLA FORM				AGGREGATE	$
	WORKERS' COMPENSATION				STATUTORY LIMITS	$
	AND				EACH ACCIDENT	$
	EMPLOYER'S LIABILITY				DISEASE - POLICY LIMIT	$
					DISEASE - EACH EMPLOYEE	$
	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

CERTIFICATE HOLDER	MODIFICATION/CANCELLATION:
	THE ABOVE IDENTIFIED POLICY (POLICIES) OF INSURANCE SHALL NOT BE MATERIALLY CHANGED OR ALTERED, OR CANCELED WITHOUT FIRST GIVING THIRTY (30) DAYS ADVANCE WRITTEN NOTICE BY CERTIFIED MAIL RETURN RECEIPT REQUESTED TO THE PARTIES.

Please provide your SAMS.GOV Registration

EXHIBIT E

SAMPLE FORM of SAMS.GOV CURRENT REGISTRATION FORMAT

Entity Information

Entity Name

Active Registration

Unique Entity ID

Cage/NCAGE

Expiration Date

Physical Address

Mailing Address

Purpose of Registration

Version

Current Record