



**Section 5309 — Metropolitan Transportation Planning Program**

Prepared by the Division of Intermodal Programs



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# MISSION

*“...to preserve and enhance the state’s facilities and equipment for urban and rural public transportation programs...”*

## **INTRODUCTION**

This document describes the Georgia Department of Transportation's (GDOT) procedures for the administration of the Federal Transit Administration's (FTA) Capital Program (Title 49 U.S.C. Section 5309).<sup>1</sup> The Section 5309 program was authorized to make grants to assist in financing capital projects that will benefit the country's transit systems. These funds were made available for capital assistance purposes through the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, the Transportation Equity Act for the 21st Century (TEA-2 1), and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

The Department assists transit agencies with the Section 5309 program in accordance with Federal and State requirements. The Department's goal is to work with local governments to provide effective utilization of resources and to deliver safe, efficient and responsive public transportation services. This effort is a joint endeavor of the Department and local governments working together for a common purpose.

## **FTA CAPITAL PROGRAM (TITLE 49 U.S.C. SECTION 5309)<sup>2</sup>**

### **Roles and Responsibilities**

The Georgia Department of Transportation has the following responsibilities:

- Administers FTA grant programs by reviewing applications, monitoring quarterly reports and project progress;
- Prepares electronic grant applications for funding projects, using FTA's TEAM system;
- Holds periodic workshops/training sessions to provide to assist local areas with questions on program specific issues and requirements;
- Prepares administrative guidance manuals to guide the local areas through the grant process from application through successful project completion and closeout;
- Contracts with FTA and with local areas; and
- Monitors compliance with Federal and State project requirements and reports project performance to FTA;
- The grant sub recipient has the following responsibilities:
  - Identifies and prioritizes new projects;
  - Carries out the transit planning work programs;
  - Works closely with the transit operator to evaluate transit operations and finance;
  - Implements projects in accordance with the specific program requirements set forth herein;
  - Implementing projects in accordance with other applicable Federal and State requirements applicable to the Section 5309 program (acquisitions/procurement, public participation, NEPA etc.);
  - Provides quarterly status reports on projects to the State program manager regarding project activities, budget, schedule and scope; and
  - Submits quarterly reports, reimbursement requests, project closeout letters and other reports/requests in accordance with the State requirements; and Programs capital projects in the urban area's TIP for inclusion in the Statewide Transportation Improvement Program (STIP), to ensure project is eligible for Discretionary Program funding.

## **Purpose**

**The purpose of this manual is to disseminate complete and concise information to sub recipients designated to receive earmarked funding. The Administrative Guide will give examples of:**

- 1. Reimbursement forms**
- 2. Budget Revision Requests**
- 3. Quarterly Reporting**

**After reading this guide and proceeding to implementation of the guidelines the sub-recipient should possess working knowledge of the 5309 program.**

## **REIMBURSEMENTS**

Reimbursement requests will be processed in the order they are received. It is the sub recipient's responsibility to submit a complete package that will result in the reimbursement being dispersed. A complete package should include the receipts/documentation showing the items requested for reimbursement have been paid to the appropriate vendor, a listing of the items received, the reimbursement request cover letter and the reimbursement funding breakdown sheet. Examples of these items can be found in Attachment 1.

Reimbursable expenses shall be reviewed and approved in accordance with FTA guidelines. The 5309 grant manager has the right to request additional documentation if necessary.

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## Funding Distribution

The distribution of funding for the Section 5309 program is as follows:

Section 5309 Program Funding Distribution			
Project Type	Federal Sources	State Sources	Local Sources
Capital	80%	10%*	10%
ADA Capital	90%	5%*	5%
CAA Capital	90%	5%*	5%
Bicycle Facilities	90%	5%*	5%

\*These numbers are estimates. If the Department has a short fall in funding it is expected that the sub-grantee will match the federal dollars in totality.

The FTA Section 5309 funds are authorized by Congress to assist eligible recipients in the financing of public transportation capital projects. The Federal match for capital grants under Section 5309 is 80 percent of the net project cost. There is no guarantee that the department will be able to match any funding. The department shall do its best to supplement the funding of local government recipients when possible.

(1) Acquiring vehicle-related equipment or facilities attributable to compliance with the Americans with Disabilities Act (ADA); (2) Clean Air Act (CAA); (3) Bicycle facilities, and (4) grant applicants requesting less than 80% of federal share.

Under the Section 5309 program, the Federal match is 90% for those projects designed to:

- Provide access for bicycles to public transportation facilities;
- Provide shelters and parking facilities for bicycles in or around public transportation facilities;
- Install equipment for transporting bicycles on public transportation vehicles;
- Acquire/install vehicle-related equipment or facilities attributable to compliance with the ADA of 1990; or
- Acquire/install vehicle related equipment or facilities (including clean-fuel or alternative-fuel vehicle related equipment or facilities) attributable to compliance with the CAA.

Applicants should identify, in their grant applications, the vehicle-related equipment necessary to meet the requirements of the Americans with Disabilities Act and Clean Air Act (CAA). Additionally, it is important to note that the 90% federal assistance applies only to the difference between normal capital costs and the additional cost incurred to meet ADA and/or CAA requirements.

### **FTA Funding For Section 5309 Earmarks**

The 2010 Federal Register Notice, has not been published as of on February 2010. When the notice of Earmarks for FY 2010 is published the tables will be updated accordingly.

The Administrative Guide will be updated to include the FY 2010 Section 5309 Bus and Bus-Related Facilities Allocations as soon as the supplemental notice is issued.

### **Section 5309 Bus and Bus Related Facilities Allocations**

The FY 2008 and FY 2009 allocations are presented in the following tables. As indicated above, an additional table is provided as a placeholder for the FY 2010 Section 5309 Bus and Bus-Related Facilities Allocations and will be updated upon the release of the Federal Register., which is anticipated to be published in March 2010.

FEDERAL TRANSIT ADMINISTRATION				
TABLE 10, Page 77404				
FY 2008 SECTION 5309 BUS AND BUS RELATED FACILITIES ALLOCATIONS <sup>1</sup>				
STATE	EARMARK ID	SAFETEA-LU PROJECT NO.	PROJECT	UNOBLIGATED ALLOCATION
FY 2008 UNOBLIGATED ALLOCATIONS				
GA	E2008-BUSP-0214	355	ALBANY, GA BUS REPLACEMENT	\$65,208.00
GA	E2008-BUSP-0215	255	ALBANY, GA MULTIMODAL FACILITY	\$173,888.00
GA	E2008-BUSP-0216	357	ATHENS, GA BUSES AND BUS FACILITIES	\$308,651.00
GA	E2008-BUSP-0217	247	ATLANTA, GA INTER-MODAL PASSENGER FACILITY IMPROVEMENTS	\$434,720.00
GA	E2008-BUSP-0221	91	COLUMBUS, GA BUS REPLACEMENT	\$65,208.00
GA	E2008-BUSP-0222	510	COLUMBUS, GA / PHOENIX CITY, ALABAMA-NATIONAL INFANTRY MUSEUM MULTIMODAL FACILITY	\$440,000.00
GA	E2008-BUSP-0223	49	COLUMBUS, GEORGIA - BUSES & BUS FACILITIES	\$210,622.00
GA	E2008-BUSP-0224	530	GEORGIA DEPARTMENT OF TRANSPORTATION - GEORGIA STATEWIDE BUS AND BUS FACILITIES	\$2,328,000.00
GA	E2008-BUSP-0225	60	GEORGIA STATEWIDE BUS PROGRAM	\$43,472.00
GA	E2008-BUSP-0226	275	JESUP, GEORGIA-TRAIN DEPOT INTERMODAL CENTER	\$217,360.00
GA	E2008-BUSP-0228	406	MOULTRIE, GA INTERMODAL FACILITY	\$65,208.00
GA	E2008-BUSP-0230	256	SAVANNAH, GA BUS AND BUS FACILITIES - CHATHAM AREA TRANSIT	\$1,086,800.00
GA	E2008-BUSP-0232	206	SYLVESTER, GA INTERMODAL FACILITY	\$43,472.00
GA	E2008-BUSP-0739		CHATHAM COUNTY , SAVANNAH BUS FACILITY	\$392,000.0
GA	E2008-BUSP-0740		CITY OF MOULTRIE INTERMODAL FACILITY	\$343,000.0

<sup>1</sup>The FY 2008 unobligated Section 5309 allocations are scheduled to lapse September 2010.

As indicated in the previous paragraph, the following table is provided as a placeholder. The table will be updated with the FY 2010 Section 5309 Bus and Bus-Related Facilities Allocations as soon as the supplemental notice is issued by FTA.

**FEDERAL TRANSIT ADMINISTRATION**  
**TABLE 10A (FTA Grant Apportionment List)**  
**PLACEHOLDER FOR FY 2009 SECTION 5309 BUS AND BUS RELATED FACILITIES ALLOCATIONS<sup>1</sup>**

STATE	EARMARK ID	SAFETEA-LU PROJECT NO.	PROJECT	UNOBLIGATED ALLOCATION
<b>FY 2009 FUNDS</b>				
GA	E2009-BUSP-286	355	Albany, GA Bus replacement	67,716
GA	E2009-BUSP-287	255	Albany, GA Multimodal Facility	180,576
GA	E2009-BUSP-288	357	Athens, GA Buses and Bus Facilities	320,522
GA	E2009-BUSP-289		Athens-Clarke County Transit, Bus	1,330,000
GA	E2009-BUSP-290	247	Atlanta, GA Inter-modal Passenger	451,440
GA	E2009-BUSP-291	384	Atlanta, GA MARTA Clean Fuel Bus	1,354,320
GA	E2009-BUSP-292	469	Auburn University-Intermodal Parking	1,097,000
GA	E2009-BUSP-293	144	Augusta, GA Buses and Bus Facilities	90,288
GA	E2009-BUSP-294		Bus and Related Facilities Replacement,	475,000
GA	E2009-BUSP-295		Chatham Area Transit (CAT) Bus	665,000
GA	E2009-BUSP-296	110	Cobb County, GA Cobb County Smart	225,720
GA	E2009-BUSP-297	91	Columbus, GA Bus replacement	67,716
GA	E2009-BUSP-298	510	Columbus, Georgia/Phoenix City,	466,000
GA	E2009-BUSP-299	49	Columbus, Georgia-Buses & Bus Facilities	218,723
GA	E2009-BUSP-300	530	Georgia Department of Transportation-	2,468,000
GA	E2009-BUSP-301	60	Georgia Statewide Bus Program	45,144
GA	E2009-BUSP-302		GRTA Park and Ride Facility, Rockdale	190,000
GA	E2009-BUSP-303		Intermodal Facility, Moultrie	712,500
GA	E2009-BUSP-304	275	Jesup, Georgia-Train Depot intermodal	225,720
GA	E2009-BUSP-305		MARTA Clean Fuel Buses and Facilities	1,330,000
GA	E2009-BUSP-306	374	Metro-Atlanta, GA MARTA Automated	225,720
GA	E2009-BUSP-307	406	Moultrie, GA Inter-modal facility	67,716
GA	E2009-BUSP-308	329	Quitman, Clay, Randolph, Stewart Co.,	56,430
GA	E2009-BUSP-309	256	Savannah, GA Bus and Bus Facilities-	1,128,600
GA	E2009-BUSP-310	348	Savannah, Georgia-Water Ferry River	451,440
GA	E2009-BUSP-311	206	Sylvester, GA Inter-modal Facility	45,144
GA	E2009-BUSP-312	298	Thomasville, GA Bus Replacement	45,144

<sup>1</sup>Source: 2009 Federal Register - Supplementary Notice, published in March 2009.



### **Relationship to Metropolitan Planning Program (Title 49 U.S.C. Section 5303)**

The Section 5303 Metropolitan Planning Program was authorized by Congress to provide funding for transit planning and technical studies in urban and non-urban areas. The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) gave GDOT the responsibility to administer the program in all urban areas, regardless of population size. The national policy objective of this program is to encourage and promote the development of efficient transportation systems. It is towards this end that Metropolitan Planning Organizations and the state must work together to develop transportation plans and programs for urbanized areas in the state. Through this cooperative effort, three major planning products are required: (1) Long Range Plan (LRP), (2) Transportation Improvement Program (TIP), and (3) Unified Planning Work Program (UPWP).

Both the Metropolitan Planning Organization and the state are required to develop a Long Range Transportation Plan covering a forecast period at least 20 years. The LRP for MPOs is integrated into the state's long-range transportation plan. If the MPO is located in an area that is designated by EPA as a non-attainment area for purposes of the Clean Air Act, then it must coordinate development of its long-range transportation plan with that of the state to conform to the state's (air quality) implementation plan (SIP).

The TIP is a priority list of highway and transit projects to be carried out in a four-year time period that are either federally or non-federally funded. Development of the TIP is the result of cooperation between the MPOs, the State, and affected transit operators. The TIP is updated at least once every four years; however, projects proposed in the TIP must be consistent with the long-range transportation plan. Additionally, a public hearing process is required to ensure the public is given ample opportunity to comment on proposed projects. The TIP must also demonstrate how proposed projects will be financed.

MPOs are required to develop and submit a Unified Planning Work Program (UPWP) that consists of transportation planning activities covering a one or two-year time period. The MPOs receive federal assistance from the FTA for preparing UPWPs via the states.

The Grant Applicant for capital assistance is encouraged to actively participate in the metropolitan planning process.

### **Relationship to Urbanized Area Formula Program (Title 49 U.S.C. Section 5307)**

The Section 5307 Urbanized Area Formula Program funding is used for public transportation capital, operating and planning projects, whereas the Section 5309 Capital Program funding is used for capital projects only. The FTA will perform a triennial review every three years for the Section 5307 program to determine if they are in compliance with Federal requirements. If the Section 5309 applicant is receiving Section 5307 funds, then FTA will rely on findings documented with the most recent triennial review to approve the 5309 application. Section 5307 applicants must relate to the following Federal requirements: the project proposed is a part of the planning process (included in the TIP and STIP); they have the legal, financial, and technical capacity to carry out the project; they have satisfactory continuing control over the use of the equipment or facilities; and they have the capability to maintain the equipment or facilities, and will maintain the equipment or facilities.

The purpose of Section 5309 is to capitalize transit facilities, and to help bring those facilities up to a level of acceptable safety, reliability and efficiency. Critical bus capital projects that cannot be accommodated under the Urbanized Area Formula Program (Section 5307) will be considered for discretionary capital funding.

The Section 5309 discretionary capital grant program funding should be used to supplement Section 5307 formula funds. Urbanized Area Formula funds are intended to be the primary resource for routine capital needs. Discretionary Capital funds will be used as a resource for major bus or rail projects that require federal funding beyond what is available under FTA Urbanized Area Formula funds.

Application procedures for the Urbanized Area Formula Program (Section 5307) are similar to those outlined in this Capital Program Administrative Guide. Interested grantees should contact the Office of Intermodal Programs at (404) 631-1237 for detailed application procedures.

### **Eligible Grant Activities**

Projects to be funded from the Discretionary Program fall into three categories of projects: Bus and Bus-Related Facilities; Modernization of Fixed Guideway Systems; and New Starts. Applicants should verify that projects are eligible based upon the criteria presented in the following table.

## ELIGIBLE GRANT ACTIVITIES

Capital Investment Category	Eligible Projects
<b>Bus and Bus-Related Facilities</b>	<p>Bus rehabilitation and leasing, park-and ride facilities, and parking lots associated with transit facilities;</p> <p>Acquisition of buses for fleet and service expansion;</p> <p>Bus maintenance and administrative facilities;</p> <p>Transfer facilities, bus malls, transportation centers, intermodal terminals, and park-and ride facilities;</p> <p>Acquisition of replacement vehicles;</p> <p>Bus rebuild to extend useful life; and</p> <p>Passenger amenities such as passenger shelters and bus stop signs.</p>
<b>Modernization of Fixed Guideway Systems</b>	<p>Accessory and miscellaneous equipment such as mobile radio units, supervisory vehicles, fareboxes, computers, and shop and garage equipment.</p> <p>The purchase and rehabilitation of rolling stock (including railcars, locomotives, work trains, and ferryboats), track, line equipment and structures, signals and communications, power equipment and substations, passenger stations and terminals, security equipment and systems, maintenance facilities and equipment, operational support equipment (including computer hardware and software) and system extensions.</p>
<b>New Starts</b>	<p>A light rail line, rapid rail (heavy rail), commuter rail, automated fixed guideway system (such as a “people mover”), or a busway/high-occupancy vehicle (HOV) facility, or an extension of any of the above.</p>
<b>Additional Eligible Project Activities</b>	<p>Education and training;</p> <p>Design and art in transit;</p> <p>Clean fuels;</p> <p>Innovative financing;</p> <p>Crime prevention and security;</p> <p>Public Transportation Improvements;</p> <p>Introduction of new technology;</p> <p>Bicycle facilities;</p> <p>Preventative maintenance;</p> <p>Capital cost of contracting;</p> <p>Leasing; and</p> <p>Rail Trackage Agreements.</p>

### Critical Dates

The State’s Program of Projects and budget will be submitted to FTA by April 15, 2010. **Grant applications must be submitted to the Department by Friday, February 26, 2010.**

Completed applications from the local areas should include all necessary documentation, as described herein.

### **Program Requirements**

Once applications are approved and contracted, grantees must adhere to administrative procedures and guidelines. The purpose of these guidelines is to provide uniform instructions to grantees, ensure compliance with Federal and State rules and regulations and to facilitate a systematic approach to managing public transportation programs and activities in Georgia.

This document is not intended to summarize all Federal and State requirements applicable to the Section 5309 program. A brief summary of FTA Program requirements is outlined in the following section; federal guidance providing Capital Program Grant Application Instructions are published in FTA Circular 9300.1B, accessible via the following URL/web address.

[http://www.fta.dot.gov/laws/leg\\_reg\\_circulars\\_guidance.html](http://www.fta.dot.gov/laws/leg_reg_circulars_guidance.html)

Additional information on Planning and the Grants and Financing can also be accessed from FTA's main page at [www.fta.dot.gov](http://www.fta.dot.gov). The Georgia Department of Transportation's Office of Intermodal Programs may also be contacted for clarity on specific State requirements.

The Department reserves the right to review vehicle specifications, construction plans, bid proposals, awards, etc. The Department must approve third party contracts prior to execution. Procurement procedures should meet State requirements and those in FTA Circular 4220.1F. When implementing Section 5309 projects, grantees must follow State procedures and project management guidelines conforming to OMB A-128 Audit procedures and as outlined in FTA Circular 5010.1D, Grant Management Guidelines.

## **FEDERAL REQUIREMENTS ASSOCIATED WITH THE CAPITAL PROGRAM**

### **Certifications Specific to the Capital Program**

There are specific elements to which a grant applicant must certify when applying for Section 5309 funding. A brief description of each is outlined below.

Legal Capacity - The applicant must be eligible and authorized under state or local law to request, receive, and spend FTA funds to administer the program. Officials acting on behalf of the applicant must have the appropriate authority to do so.

Financial Capacity - Recipients must be able to match and manage funds through long-term reliable sources and to maintain and operate federally funded facilities and equipment. FTA's Financial Capacity Policy focuses on:

- (1) General Financial Condition, which refers to historical trends and current situations which may affect the ability to maintain present levels of service; and
- (2) Financial Capability, which focuses on the applicant's ability to cover operating deficits and capital costs.

Technical Capacity - Involves the Applicant's ability to carry out and manage Federal grants in accordance with the grant agreement and with applicable laws and regulations, using sound management practices. Grantee responsibility in this regard is outlined in FTA Circular 5010.1D, Grant Management

Guidelines - Procurement practices are also related to technical capacity.

Satisfactory Continuing Control - Grantees must maintain control over federally funded property to ensure that it is used in transit service and disposed of in accordance with Federal requirements. Satisfactory control also includes safeguards against loss, theft or damage.

Maintenance - Grantees must keep equipment and facilities purchased with Federal funds in good operating order. Each grant recipient must have a maintenance plan, which outlines the goals and objectives of their maintenance program.

Rates Charged Elderly and Persons with Disabilities During Non-Peak Hours - Grantees must ensure that rates charged elderly and persons with disabilities during nonpeak hours for fixed-route transportation, using facilities and equipment financed with Federal assistance, will not exceed one-half of the rates applicable to other persons at peak hours.

Rates Charged Person Presenting a Medicare Card Grantees must extend the half-fare rate to any person presenting a Medicare card issued to that person under the Social Security Act.

Competitive Procurement - Grantees must use a competitive procurement process to obtain goods and services and may not utilize exclusionary or discriminatory specifications. All procurement financed with FTA funds must conform to the requirements of FTA Circular 4220.1F,

Third Party Contracting Requirements - State or local preference provisions are generally prohibited in third party procurements.

Buy America Provisions - The Buy America stipulation is intended to ensure that Federal grants stimulate domestic economic activity. Per “Buy America” law, federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless FTA has granted a waiver, or the product is subject to a general waiver. Rolling stock must have sixty percent domestic content and final assembly must take place in the United States. FTA can grant a specific Buy America waiver when it is in the public interest, domestically produced goods are not available, or when there is a price differential of at least 25 percent between domestic and foreign bids. A general interest waiver has been issued to exempt small purchases, defined as those of \$100,000, from the Buy America Requirement.

Improve Mobility, Fuel Consumption and Air Pollution - National Policy indicates that it is in the best interest of the United States to encourage the development of transportation systems that embrace various modes of transportation efficiently, maximize the mobility of individuals and goods in and through urbanized areas, and minimize transportation-related fuel consumption and air pollution.

Availability of Local Funds - Local matching funds must be available to carry out the proposed projects.

Metropolitan Planning Requirements - Projects must appear in a TIP and STIP jointly approved by FTA and FHWA. Before inclusion in the TIP/STIP projects should be consistent with the area’s Long Range Plan and conform to joint Metropolitan Planning Regulations issued by FTA and FHWA.

Elderly Persons and Individuals with Disabilities National Policy - Elderly and individuals with disabilities have the same rights as other individuals to use transit service and facilities. Thus,

grantees must make special efforts in planning and designing transit service and facilities to ensure that this segment of the population can use transit.

Public Comment of Fare and Service Changes - Grantees should have a written policy describing the public comment processes on increases in the basic fare structure and for major service reductions. The policy should provide an opportunity for a public hearing or public meeting, describe how meetings will be conducted, and provide how the meeting results will be considered in the process of changing fares or reducing service.

Transit Security Project Expenditures - Grantees must expend at least one percent (1%) of funds received each fiscal year on transit security projects or certify that these expenditures are not necessary. Security projects may be operating or capital expenditure.

### **Public Participation Requirements**

Requirements for holding a public hearing pertaining to a capital project are contained in Title 49, Chapter 53, Section 5323 (49 U.S.C. 5323), “General Provisions on Assistance”. These regulations specify that a grant application for a capital project that will “substantially” affect a community or its mass transportation service must include a certification that the grant applicant has:

- A. Provided an adequate opportunity for public review and comment on the project;
- B. After providing notice, held a public hearing on the project if the project affects significant economic, social, or environmental interests;
- C. Considered the economic, social, and environmental effects of the project; and
- D. Found that the project is consistent with official plans for developing the community.

SAFETEA-LU further addressed the requirement in 49 U.S.C. 5323(b) for capital projects by more clearly associating public involvement and hearing requirements for capital projects with the environmental review required by the National Environmental Policy Act (NEPA) and its implementing regulations.

Grant applicants must provide adequate opportunity for public review and comment on a capital project, and, after providing notice, must hold a public hearing on the project if it affects significant economic, social, or environmental interests. These requirements are to be satisfied through compliance with the NEPA requirements for a public scoping process, public review and comment on NEPA documents, and a public hearing on every draft environmental impact

statement (EIS). Furthermore, FTA will also require a public hearing on environmental assessments that have a high probability of being elevated to an EIS.

## **Environmental**

Proposed projects must comply with FTA environmental review procedures implementing the National Environmental Policy Act (NEPA). Review procedures are classified based on the significance of their probable impacts. All other applicable environmental protection requirements should be coordinated with the NEPA compliance process.

In order to approve a capital program grant, FTA must make a finding that either “no adverse environmental effect is likely to result from the project, or no feasible and prudent alternative to the effect exists and all reasonable steps have been taken to minimize the effect.” Federal environmental regulations applicable to the capital program include the joint FHWA/FTA regulations, “Environmental Impact and Related Procedures.” These joint regulations address the requirements for the following Federal environmental statutes and regulations. These include: the National Environmental Policy Act (NEPA) of 1969; Section 4(f) of the U.S. DOT Act protecting public parks, recreation areas, wildlife refuges, and historic sites; Section 106 of the Historic Preservation Act; Section 404 of the Clean Water Act; and Section 176 of the Clean Air Act.

The level of environmental documentation required for a project depends on the extent of the potential environmental effects (social, economic, or environmental) to the manmade as well as the natural environment. This can range from projects considered to have the most significant impact requiring an Environmental Impact Statement (EIS) to projects that are assessed to incur a minor impact, satisfying conditions for a Categorical Exclusion (CE). In between the EIS and CE is the Environmental Assessment (EA), which is conducted if the project has uncertain environmental impacts.

Since the environmental review process can be lengthy for major transit projects, it is recommended that early coordination be done with all the federal, state and local agencies involved in having jurisdiction with the project, such as the Corps of Engineers (COE) for wetland impacts. It is recommended to consult early with the FTA Regional Office to determine the level of environmental documentation required, because a project may not advance beyond the preliminary engineering phase until the environmental review process has been completed. This may require prior FTA approval of a Record of Decision (ROD), a Finding of No

Significant Impact (FONSI), or a Categorical Exclusion (CE), depending upon the level of environmental documentation required.

### **Clean Air Act**

Long-Range Plans, TIPs and projects must conform to State Implementation Plans (SIPs) for air quality. This is primarily applicable to areas designated as “non-attainment” or “maintenance” areas. Many smaller transit projects are exempt by regulation from the conformity requirements.

### **Private Enterprise Concerns**

Grantees must include the private sector in developing local transit programs; ensure adequate compensation if a state or local government purchases the facilities and equipment of a private provider, and protect the private provider of transit from competition with federally assisted transit providers. Planning requirements specify that private enterprise participation be encouraged to the maximum extent feasible. Private providers of charter and school bus service are afforded certain protections from competition with public transit operators.

### **Real Property Acquisition**

Grantees must ensure that displaced persons and the owners of real property are treated fairly and consistently. Grantees must also ensure that displaced persons will not suffer disproportionately as a result of a federally assisted project. They must also ensure that the regulations are implemented in a cost-efficient and cost-effective manner in accordance with requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and set forth in 49 CFR Part 24.

### **Relocation**

When a federally assisted project requires displacement of individuals, families, businesses, partnerships, corporations or associations, no financial assistance can be extended unless an adequate relocation program is in place for persons to be displaced by the project.

### **Pre-Award and Post-Delivery Reviews**

Grant recipients purchasing revenue passenger rolling stock undertake reviews of the rolling stock prior to the award of the bid, during manufacture, and following delivery of the vehicles. Supporting documentation resulting from reviews must be submitted to Georgia Department of Transportation and a copy retained for future inspections. A grant applicant must certify that it

will comply with FTA's pre-award and post-delivery review requirements when purchasing revenue service rolling stock. According to FTA, Pre-Delivery and Post-Delivery inspections will be reimbursed.

### **Labor Standards**

Grantees must ensure that laborers and mechanics employed for construction projects covered by the Davis-Bacon Act will be paid the prevailing wages for their locality as determined by the Department of Labor (DOL). This applies to authorized transit construction projects.

In addition, fair and equitable arrangements must be made to protect the interests of transit employees affected by the proposed FTA assistance. The protections must be afforded to all transit employees in the service area (Applicant, other FTA grantees, and Public and Private, and Contract Providers). The comprehensive listing of wage schedules that show the prevailing local wages are available on the DOL web page at this internet address:

<https://www.dol.gov/compliance/topics/wages-fed-contracts.htm>

### **Nondiscrimination - Civil Rights Requirements**

Grantees must comply with all civil rights program requirements that apply to transit-related projects. Applicable program areas are Title VI of the Civil Rights Act of 1964, as amended (nondiscrimination in the delivery of service and benefits), Equal Employment Opportunity (EEO), Disadvantaged Business Enterprise (DBE), and Americans with Disabilities Program (ADA).

Grantees must submit a program that addresses Civil Rights requirements. In this documentation, they must assure those transit services and benefits provided with FTA assistance will be provided in a nondiscriminatory manner, without regard to race, color, national origin, creed, age or sex. This includes but is not limited to land acquisition, relocation, route placement, vehicle assignments, and availability of transit amenities. There are general and specific reporting requirements to assess compliance applicable to grant recipients. FTA Circular 4702.1A, entitled Title VI and Title VI-Dependent Guidelines For Federal Transit Administration Recipients, provides recipients and subrecipients of FTA financial assistance with guidance and instructions necessary to carry out the U.S. Department of Transportation's Title VI regulations (49 CFR part 21) and to integrate into their programs and activities considerations expressed in the Department's Order on Environmental Justice (Order 5610.2), and Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient

(“LEP”) Persons (70 FR 74087, December 14, 2005). The circular is accessible via the following URL/web address. [http://www.fta.dot.gov/laws/leg\\_reg\\_circulars\\_guidance.html](http://www.fta.dot.gov/laws/leg_reg_circulars_guidance.html)

*Equal Employment Opportunity* - Applicable to grantees with 50 or more employees that have received \$1 million or more dollars in the previous fiscal year. The major focus of this program is a workforce analysis to identify job categories and levels of employment in which minorities and women are underrepresented and take corrective action. The Equal Employment Opportunity Program Guidelines for Grant Recipients are published in FTA Circular 4704.1

Disadvantaged Business Enterprise - Recipients of DOT funds must develop and implement a DBE program that conforms to DOT standards set forth in 49 CFR Part 23. TEA-21 rule views the statutory ten percent goal as a nationwide aspirations based goal, but does not require that recipients set their goals at ten percent or any other particular level. Recipients must set overall goals to represent a “level playing field” – the amount of DBE participation realistically expected absent discrimination.

Transportation of Persons with Disabilities - The Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation, and telecommunications. Grantees must not discriminate on the basis of handicap or disability. The ADA includes the following.

- requirements for vehicle accessibility (for public and private fixed route and demand response service);
- accessibility requirements in the design and construction of new transportation facilities, alterations to existing facilities and key stations on rail transit;
- provisions for complementary paratransit service to people who cannot use fixed route service; and
- service requirements intended to ensure that people with disabilities are afforded equal opportunity to use transportation vehicles and facilities.

## **Drug and Alcohol Testing**

Grantees must establish programs designed to prevent accidents and injuries resulting from misuse of alcohol or the use of prohibited drugs by employees who perform safety sensitive functions either directly or under contract. Two regulations have been published: one for drugs and one for alcohol, which contain the details of the program requirements. Each regulation requires that FTA recipients follow the drug and alcohol-testing procedures found in the USDOT regulation. Annual MIS\* (Management Information System) reports are required.

\*Annual reports that must be submitted to FTA to comply with the Drug and Alcohol Program. They are submitted either on a softcopy or hardcopy format and the report is known as a “data collections form.”

## **Drug-Free Workplace**

Grantees are required to maintain a drug-free workplace for all employees and to have an anti-drug policy and awareness program. This includes, among other things, a written policy statement, notification to all employees of the program, and an ongoing awareness program.

## **Lobbying**

All recipients and contractors receiving \$100,000 or more must certify that the funds were not used to influence or attempt to influence transactions involving Federal grants, contracts or cooperative agreements. Lobbying activities are not prohibited; however, using Federal funds to pay for lobbying is prohibited. Certain lobbying activities must be disclosed.

## **Integrity - Debarment and Suspension**

All grantees should only do business with responsible parties. USDOT Policy requires grantees to ensure that it and its contractors and subcontractors have not been debarred, suspended, or ineligible or voluntarily excluded from participation in federally assisted transactions.

## **Seismic Design and Construction Standards**

Any new building or addition to a building built with federal assistance must be designed and constructed in accordance with seismic safety standards.

## **Lease vs. Buy Considerations**

Grantees must make a written comparison of the cost of leasing assets with the cost of purchase

or construction. They must certify that leasing is more cost-effective than purchase or construction.

## **Buses**

FTA has established several policies that are meant to ensure that buses purchased or leased with FTA funds are maintained and remain in transit use for a minimum normal service life. The policies also intend to ensure that buses acquired are necessary for regularly scheduled revenue service, meet peak requirements as well as have a reasonable allowance for spares. The suggested service life outlined below refers to time spent in normal service, not time spent stockpiled or otherwise unavailable for regular transit service.

### **Requirements for Bus Fleets**

<b>Transit Bus</b>	<b>Size (Approximate)</b>	<b>Service Life</b>	<b>Service Mileage</b>
Large-size, heavy-duty	35' to 40'	12 years	500,000 miles
Medium-size, heavy-duty	30'	10 years	350,000 miles
Medium-size, medium- duty	30'	7 years	200,000 miles
Medium-size, light-duty	25' to 35'	5 years	150,000 miles
Other light-duty (vans, etc.)	16' to 25'	4 years	100,000 miles

#### **A. Bus Replacement Policies**

- (3) Replacement at End of Minimum Normal Service Life - Vehicles to be replaced should have achieved the minimum normal service life. The age of the bus is its years of service or mileage at the time the new bus will be put into service.
- (4) Early Disposition Policy - If a vehicle is replaced before it has reached the minimum normal service life, the grantee has the option of returning the Federal interest to FTA or placing the remaining Federal interest into the new vehicle (like-kind exchange policy).
- (5) Like-Kind Exchange Policy - Under this policy, the trade-in value or sales proceeds from a vehicle replaced before the end of its normal service life are not returned to FTA but rather applied towards the purchase of a “like-kind” replacement vehicle. Like-kind replacement is defined as a vehicle for a vehicle with a similar service life.

- (6) Rebuilding Policies - Buses to be rebuilt should be at the end of the minimum normal service life and in need of major structural or mechanical rebuilding. The age of the bus is its years of service at the time the rebuilding work begins.
  - i. Rehabilitation - Rehabilitation efforts are focused on mechanical systems and vehicle interiors. The goal for standard, heavy-duty transit buses is to provide at least five years of additional service through rehabilitation and for smaller buses, make the rehabilitation extend the minimum normal service life by at least 40 percent.
  - ii. Remanufacturing - Main emphasis is placed on structural restoration of a standard, heavy-duty bus in addition to rehabilitation (above). Eight years of additional service life should be provided through this rebuilding process.
- (7) Vehicle Overhauls - Federal capital assistance of up to 20% of annual vehicle maintenance is eligible for vehicle overhaul work. This eligibility also applies to leasing and contracted service.
- (8) Spare Ratio Policies - The number of spare buses in the active fleet for grantees operating 50 or more revenue vehicles should not exceed 20% of the number of vehicles operated in maximum service. Spare ratio is defined as the number of spare vehicles divided by the vehicles required for annual maximum service. Local circumstances may be considered in determining a reasonable spare ratio for individual grantees.

#### B. Requirements Related to Purchase of New Buses

- (1) Fleet and Service Expansion - Applicants seeking to expand service and fleets should describe new markets to be served. Vehicle needs, fleet size, projected ridership, operating cost, revenues, and spare ratios should also be documented. More detailed analysis may be requested.
- (2) Eligibility of Components for Funding - The applicant may purchase spares of major components and replacement vehicles if they can demonstrate it is cost-effective under the Capital Program. This would apply when vehicles are purchased for new transit systems, or when existing systems and operations are being extended so that the vehicle fleet size will be greater than it was previously.
- (3) Buy America - Applicants are required to comply with Buy America Provisions in 49 CFR 661.
- (4) Warranties - A warranty that is an industry standard is an eligible capital cost as part of the acquisition of a bus or any other capital asset.

- i. Complete Bus - Is warranted and guaranteed for one year or 50,000 miles, whichever comes first.
- ii. Subsystems and Components - Specific subsystems and components that are warranted and guaranteed to be free from defects are outlined in the table below per number of years and mileage:

**Eligible Warranties**

<b>Item</b>	<b>Years</b>	<b>Mileage</b>
Engine	2	200,000
Transmission	2	100,000
Drive axle	2	100,000
Brake system (excluding friction)	2	50,000
Air conditioning system	2	n/a
Basic body structure	3	150,000
Structural integrity	7	350,000

(5) Bus Testing - Any new model bus or ones with significant model changes must be tested at the FTA-sponsored test facility in Altoona, Pennsylvania before Federal funds can be used. Vehicles are tested for maintainability, reliability, safety, performance, structural integrity, fuel economy and noise. Bus testing is not required for unmodified, mass produced vans.

(6) Pre-Award and Post Delivery Review of Buses - Grantees must undertake reviews of rolling stock before award of the bid, during manufacture and following vehicle delivery. The reviews are intended to improve compliance with Buy America requirements, bid specifications, and Federal Motor Vehicle Safety Standards. Staff or a contractor may conduct reviews. (Supporting documentation resulting from these reviews must be submitted to GDOT and a copy retained for future inspections).

C. Requirements Related to Accessory and Miscellaneous Equipment - This would include such items as mobile radio units, bus stop signs, supervisory vehicles, fareboxes, computers, and shop and garage equipment. The rationale or need for requesting them should be made apparent in the grant application.

D. Requirements Related to Buses in Service

(1) Commercial Driver’s License (CDL) - All drivers and mechanics of vehicles designed to transport more than 15 people must have a CDL.

- (2) Charter Bus Operations - Charter service regulations prohibit FTA recipients from providing service using FTA funded equipment or facilities if there is at least one private charter operator willing and able to provide the service. Before a transit operator may provide service, the operator must publish a notice at least annually to determine if there are private operators willing and able to provide service. There are exceptions and, a specific process for making those requests. Each grantee is required to agree not to engage in charter service unless permitted by FTA charter service regulations.
- (3) School Bus Operations - Grantees seeking to provide school bus service must agree not to engage in exclusive service to students and school personnel in competition with private school bus operators. This prohibition does not apply to “Tripper Service,” defined as regularly scheduled transit service that is open to the public and that is designed or modified to accommodate the needs of school students and personnel, using various fare collection and subsidy systems. In some cases, exemptions to regulatory limitations will be allowed.

## **Bus Facilities**

- (1) FTA will assist building facilities that support transit operations and provide passenger amenities and park-and-ride lots. FTA also supports facilities that are transit-related and will participate in those portions of facilities physically or functionally connected to transit. FTA will participate on a pro rata basis in intermodal facilities, based on the transit portion of the project.
  - A. Facility Size - FTA’s general policy is to provide assistance for facilities that are adequate for the grant applicant’s present needs and that will realistically meet future needs.
  - B. Project Staging - Applicants must be able to fully describe the project and estimate the cost of the facility.
  - C. Planning Justifications - There must be a planning basis for every project, therefore, appropriate planning studies should be undertaken in support of projects to acquire, install, or construct major transit facilities.
- (1) Passenger Amenities
  - i. Passenger Shelters – Bus shelters are eligible for FTA assistance at certain locations, such as load and transfer points, park-and-ride stations, employment concentrations, and housing concentrations for the elderly and persons with disabilities.
  - ii. Transfer Facility or Transportation Center – The basis for a new transfer facility or

transportation center should be documented in a planning study.

iii. Park-and-Ride Facilities – The basis for a new park-and-ride lot should be documented in a planning study.

(2) Maintenance and Administrative Facilities – The basis for new maintenance and administrative facilities or major expansions or renovations of existing facilities should be documented in a planning study.

### **New Starts**

Occasionally, Section 5309 funds are used to support a new fixed guideway or its extension. It can also involve development of transit corridors and markets to support the eventual construction of fixed guideway systems, including purchase of land to protect right-of-ways or construction of park-and-ride lots.

### **Certification Procedures**

ISTEA amended Federal transit laws to provide that certifications and assurances by a grant applicant may be consolidated into a single document, which will be submitted annually as part of the grant application. These certifications and assurances will be published annually by FTA in the Federal Register. They are included in this document in the Appendix.

### **Intergovernmental Review**

Grantees must ensure that appropriate authorities are informed about and have an opportunity to comment on projects involving federal assistance within the State. They must comply with Georgia's Intergovernmental Consultation Process. The grant application needs to have the Clearinghouse Review form returned by OPB as an attachment.

### **National Transit Database (NTD) Reporting System**

All grantees receiving funds under the Section 5309 Program must maintain and report financial and operating information (NTD) on an annual basis. The FTA Uniform System of Accounts and Reporting System was designed to provide information on which to base planning for public transportation services and public sector investment decisions at all levels of government.

### **Annual Audit and Triennial Reviews<sup>3</sup>**

Congress has charged FTA with conducting audits or requiring grantees to have independent audits to determine that recipients have carried out its activities in accordance with program requirements and certifications. In particular, FTA must conduct a full review and evaluation of

grantee performance at least every three years. These "Triennial Reviews" allow the FTA to determine if the grantee is complying with the certifications that it has made.

### **New Technology Introduction**

Formula funds may be used for projects that introduce new technology and adopt innovative techniques and methods. FTA encourages suppliers to produce, and transit providers to introduce, new technology in transit service in the form of innovative and improved products.

## **DISCRETIONARY CAPITAL PROGRAM APPLICATION PROCEDURES**

### **Application Requirements**

In order to participate in the Section 5309 Capital grant program, eligible recipients must complete the following application components and submit them to GDOT by the grant application deadline. Capital program grant application packages must be submitted to GDOT in order for this grant to be submitted to FTA. The grant application consists of the following documentation.

#### **Required Exhibits of a Complete Grant Application**

<b>Exhibit No.</b>	<b>Description</b>
Exhibit 1	Letter of Transmittal
Exhibit 2	Section 5309 Program Funding Form
Exhibit 3	Project Description
Exhibit 4	Project Justification
Exhibit 5	Milestone Schedule
Exhibit 6	Project Financing/Local Share Commitment
Exhibit 7	Labor Union Description
Exhibit 8	Environmental Review
Exhibit 9	Air Quality
Exhibit 10	Transcript for Public Hearing
Exhibit 11	STIP Reference
Exhibit 12	Confirmation of Fund Programming
Exhibit 13	Opinion of Counsel
Exhibit 14	FTA Title VI Data Collection & Reporting
Exhibit 15	Georgia Intergovernmental Consultation Process
Exhibit 16	Authorizing Resolution
Exhibit 17	Federal FY 2010 Certifications & Assurances
Exhibit 18	Anti-Drug Program Certification
Exhibit 19	Certification of No Intent of Charter Service
Exhibit 20	Sole-Source, Single-Bid, and Brand-Name Procurement Certification
Exhibit 21	American's with Disabilities (ADA) Act Update

Exhibit 22	NTD Closeout Letter
Exhibit 23	Application Checklist

All applications should be completed in the order shown in this manual. Completed applications should have original signatures. **An original and one copy of the application should be submitted to GDOT with delivery confirmation no later than February 26, 2010.** Additionally, an electronic copy should be submitted to skish@dot.ga.gov with an email receipt. Original copies should not be stapled, bound or folded and should be prepared on standard 8 1/2 by 11 paper size.

Instructions for Applications - The completed applications should include only the items listed in the preceding section, unless additional documentation is requested. A brief description of each component is outlined below. The Department reserves the right to request additional documentation as needed.

**EXHIBIT 1**  
**SAMPLE LETTER OF TRANSMITTAL**

The applicant should utilize this sample letter of transmittal to identify the type of grant and the amount of financial assistance requested. This letter should be submitted on original letterhead and signed by the person designated in accordance with the authorizing resolution for the agency. The transmittal letter should include contact information (e.g. applicant's name and title of point of contact, street address/P.O. Box, phone number and FAX number).

Date

Mr. Steven J. Kish  
Georgia Department of Transportation  
Intermodal Programs Division  
600 West Peachtree Street, NE  
Atlanta, Georgia 30308-3607

Dear Mr. Kish:

The (Applicant) is applying for a FTA Section 5309 Program grant to aid in the transit operation of the (Transit Agency). The capital assistance requested in this project has been reviewed and approved through the local transportation planning process and is listed in the current Transportation Improvement Program/Statewide Transportation Improvement Program. We are requesting federal assistance in the amount of \$\_\_\_\_\_ for capital assistance. State assistance in the amount of \$\_\_\_\_\_ is also requested, which will be matched with local assistance in the amount of \$\_\_\_\_\_.

We attest that all of the information contained in this Section 5309 request is correct and the applicant has the legal, financial and technical capacity to carry out the proposed project. If you have any questions on this request, please contact \_\_\_\_\_ (enter name/title of principal contact) at \_\_\_\_\_ (enter phone number).

Sincerely,

\_\_\_\_\_  
Signature and Title

**EXHIBIT 2**  
**SECTION 5309 PROGRAM FUNDING FORM (SAMPLE)**  
**(Page 1 of 2)**

The purpose of this form is to identify the amounts of federal, state and local funding requested. The Congressional District of the project, the project duration, and the Clearinghouse number and date approved should also be provided.

Name of Applicant: \_\_\_\_\_

Congressional District: \_\_\_\_\_

Project Start Date: \_\_\_\_\_

Project Duration: (months)

\_\_\_\_\_

Clearinghouse Number: \_\_\_\_\_

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

**Proposed Funding:**

SCOPE		TOTAL AMOUNT	FEDERAL AMOUNT	STATE AMOUNT	LOCAL AMOUNT
No. __	<b>SCOPE DESCRIPTION</b>	\$ _____	\$ _____	\$ _____	\$ _____
	Budget Activity Code and Activity	\$ _____	\$ _____	\$ _____	\$ _____
	Budget Activity Code and Activity Description	\$ _____	\$ _____	\$ _____	\$ _____
	Budget Activity Code and Activity Description	\$ _____	\$ _____	\$ _____	\$ _____
No. __	<b>SCOPE DESCRIPTION</b>	\$ _____	\$ _____	\$ _____	\$ _____
	Budget Activity Code and Activity Description	\$ _____	\$ _____	\$ _____	\$ _____
	Budget Activity Code and Activity	\$ _____	\$ _____	\$ _____	\$ _____
	<b>TOTAL CAPITAL</b>	\$ _____	\$ _____	\$ _____	\$ _____

**EXHIBIT 2**  
**SECTION 5309 PROGRAM FUNDING FORM (SAMPLE)**  
**(Page 2 of 2)**

SCOPE		TOTAL	FEDERAL	STATE	LOCAL
	Budget Activity No.	100%	80%	10%	10%
111-01	BUS-ROLLING STOCK	\$601,000	\$480,800	\$60,100	\$60,100
	11.13.03 QTY 4 BUY 30-FT BUS FOR SERVICE EXPANSION	\$580,000	\$464,000	\$58,000	\$58,000
	11.32.06 QTY 5 ACQ FARE COLLECTION EQUIPMENT	\$5,000	\$4,000	\$500	\$500
	11.62.03 QTY 3 PURCHASE BUS RADIOS 30-FT BUSES	\$16,000	\$12,800	\$1,600	\$1,600
	11.13.03 QTY 4 BUY 30-FT BUS FOR SERVICE EXPANSION	\$25,000	\$20,000	\$2,500	\$2,500
113-01	<b>BUS STATIONS/STOPS/TERMINALS</b>	<b>\$25,000</b>	<b>\$20,000</b>	<b>\$2,500</b>	<b>\$2,500</b>
	11.13.10 QTY 5 PURCHASE PASSENGER AMMENITIES	\$25,000	\$20,000	\$2,500	\$2,500
	<b>TOTAL CAPITAL</b>	<b>\$626,000</b>	<b>\$500,800</b>	<b>\$62,600</b>	<b>\$62,600</b>

**ROLLING STOCK - BUSES TO BE  
PURCHASED**

Size	Fuel Type

**ROLLING STOCK - BUSES TO BE REPLACED**

Make	Age	Size	Fuel Type	Mileage	Vehicle #	VIN #

**EXHIBIT 3  
PROJECT DESCRIPTION**

Within this exhibit, the application should list and describe all projects and activities in sufficient detail for GDOT & FTA to concur that the grant request is eligible for funding. For bus purchases, please include the length or size of the bus(s).

**EXHIBIT 4  
PROJECT JUSTIFICATION**

This exhibit should be brief yet descriptive of the capital projects requested. Detailed capital justifications will be requested if needed for project management and oversight.

**EXHIBIT 5**  
**PROJECT MILESTONE SCHEDULE**  
**(Page 1 of 2)**

A separate milestone schedule needs to be prepared for each capital item. For the estimated dates and budget amounts, "varies" is not an acceptable response. Milestones should be sensible for the particular item description. Should you need assistance developing your milestone schedule, please contact your GDOT Transit Planner immediately. Upon the final reimbursement, all funds should be exhausted or an explanation provided.

**Grantee Name: ABC Transit**

Contact Name: \_\_\_\_\_ Contact Phone: \_\_\_\_\_

<b>Budget Activity No.</b>	<b>Budget Line Item Description</b>	<b>Budget Request</b>
11.13.03	Purchase Three (3) 30ft Diesel Buses	\$ 1,000,000
	<b>Estimated Completion Date</b>	<b>Amount Exhausted</b>
RFB/IFB Out for Bid	7/1/2008	\$ 0.00
Contract Award	8/15/2008	\$ 10,000
Final specifications delivered to vendor	9/1/2008	\$ 50,000
Bus 1 delivered	8/1/2009	\$ 350,000
Bus 2 delivered	6/1/2010	\$ 550,000
Bus 3 delivered	3/1/2011	\$ 950,000
Final reimbursement submitted	5/1/2011	\$ 1,000,000
<b>Budget Activity No.</b>	<b>Budget Line Item Description</b>	<b>Budget Request</b>
11.32.03	Acquisition of Intermodal Facility	\$ 5,000,000
	<b>Estimated Completion Date</b>	<b>Amount Exhausted</b>
Applicant requests notice to proceed	7/1/2008	\$ 0.00
Applicant granted notice to proceed	9/15/2008	\$ 5,000
RFB/IFB Out for Bid	9/30/2008	\$ 5,000
Contract Awarded	11/1/2008	\$ 250,000
Phase I completed	11/1/2009	\$ 1,000,000
Phase II completed	6/30/20 10	\$ 3,000,000
Phase III completed	3/31/2011	\$ 4,000,000
Final reimbursement submitted	5/1/2011	\$ 5,000,000

\* Please refer to Appendix C ( Scope & Activity Line Item Codes) to construct your Budget Activity Numbers

**EXHIBIT 5  
PROJECT MILESTONE SCHEDULE  
(Page 2 of 2)**

**PROJECT NO.:** \_\_\_\_\_  
**MOST RECENT AMENDMENT NO.:** \_\_\_\_\_  
**TOTAL FTA SHARE: \$3,300,000**

**MILESTONE SCHEDULE**

**Line Item Description**

Purchase Three (3) 30ft Diesel Buses

<b>Milestone Description</b>	<b>Date</b>
RFB/IFB Out for Bid	7/1/2008
Contract Award	8/15/2008
Final specifications delivered to vendor	9/1/2008
Bus 1 delivered	8/1/2009
Bus 2 delivered	6/1/2010
Bus 3 delivered	3/1/2011
Final reimbursement submitted	5/1/2011

**Line Item Description**

Acquisition of Intermodal Facility

<b>Milestone Description</b>	<b>Date</b>
Applicant requests notice to proceed	7/1/2008
Applicant granted notice to proceed	9/15/2008
RFB/IFB Out for Bid	9/30/2008
Contract Awarded	11/1/2008
Phase I completed	11/1/2009
Phase II completed	6/30/2010
10	
Phase III completed	3/31/2011

**Line Item Description**

Purchase/Install Communications Equipment

<b>Milestone Description</b>	<b>Date</b>
RFB/IFB Out for Bid	7/1/2008
Contract Award	8/15/2008
Final specifications delivered to vendor	9/1/2008
Server room prepared	12/1/2008
Internal lines installed	1/15/2009
External networking completed	2/10/2009
Final reimbursement submitted	3/15/2009



**EXHIBIT 6**  
**PROJECT FINANCING/LOCAL SHARE COMMITMENT**

Source and amount of funding must be identified for the total amount of local match for federal (and State) funds.

**EXHIBIT 7**  
**LABOR UNION DESCRIPTION(S)**

Applicant must comply with the Davis-Bacon Act which covers the prevailing wage rates and required labor standards in order to obtain project funding through FTA as authorized under 49 U.S.C. 53. This is done when grantee signs a grant agreement with a Master Agreement attached specifying construction labor standards. Items required for this exhibit include: list of transit providers, list of union(s), a list of transit provider employees represented by union, and those not represented by a union.

- (a) List of Labor Union(s)
- (b) Name of contact person(s)
- (c) Address, phone number, fax and e-mail of contact person(s)
- (d) List of other transit providers

**EXHIBIT 8**  
**ENVIRONMENTAL REVIEW**

Please submit the following information for this exhibit

- (a) Date of FTA's signing of Finding of No Significant Impact (FONSI), or
- (b) Date of FTA's signing of Record of Decision (ROD), or
- (c) Grant applicant's Categorical Exclusion (CE) recommendation if neither of the above two choices applies.

**EXHIBIT 9**  
**AIR QUALITY**

Please submit the following information for this exhibit

- (a) Date of project level conformity determination by FTA, or
- (b) Applicant's recommendation concerning project's category of exemption

**EXHIBIT 10  
TRANSCRIPT FOR PUBLIC HEARING, IF HELD**

Please attach affidavit for opportunity of public hearing or attach transcript if public hearing was held.

**EXHIBIT 11  
STIP - DATE OF APPROVAL BY GDOT TRANSPORTATION BOARD**

Please note the date of approval and page number of the STIP which includes your project.

**EXHIBIT 12  
INFORMATION CONFIRMING THAT CAPITAL FUNDS ARE PROGRAMMED**

Please note the date of approval and page number of the TIP which includes your project.

**EXHIBIT 13**  
**OPINION OF COUNSEL**

Name of Applicant \_\_\_\_\_

Address of Applicant \_\_\_\_\_

Dear (Responsible Official for Applicant):

This communication will serve as the requisite opinion of counsel to be filed with the Georgia Department of Transportation and Federal Transit Administration, United States Department of Transportation, in connection with the application of (Name of Applicant) for Federal transportation assistance authorized by Title 49 U.S.C. Section 5309 and other Federal statutes authorizing activities administered by the Federal Transit Administration.

Citations to laws, regulations, etc. establishing the legal authority of (Name of Applicant) to carry out transportation projects for which Federal assistance is sought is set forth below:

- (1) \_\_\_\_\_ is authorized by (cite and quote from legal authority) to provide and assist transportation by \_\_\_\_\_.
  
- (2) The authority of (Name of Applicant) to provide funds for the local share of the project is set forth in (city source and provide a copy of, for example, the local ordinance passed by City Council or other governing body authorizing funding for the local share).
  
- (3) I have reviewed the pertinent federal, state, and local laws, and I have concluded there is no legal impediment to your filing an application for the project for which (Name of Applicant) seeks assistance. Furthermore, as a result of my examination, I find there is no pending or threatened litigation or other action which might in any way adversely affect the proposed project or the capability of (Name of Applicant) to carry out the project.

Sincerely,

\_\_\_\_\_  
Legal Counsel

**EXHIBIT 14**  
**FTA TITLE VI DATA COLLECTION AND REPORTING**  
**(Page 1 of 4)**

All applicants for FTA Urbanized Area Formula Program assistance must have completed civil rights program information as required in FTA Circular 4702.1A. The Title VI Status Report and Monitoring Plan must be included within this exhibit of the grant application.

All applicants for FTA funding are required to maintain and provide GDOT and FTA with certain Title VI information. The required information is outlined in Part 1 - General Requirements and Part 2 - Monitoring Procedures. Updated information should be provided to the Department as conditions warrant but at a minimum, Parts 1 and 2 should be updated annually. *The information should be relevant to the organizational entity actually submitting the application, not necessarily the larger agency or department of which the entity is a part.*

**Part 1 - General Reporting Requirements:**

1. A list of any active lawsuits or complaints naming the applicant which allege discrimination on the basis of race, color, or national origin with respect to service or other transit benefits. The list should include:
  - (a) The date the lawsuit or complaint was filed;
  - (b) A summary of the allegation; and
  - (c) The status of the lawsuit or complaint.
2. A description of all pending applications for financial assistance, and financial assistance currently provided by other federal agencies.
3. A summary of all civil rights compliance review activities conducted in the last three years. The summary should include:
  - (a) The purpose or reason for the review;
  - (b) The name of the agency or the organization that performed the review
  - (c) A summary of the findings and recommendations of the review; and
  - (d) A report on the status and/or disposition of such findings and recommendations.
4. Construction Projects - A fixed-facility impact analysis should be conducted to assess the effects on minority communities. If this information has been prepared as a result of an environmental assessment or environmental impact statement, the applicant, recipient, or subrecipient should reference the relevant information by document, page number(s), and date of submission to FTA.

**EXHIBIT 14**  
**FTA TITLE VI DATA COLLECTION AND REPORTING**  
**(Page 2 of 4)**

5. Changes in Service Feature – Provide a description of the type of service changes (e.g. route extensions, deletions, etc. including any changes as a result of contracting out transit service over the next three years and a statement of the effect of these changes on minority communities and minority transit users. In particular, the transit system must describe significant service changes relating to hours or days of operation, headways or fares, etc. and provide the schedule reflecting such changes.
  - (a) A discussion of the potential impact on minority communities and minority-owned businesses during and after construction;
  - (b) A discussion of all potential negative environmental impacts, such as noise, air, or water pollution;
  - (c) A detailed list of minority-owned businesses and households that will be affected by the construction project;
  - (d) A description of other significant changes or impacts on the minority community, such as increased traffic, reductions in the amount of available parking, etc.; and
  - (e) A description of the relocation program and/or other measures adopted by the applicant that will be used to mitigate any identified adverse social, economic, or environmental effect of the proposed construction project.
6. Information Dissemination - Provide a description of the methods used to inform minority communities of service changes (e.g. public notices, public hearings, or other formal or informal public discussions, presentations, meetings, etc.) relating to transit service and improvements.
7. Minority Representation on Decision-Making Bodies - Provide a racial breakdown of transit-related non-elected Boards, Advisory Councils or Committees which are integral parts of the transit agency’s planning process, and provide a description of implementation of programs and other related activities. Provide a description of the efforts made to encourage minorities to participate on such Boards, Councils, or Committees.
8. Multilingual Requirements - Assess the bilingual needs of the service area. Where a significant number or portion of the population to be served needs service or information in a language other than English to participate in FTA assisted programs, the recipient shall take every reasonable step to provide information in appropriate languages.

**EXHIBIT 14**  
**FTA TITLE VI DATA COLLECTION AND REPORTING**  
**(Page 3 of 4)**

**Part 2 - Data Collection Requirements:**

*Please supply documentation of level of service and quality of service monitoring activities as outlined in Part 2, for the past year.*

**Monitoring Procedures** - For the purpose of this section, FTA is requiring that all grantees that provide public transit service develop and implement procedures to monitor their level and quality of transit service to determine compliance with Title VI. These comparisons of the level and quality of transit service provided to the minority community, against overall system averages, will measure the actual realization of established service policies and standards. FTA requests that the following methodologies be incorporated in the grantee's monitoring procedures for reviewing levels and quality of service:

1. Level of Service Methodology - For the purpose of this methodology, minority communities must be identified by census tracts or traffic analysis zones. Service provided to these communities will be measured in terms of the service policies and standards adopted by the recipient (i.e., vehicle load, vehicle assignment, headways, transit amenities, transit access, etc.). Recipients shall as a part of their internal monitoring procedure undertake the following:
  - (a) Select an appropriate sample size. At a minimum, the sample must include each tract or zone that has a minority population (minority census tract) that is equal to or above the total percentage of all minorities within the service area. In addition, at least ten percent (10%) of all the census tracts or traffic analysis zones in the service area should be monitored.
  - (b) Inventory the transit service provided in the selected sample areas.
  - (c) Assess the performance of each route operating within the selected areas for each of grantee's service standards and policies.
  - (d) Compare the transit service provided to minority areas to the recipient's service policies and standards, and review and take action in all cases in which the service to minority areas do not meet the stated service policy or standards of the grantee.
  - (e) Compare the average performance for each route in the transit system to the grantee's service policies and standards, and take action on the observed differences.

**EXHIBIT 14**  
**FTA TITLE VI DATA COLLECTION AND REPORTING**  
**(Page 4 of 4)**

2. Quality of Service Methodology - This methodology will determine whether the quality of service is consistent among different user groups and the degree to which transit service is responsive to minority needs. Recipients shall utilize the following methodology to assess equity in the quality of service provided:
- (a) Identify an appropriate number of minority census tracts or traffic analysis zones and a corresponding number of comparable nonminority census tracts or traffic analysis zones. The number of census tracts or analysis zones selected should be based on the population within the service area. For service areas with a population of 200,000 or below, at least three minority and nonminority census tracts or traffic analysis zones must be selected.
  - (b) Conduct a survey of transit riders in the identified areas to determine travel patterns (work trip destination) and opinions on the transit service provided. Census data may also be used to model transit travel patterns in an urbanized area.
  - (c) Summarize the travel patterns of transit users in the selected census tracts or traffic analysis zones, and summarize comments or opinions about the transit service.
  - (d) Using transit travel time and fare matrices, and/or other appropriate indices, information must be monitored for the top three most-traveled destinations. All values below emanate from the centroid of selected census tracts or traffic analysis zones to the centroid of destination:
    - i. Average peak hour travel time to destination;
    - ii. Number of transfers/bus stops before reaching destination;
    - iii. Total cost of trip to destination; and
    - iv. Cost per mile of trip to destination.
  - (e) In using this methodology, the grantee must compare the quality of service of minority census tracts or traffic analysis zones with nonminority census tracts or traffic analysis zones, and take action on the disparities.

**EXHIBIT 15**  
**GEORGIA INTERGOVERNMENTAL CONSULTATION PROCESS**  
**(Page 1 of 2)**

Please send completed form to: State Clearinghouse c/o Barbara Jackson, Office of Planning and Budget, 8th Floor, 270 Washington Street, S.W., Atlanta, Georgia 30334 Tel. (404) 656-3855 or Fax: (404) 656-7916. Do Not Send to the Regional Development Center (RDC). If the project is to be located in a locale served by a Metropolitan Clearinghouse, a legible copy must be sent to the appropriate MPO for review and approval (except in Atlanta).

**Applicant:**

**Project Name:**

**Applicant's Address:**

**Name and Title of Contact Person:**

**Phone:**

**Impacted City/Cities:**

**Impacted County/Counties:**

**Project Description (Nature, Purpose, Location):**

**Funding Federal Catalog Number: 20.500**

Source	\$ Amount	Federal Program Name: Section 5309
Basic Federal Grant		Federal Agency Name: Federal Transit Administration. David Schilling, Community Planner 230 Peachtree, NW, Suite 800 Atlanta, GA 30303 Phone: 404.865.5645 Fax (404) 865-5605 david.schilling@dot.gov
State Matching Grant		
Local Matching Grant		
<b>Total Cost</b>		
<b>Impacted Regional and Metropolitan Clearinghouse:</b>		
Signature of Authorizing Official	Title	Date

**EXHIBIT 15**  
**GEORGIA INTERGOVERNMENTAL CONSULTATION PROCESS**  
**(Page 2 of 2)**

When completing the Intergovernmental Consultation Form, the applicant must be sure to include the following information:

1. Identification of the applicant.
2. Federal program title, number and agency under which assistance is sought as listed in the latest Catalog of Federal Domestic Assistance.
3. Geographic location of the proposed project by type accompanied by a map (physical development only).
4. Brief description of the proposed project by type, purpose, general size, or scale, estimated cost, beneficiaries or other characteristic details.



**EXHIBIT 16**  
**AUTHORIZING RESOLUTION**

The resolution must be executed by the governing body of the applicant. The resolution authorizes the applicant to file a Section 5309 Capital Program Application with the Georgia Department of Transportation and the Federal Transit Administration and it also identifies the person authorized to execute a grant on behalf of the applicant.

Resolution No. \_\_\_\_\_

Resolution authorizing the filing of an application with the Federal Transit Administration, an operating administration of the United States Department of Transportation; and the Georgia Department of Transportation for Federal transportation assistance authorized by 49 U.S.C. chapter 53, Title 23 United States Code, and other Federal statutes administered by the Federal Transit Administration.

WHEREAS, the Federal Transportation Administrator and the Georgia Department of Transportation are authorized to award Federal financial assistance for transportation projects;

WHEREAS, the grant or cooperative agreement for Federal financial assistance will impose certain obligations upon the Applicant, and may require the Applicant to provide the local share of the project cost;

WHEREAS, the Applicant has or will provide all annual certifications and assurances to the Federal Transit Administration and the Georgia Department of Transportation required for the project;

NOW, THEREFORE, BE IT RESOLVED BY (Governing Body of Applicant)

1. That (Title of Designated Official) is authorized to execute and file an application for Federal assistance on behalf of (Legal Name of Applicant) with the Federal Transit Administration and the Georgia Department of Transportation for Federal assistance authorized by 49 U.S.C. chapter 53, Title 23, United States Code, or other Federal statutes authorizing a project administered by the Federal Transit Administration. The Georgia Department of Transportation, the Designated Recipient as defined by 49 U.S.C. Section 5307(a) (2), will apply on behalf of the Applicant for Section 5309 Capital Program funds.
2. That (Title of Designated Official) is authorized to execute and file with its applications the annual certifications and assurances and other documents the Federal Transportation Administration and Georgia Department of Transportation require before awarding a Federal assistance grant or cooperative agreement.
3. That (Title of Designated Official) is authorized to execute grant and cooperative agreements with the Federal Transit Administration and the Georgia Department of Transportation on behalf of (Legal Name of Applicant).

**CERTIFICATION**

The undersigned duly qualified (Title of Designated Official), acting on behalf of the (Legal Name of Applicant), certifies that the foregoing is a true and correct copy of a resolution adopted at a legally convened meeting of the (Governing Body of Applicant) held on (Month, Day, Year).

If applicant has an official seal, impress here.

\_\_\_\_\_  
Signature of Recording Officer

\_\_\_\_\_  
Title of Recording Office

\_\_\_\_\_  
Date

**EXHIBIT 17**  
**FEDERAL FY 2010 CERTIFICATIONS AND ASSURANCES FOR FTA ASSISTANCE**  
**(Page 1 of 2)**

The Annual Listing of Certifications and Assurances must be executed by the applicant and the applicant's attorney.

*Both pages of this signature document must be completed and signed as indicated.*

**Name of Applicant:** \_\_\_\_\_

The applicant agrees to comply with applicable provisions of Categories 01-24.

OR

The Applicant agrees to comply with the applicable provisions of the Categories it has selected:

Category   Description

1. Assurances Required For Each Applicant.
2. Lobbying.
3. Procurement Compliance.
4. Protections for Private Providers of Public Transportation.
5. Public Hearing.
6. Acquisition of Rolling Stock for Use in Revenue Service.
7. Acquisition of Capital Assets by Lease.
8. Bus Testing.
9. Charter Service Agreement.
10. School Transportation Agreement.
11. Demand Responsive Service
12. Alcohol Misuse and Prohibited Drug Use.
13. Interest and Other Financing Costs.
14. Intelligent Transportation Systems.
15. Urbanized Area Formula Program.
16. Clean Fuels Grant Program.
17. Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program.
18. Non-urbanized Area Formula Program for States.
19. Job Access and Reverse Commute Program.
20. New Freedom Program.
21. Paul S. Sarbanes Transit and Parks Program
22. Tribal Transit Program.
23. Infrastructure Finance Projects.
24. Deposits of Federal Financial Assistance to a State Infrastructure Banks.

**EXHIBIT 17**

**FEDERAL FY 2010 CERTIFICATIONS AND ASSURANCES FOR FTA ASSISTANCE**

**(Page 2 of 2)**

**AFFIRMATION OF APPLICANT**

Name of Applicant: \_\_\_\_\_

Name and Relationship of Authorized Representative: \_\_\_\_\_

BY SIGNING BELOW, on behalf of the Applicant, I declare that the Applicant has duly authorized me to make these certifications and assurances and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes, regulations, and with the certifications and assurances as indicated on the foregoing page applicable to each application it makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 2010.

FTA intends that the certifications and assurances the Applicant selects on the other side of this document, as representative of the certifications and assurances in this document, should apply, as provided, to each project for which the Applicant seeks now, or later, seek FTA assistance during Federal Fiscal Year 2010.

The Applicant affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted herein with this document and any other submission made to FTA, and acknowledges that the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq.*, and implementing U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31 apply to any certification, assurance, or submission made to FTA. The criminal provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with a Federal public transportation program authorized in 49 U.S.C. Chapter 53 or any other statute.

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

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

Name: \_\_\_\_\_

Authorized Representative of Applicant

**AFFIRMATION OF APPLICANT'S ATTORNEY**

For (Name of Applicant): \_\_\_\_\_

As the undersigned Attorney for the above named Applicant, I hereby affirm to the Applicant that it has authority under State, local, or tribal government law, as applicable, to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligations on the Applicant.

I further affirm to the Applicant that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these certifications and assurances, or of the performance of the project.

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

Name: \_\_\_\_\_

Attorney for Applicant

Note: Each Applicant for FTA financial assistance and each FTA Grantee with an active capital or formula project must provide an Affirmation of Applicant's Attorney pertaining to the Applicant's legal capacity. The Applicant may enter its signature in lieu of the Attorney's signature, provided the Applicant has on file this Affirmation, signed by the attorney and dated this Federal fiscal year.

**EXHIBIT 18**  
**ANTI-DRUG PROGRAM CERTIFICATION**

Applicants must certify by completing this exhibit that they and their subcontractors have a Drug and Alcohol program in effect which meets the requirements set forth in 49 CFR, Parts 40 and 655. This should be submitted on official letterhead.

I, \_\_\_\_\_ (Name and Title of Official), Certify that \_\_\_\_\_  
\_\_\_\_\_ (Name of Organization) and its contractors as required under 49 of U.S Code (U.S.C) Parts 655 and 40 for the Section 5309 Program, has established and implemented an anti-drug and alcohol misuse prevention program in accordance with the above federal regulations.

I further certify that the following statements are true:

- a. Random testing of safety sensitive employees will be conducted in a manner consistent with requirements of 49 CFR Parts 655 and 40 and that these tests will be spread reasonably throughout the calendar year to include all workdays and hours of service and shall be unpredictable.
- b. Employee training will be conducted in a manner consistent with requirements of 49 CFR Parts 655 and 40.

\_\_\_\_\_  
Signature of Recipient/Subrecipient

\_\_\_\_\_  
Signature of Contractor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**EXHIBIT 19**  
**CERTIFICATION OF NO INTENT OF CHARTER SERVICE**

Applicants must complete this exhibit to certify that the applicant does not intend to run charter services with FTA funding.

\_\_\_\_\_ (Name of Organization) certifies that it does not intend to provide charter service with FTA funded equipment or facilities during the operating period of this application. Should the Applicant decide to provide charter service, the Applicant will notify the Georgia Department of Transportation no less than 90 days prior to implementation of this service.

\_\_\_\_\_  
Signature of Authorized Officer

\_\_\_\_\_  
Name and Title of Authorized Officer

\_\_\_\_\_  
Date

\_\_\_\_\_

**EXHIBIT 20**  
**SOLE-SOURCE, SINGLE-BID AND BRAND-NAME PROCUREMENT**  
**CERTIFICATION**

The Federal Transit Administration (FTA) requires full and open competition in procurements for goods and services and encourages grantees to award contracts to the lowest responsive and responsible bidder. However, sole-source, single-bid, and brand-name or equal awards can be used. In such situations, the grantee should have appropriate documentation for the award which is described below. As part of the application process, all applicants must certify that they are in compliance with this requirement by completing this exhibit.

**Sole-Source:**

In the case of a sole-source award, the documentation should be a sole-source justification, which includes a cost analysis.

**Single-Bid:**

With a single-bid, the documentation should include a cost analysis, as well as an explanation as to why a single bid was obtained.

**Brand-Name:**

For brand-name or equal awards, the procurement specification should list the product's salient characteristics and allow an equal product to be offered.

I hereby assure that the FTA requirements for single bid, sole source and brand name or equal procurements are understood and will be followed for procurements involving FTA funds.

\_\_\_\_\_  
Signature of Official

\_\_\_\_\_  
Title of Official

\_\_\_\_\_  
Date

**EXHIBIT 21  
AMERICANS WITH DISABILITIES ACT (ADA) UPDATE**

In order to be eligible to receive federal funding, applicants must submit an updated ADA plan annually as this exhibit of the application.

<b>Transit Agency:</b>		
<b>Six Service Criteria</b>		<b>Y/N</b>
<b>1. Service Area</b>	Service to all origins and destinations within the defined area	
	Coordination with contiguous/overlapping service areas	
<b>2. Response Time</b>	Requests accepted during normal business hours on "next day"	
	Requests accepted on all days prior to days of service (e.g. weekends/holidays)	
	Requests accepted at least 14 days in advance	
	Trips scheduled within one hour of requested pickup time	
<b>3. Fares</b>	No more than twice the base fixed fare for eligible individuals	
	Compliance with companion fare requirement	
	Compliance with personal care attendant fare requirement	
<b>4. Days &amp; Hours of Service</b>	Paratransit provided during all days and hours when fixed route service is in operation	
<b>5. Trip Purposes</b>	No restriction on types of trip purposes	
	No restriction by trip purpose in scheduling	
<b>6. Capacity Constraints</b>	No restrictions on the number of trips an individual will be	
	No waiting list for access to the service	
	No substantial numbers of significantly untimely pickups for initial or return trips	
	No substantial number of trip denials or missed trips	
	No substantial trips not meeting on-time performance.	
	No substantial numbers of trips with excessive trip lengths	
	When capacity is unavailable, subscription trips are less than 50%	
<b>CERTIFICATION OF PARATRANSIT PLAN</b>		
The (transit agency name) hereby certifies that it has completed the 2010 Paratransit Review, as required under 49 CFR 37.139(j) and finds it to be in conformance with the transportation plan developed under 49 CFR part 613 and 23 CFR part 450 (the FTA/FHWA joint planning regulation). This certification is valid for one year.		
Signed by:		
Title:		
Date:		

**EXHIBIT 22**  
**NTD CLOSEOUT LETTER**

Please submit a copy of the most recent NTD closeout letter.

**EXHIBIT 23  
APPLICATION CHECKLIST**

This is provided to each applicant to ensure the application includes all necessary components. The completed checklist form must be signed and returned as the first page of all applications submitted.

**Please check off items as being completed:**

- Exhibit 1 – Sample Letter of Transmittal \_\_\_\_\_
- Exhibit 2 – Section 5309 Program Funding Form (Sample) \_\_\_\_\_
- Exhibit 3 – Project Description \_\_\_\_\_
- Exhibit 4 – Project Justification \_\_\_\_\_
- Exhibit 5 – Project Milestone Schedule \_\_\_\_\_
- Exhibit 6 – Project Financing/Local Share Commitment \_\_\_\_\_
- Exhibit 7 – Labor Union Description(s) \_\_\_\_\_
- Exhibit 8 – Environmental Review \_\_\_\_\_
- Exhibit 9 – Air Quality \_\_\_\_\_
- Exhibit 10 – Transcript for Public Hearing, if held \_\_\_\_\_
- Exhibit 11 – STIP – Date of Approval by GDOT Transportation Board \_\_\_\_\_
- Exhibit 12 – Information Confirming That Capital Funds Are Programmed \_\_\_\_\_
- Exhibit 13 – Opinion of Counsel \_\_\_\_\_
- Exhibit 14 – FTA Title VI Data Collection and Reporting \_\_\_\_\_
- Exhibit 15 – Georgia Intergovernmental Consultation Process \_\_\_\_\_
- Exhibit 16 – Authorizing Resolution \_\_\_\_\_
- Exhibit 17 – Federal FY 2010 Certifications and Assurances for FTA Assistance \_\_\_\_\_
- Exhibit 18 – Anti-Drug Program Certification \_\_\_\_\_
- Exhibit 19 – Certification of No Intent of Charter Service \_\_\_\_\_
- Exhibit 20 – Sole-Source, Single-Bid and Brand-Name Procurement Certification \_\_\_\_\_
- Exhibit 21 – Americans with Disabilities Act (ADA) Update \_\_\_\_\_
- Exhibit 22 – NTD Closeout Letter \_\_\_\_\_
- Exhibit 23 – Application Checklist \_\_\_\_\_

\_\_\_\_\_  
Signed by Official

\_\_\_\_\_  
Title of Official

\_\_\_\_\_  
Date

**APPENDIX A**  
**INFORMATION SUPPORTING FINANCIAL CAPACITY, TECHNICAL CAPACITY,  
SATISFACTORY CONTINUING CONTROL, MAINTENANCE CAPABILITY**

Financial Capacity: This is a determination by FTA that the applicant has been found to have the financial capacity to carry out the project. Simply stated, the applicant must have the financial wherewithal to adequately address any known and unknown situations that may arise in the course of project business. FTA refers to the following FTA circular as a basis for determining the grant applicant's financial capacity to receive a Capital Program grant: FTA Circular 7008.1, "FTA Financial Capacity Policy." Two aspects are considered: one is the general financial condition of the transit operator and, two, is financial capability.

Technical Capacity: The FTA must determine that the grant applicant has or will have the technical capacity to carry out the project before awarding the applicant any Capital Program grants. Technical capacity refers to the capability to carry out and manage Federal grants. The applicant must demonstrate that they will carry out the project as stated in the grant agreement, comply with all applicable laws and regulations, and implement sound management practices. This is done when the applicant completes the required certification. The certification language is found in Category I, Item B, "Standard Assurances," in Appendix C of FTA Circular 9300. 1B "Capital Program: Grant Application Instructions." Guidelines for implementing sound management practices can be found in FTA Circular 5010. 1C, "Grant Management Guidelines." In addition, grant applicants must submit a proposed project milestone schedule and certify that its procurement system will comply with all the requirements stated in FTA Circular 4220.1F, "Third Party Contracting Requirements."

Satisfactory Continuing Control: FTA must determine that the grant applicant has or will have satisfactory continuing control over the use of property acquired with Federal assistance before awarding the applicant any Capital Program grants. The grantee must ensure that the property is used in transit service, must dispose of it in accordance with Federal requirements, and must provide safeguards against loss, theft, or damage. FTA has identified a number of factors that must be considered to determine if satisfactory continuing control is being carried out by the grantee, and some of those factors include the following: keeping a copy of the lease agreement if the grantee leases vehicles or having provisions for control if the vehicle is contracted; conducting biennial inventories of real property; adhering to requirements for removing real or personal property from service; and for grantees with 50 or more buses they must adhere to the spare ratio requirement and establish contingency plans.

Maintenance Capability: The grantee must keep equipment and facilities acquired with Federal assistance in good operating order. This also includes maintenance of rolling stock (revenue and non-revenue), machinery and equipment, and facilities. The grantee must comply with regulations of the Americans with Disabilities Act of 1990 (ADA) that requires all accessibility items such as lifts, elevators, and securement devices to be well-maintained and fully operational. A maintenance plan is required that outlines its goals and objectives for carrying out the maintenance program along with developing a system to record and enforce warranty claims.

## **APPENDIX B CIVIL RIGHTS SUBMISSION**

- A. Annual DBE Goal – Section 1101(b) of TEA-21 requires that not less than 10 percent of funds authorized by Congress for transit-related projects be contracted to Disadvantaged Business Enterprises (DBE) (including those owned by women). Consequently, if a grantee receives \$250,000 or more in FTA capital and/or operating assistance in a year (not counting funds for the purchase of transit vehicles), then the grantee is required to submit an Annual DBE Goal to FTA for approval. Also, the DBE Program must indicate actions taken to achieve this goal. This Annual DBE Goal should be submitted to the FTA Regional Office 60 days prior to the beginning of each federal fiscal year (60 days before October 1) in order to obtain FTA approval for awarding of the grant.
- B. DBE Program – Pursuant to DOT Regulations, the grantee must assure DOT that disadvantaged business enterprises (DBEs) (including women-owned) be provided maximum opportunity to compete for FTA-assisted contracts and participate in FTA-assisted projects. The essential elements that must be included in the DBE Program are listed in FTA Circular 4716. 1A, “FTA Disadvantaged Business Enterprise Requirements for Recipients and Transit Vehicle Manufacturers.”
- C. EEO Program – Applicable to grantees with 50 or more employees who have received \$1 million or more dollars in the previous fiscal year. This program ensures grantees implement steps to adhere to equal opportunity guidelines for employees and job applicants, without regard to race, color, creed, national origin, sex, age, or disability. Program information can be found in FTA Circular 4704.1 “Equal Employment Opportunity Program Guidelines for Grant Recipients.” The focal point of this program is the grantee’s requirement to conduct a workforce analysis to identify job categories and levels of employment in which minorities and women are underrepresented, and taking corrective action after identifying those categories and levels. The EEO Program must be updated every three years and then submitted to FTA.
- D. ADA (Transportation of Persons with Disabilities) – Compliance with the Americans with Disabilities Act of 1990 (ADA) and with Section 504 of the Rehabilitation Act of 1973, as amended, are eligible requirements for receiving federal financial assistance. Section 504 prohibits discrimination on the basis of handicap while the ADA and DOT Regulations at 49 C.F.R. Parts 27, 37, and 38, prohibit discrimination against individuals with disabilities in the provision of transportation service. The ADA Regulations specify requirements relating to vehicle accessibility for the transportation of persons with disabilities in vehicles that provide fixed-route service, demand responsive service, and complementary paratransit service. These vehicles can be new, used, remanufactured or rebuilt. Please reference the DOT regulations cited above, 49 C.F.R. Parts 27, 37, and 38.

**APPENDIX C**  
**FTA SCOPE AND ACTIVITY LINE ITEM CODES**

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## **APPENDIX D QUARTERLY PROGRESS REPORTS**

### **Quarterly Progress Reports**

Grant Management Guidelines (FTA Circular 5010.1C) requires Urbanized Area Formula Program recipients to complete quarterly progress reports for grants which include capital and/or planning assistance in the Program of Projects. For operating assistance projects only, a quarterly Statement of Revenues and Expenses is required. At a minimum the progress reports should include the following:

- A description of budget or schedule changes during the reporting period;
- A comparison of scheduled activities and budgeted expenditures with actual accomplishments for the period;
- A summary of reasons why any scheduled milestones were not met and a remedy to resolve the problems; delays should also be discussed along with steps outlined to minimize them;
- A list of all outstanding claims exceeding \$100,000 and all claims settled during the reporting period. There should also be a brief description and reasons for the claims;
- Projected activities planned for the next quarter and the steps proposed to carry them out;
- Any expected changes in the scheduled activities;
- Any available photographs of the project; and
- Quarterly Preventive Maintenance and Spare Ratio Report

An original report **MUST** be submitted to the GDOT Office of Intermodal Programs in Atlanta by the 10th day after the end of the quarter. This documentation must be completed on the form located on page 81 for every 5309 active grants on file for the sub-recipient. It is imperative that the sub recipient make comments whether or not activity has occurred on the project. If there has been no activity it is still the sub recipient's responsibility to explain why no activity has taken place.

## FTA Grant Milestones Quarterly Report\*

<b>Transit Agency</b>	<b>ABC Transit</b>	<b>Date</b>	1st Quarter FY 2010
<b>GDOT District</b>	7 - Transitville, GA		
<b>Federal Grant No.</b>	<b>GA-03-0006</b>	<b>Contact Person:</b>	Jane Transit
<b>State Contract No.</b>	<b>MTG00-0123-00-023</b>	<b>Phone Number:</b>	706-623-4730

Budget Activity Number	Budget Line Item Description	Approved Budget	Budget Changes	Current Budget	Amount Expended	Percentage Complete
11.13.03	Purchase three (3) 30ft Diesel Buses	\$1,000,000	\$ -	\$1,000,000	\$784,000	78%

**Progress During this Quarter**

ABC Transit has confirmed with Atlanta Bus Company that Busses #2 and #3 are nearing completion and will be ready for delivery, according to the revised estimated completion dates shown below.

	Original Estimated Completion Date (Month, Day, Year)	Revised Estimated Completion Date (Month, Day, Year)	Actual Completion Date (Month, Day, Year)	Comments
<b>RFB/IFB Out for Bid</b>	7/1/2008	n/a	7/1/2008	RFB prepared and issued to 32 vendors within the area.
<b>Contract Award</b>	8/15/2008	9/1/2008	9/15/2008	Proposals submitted from 5 competitive contractors. ABC Transit Board called a special session to evaluate submissions which delayed the completion date. After careful consideration, Atlanta Bus Company was selected as the most qualified contractor. Atlanta Bus was paid \$200,000 to begin work.
<b>Final Specifications Delivered</b>	9/1/2008	9/30/2008	9/20/2008	During the special session, the Board solidified specifications and delivered final orders to Atlanta Bus Company permitting them to begin work.
<b>First Bus Delivered (if applicable)</b>	8/1/2009		6/1/2009	The first bus was delivered ahead of schedule and the Board has made a few minor changes to the options and decal package. However, the agency was satisfied and authorized Atlanta Bus to accelerate by proceeding with work on bus #2 and #3 simultaneously. ABC Transit has increased their 2nd payment to \$584K in order to pay the remaining \$1 50K for Bus 1 and meet the 2/3 requirements for Buses 2 and 3.
<b>Second Bus Delivered (if applicable)</b>	6/1/2010	7/1/2010		
<b>Last Bus Delivered (if applicable)</b>	3/1/2011	7/1/2010		
<b>Contract Complete</b>	5/1/2011	10/1/2010		

\*Comments must be provided if any dates are revised. For any lapsed dates, a new estimated date is required along with explanation in the comments column.  
\*Dates must be indicated Month, Day and Year.

<b>Types of Vehicles (if applicable):</b>	P3R Coach Deluxe	<b>Name of Contractor or Manufacturer (vehicle only):</b>	Atlanta Bus Company
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**APPENDIX E-1**  
**REIMBURSEMENTS FOR FEDERAL AND STATE FUNDS**

To request reimbursement for items purchased with federal funds (Section 5309 your agency will need to complete the following process:

1. A letter must be submitted requesting reimbursement for all qualifying expenses. The letter must include:
  - (a) the total of the costs submitted for reimbursement;
  - (b) the grant number and the GDOT contract number associated with the reimbursement;
  - (c) the date of acceptance; and
  - (d) the source of matching funds.

A sample letter is included with the certification forms following these instructions.

2. A copy of **all** invoices associated with the total costs identified in the reimbursement request letter must be submitted.
3. Pre-Award / Post-Delivery Certification forms must be submitted. These certifications include Pre-Award and Post-Delivery Purchaser's Requirements Certification (all vehicle purchases), Pre-Award and Post-Delivery Buy America Certification, Federal Motor Vehicle Safety Standards (FMVSS) Certification, and Altoona Bus Testing Certification (for all purchases qualifying under 49 CFR 665).
4. Send copy to GDOT and keep the originals for your files.
5. Mail the documents described above to:

Steven J. Kish, Transit Program Manager  
Georgia Department of Transportation  
Division of Intermodal Programs  
One Georgia Center, Plaza Level  
600 West Peachtree Street, NE  
Atlanta, Georgia 30308-2214

6. All Section 5309 Contracts should be closed out within two years. A request for closeout is to consist of a letter to the Transit Program Manager referencing the contract number and requesting that the contract be closed. An example letter is provided in Appendix G.

**APPENDIX E-2**  
**REIMBURSEMENTS FOR FEDERAL AND STATE FUNDS**

April 22, 2010

Steven J. Kish, Transit Program Manager  
Georgia Department of Transportation  
Division of Intermodal Programs  
One Georgia Center, Plaza Level  
600 West Peachtree Street, NE  
Atlanta, Georgia 30308-2214

Re: Reimbursement request for vehicle purchase

Dear Mr. Kish:

[Name of Transit Agency] has received delivery of X number of buses and is requesting reimbursement for the purchase of these vehicles. The following information has been provided per the reimbursement instructions provided by your office.

- The total cost for the purchase is \$\_\_\_\_\_.
- This reimbursement request is from Grant number [Insert Grant Number], Contract number [Insert Contract Number].
- The vehicles were accepted by our agency on [Insert Date].
- The source of local matching funds for this purchase was from City General Funds.

Attached are copies of the invoices for all expenses claimed in this reimbursement request. Required certification forms have also been included.

Please contact [Insert name of contact person] at [Insert phone number] if there is anything else needed to process this request.

Sincerely,

John Doe  
General Manager ABC Transit

**APPENDIX E-3**  
**REIMBURSEMENTS FOR FEDERAL AND STATE FUNDS**

(Example 2)

April 22, 2010

Steven J. Kish, Transit Program Manager  
Georgia Department of Transportation  
Division of Intermodal Programs  
One Georgia Center, Plaza Level  
600 West Peachtree Street, NE  
Atlanta, Georgia 30308-2214

Re: Reimbursement request for vehicle purchase

Dear Mr. Kish:

[Name of Transit Agency] has purchased items from the capital improvement contract mentioned above and is requesting a reimbursement of monies paid in the amount of [\$ amount requested for reimbursement]. The following information has been provided per the reimbursement instructions provided by your office.

- The total cost for the purchase is \$\_\_\_\_\_.
- This reimbursement request is from Grant number [Insert Grant Number], Contract number [Insert Contract Number].
- The vehicles were accepted by our agency on [Insert Date].
- The source of local matching funds for this purchase was from City General Funds.

Attached are copies of the invoices for all expenses claimed in this reimbursement request. Required certification forms have also been included.

Please contact [Insert name of contact person] at [Insert phone number] if there is anything else needed to process this request.

Sincerely,

John Doe  
General Manager ABC Transit

**APPENDIX F-1  
PRE-AWARD CAPITAL PURCHASE CERTIFICATION FORM**

- THIS PURCHASE WAS MADE FROM A STATE OF GEORGIA CONTRACT.**

**Initial all that apply.**

- PRE-AWARD PURCHASER'S REQUIREMENTS CERTIFICATION (purchases over \$5000)**

As required by Title 49 of CFR, Part 663-Subpart B, the organization identified below certifies by the signature of its authorized representative that the vehicle(s) listed below is/are the same product(s) described in the recipient's solicitation specification and that the proposed manufacturer is a responsible manufacturer with capability to produce a vehicle that meets the specifications.

- PRE-AWARD BUS TESTING**

**(all vehicle purchases other than unmodified sedans, station wagons, vans and minivans)**

The organization identified below certifies by the signature of its authorized representative, that the vehicle(s) obtained in this procurement complies with 49 U.S.C .A 5323(c) and FTA's implementation regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

- FEDERAL MOTOR VEHICLE SAFETY STANDARDS (FMVSS) CERTIFICATION**

The organization identified below certifies by the signature of its authorized representative that the vehicle described below meets all Federal Motor Vehicle Safety Standards (FMVSS) which are applicable to this type of vehicle. This also certifies that any modifications to the vehicle have not violated the integrity of the structure, design, or systems that have been tested to conform to the FMVSS for this vehicle.

- PRE-AWARD BUY AMERICA COMPLIANCE CERTIFICATION (purchases over \$100,000)**

As required by Title 49 of the CFR, Part 663-Subpart B, the organization identified below certifies by the signature of its authorized representative that the vehicle/equipment to be purchased from the vendor listed below meet(s) the requirements of Section 1 65(b)(3) of the Surface Transportation Assistance Act of 1982 as amended. The recipient listed below has reviewed documentation provided by the manufacturer, which lists (1) the proposed component and sub-component parts of the vehicle/equipment identified by the manufacturer, country of origin and cost; and (2) the proposed location of the final assembly point for the vehicle/equipment, including a description of the activities that took place at the final assembly point and the cost of final assembly.

**YEAR, MAKE, MODEL:** \_\_\_\_\_ **VIN:** \_\_\_\_\_

For certification of multiple vehicles of the same year, make, and model attach a list of the VINs for each vehicle.

**REGISTERED OWNER:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**SECURITY INTEREST HOLDER:** \_\_\_\_\_ **AGREEMENT #:** \_\_\_\_\_

**RECIPIENT AGENCY:** \_\_\_\_\_ **ADDRESS:** \_\_\_\_\_

**CITY:** \_\_\_\_\_ **STATE, ZIP:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

**APPENDIX F-2  
POST-DELIVERY CAPITAL PURCHASE CERTIFICATION FORM**

- THIS PURCHASE WAS MADE FROM A STATE OF GEORGIA CONTRACT.**

**Initial all that apply.**

- POST-DELIVERY PURCHASER'S REQUIREMENTS CERTIFICATION (purchases over \$5000)**

As required by Title 49 of CFR, Part 663-Subpart C, after visually inspecting and road testing the contract vehicle(s), the organization identified below certifies by the signature of its authorized representative, that the vehicle(s) listed below meet(s) the contract specifications.

- POST-DELIVERY BUS TESTING**

(all vehicle purchases other than unmodified sedans, station wagons, vans and minivans)

The organization identified below certifies by the signature of its authorized representative, that the vehicle(s) obtained in this procurement complies with 49 U.S.C .A 5323(c) and FTA's implementation regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

- FEDERAL MOTOR VEHICLE SAFETY STANDARDS (FMVSS) CERTIFICATION**

The organization identified below certifies by the signature of its authorized representative that the vehicle described below meets all Federal Motor Vehicle Safety Standards (FMVSS) which are applicable to this type of vehicle. This also certifies that any modifications to the vehicle have not violated the integrity of the structure, design, or systems that have been tested to conform to the FMVSS for this vehicle.

- POST-DELIVERY BUY AMERICA COMPLIANCE CERTIFICATION (purchases over \$100,000)**

As required by Title 49 of the CFR, Part 663-Subpart C, the organization identified below certifies by the signature of its authorized representative that the vehicle/equipment listed below meet(s) the requirements of Section 1 65(b)(3) of the Surface Transportation Assistance Act of 1982 as amended. The recipient listed below has reviewed documentation provided by the manufacturer, which lists (1) the component and sub-component parts of the vehicle/equipment identified by the manufacturer, country of origin and cost; and (2) the location of the final assembly point for the vehicle/equipment, including a description of the activities that took place at the final assembly point and the cost of final assembly.

**YEAR, MAKE, MODEL:** \_\_\_\_\_ **VIN:** \_\_\_\_\_

For certification of multiple vehicles of the same year, make, and model attach a list of the VINs for each vehicle.

**REGISTERED OWNER:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**SECURITY INTEREST HOLDER:** \_\_\_\_\_ **AGREEMENT #:** \_\_\_\_\_

**RECIPIENT AGENCY:** \_\_\_\_\_ **ADDRESS:** \_\_\_\_\_

**CITY:** \_\_\_\_\_ **STATE, ZIP:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

**APPENDIX G**  
**SAMPLE FINAL REIMBURSEMENT/CLOSEOUT LETTER**

This should be submitted on agency letterhead

DATE

Mr. Steven J. Kish  
Transit Program Manager  
Georgia Department of Transportation  
Intermodal Programs Division  
600 West Peachtree Street, NE  
Atlanta, Georgia 30308-3607

RE: Project No. (ENTER PROJECT NUMBER) Final Reimbursement Request/Contract Closeout

Dear Mr. Kish,

ENTER AGENCY NAME requests that project ENTER PROJECT NUMBER be processed for closeout. Please find the attached final zero (\$0.00) request for reimbursement for this contract. All payments have been received from this contact and we are ready to proceed with closeout.

If you have any questions on these matters, please contact (ENTER PRINCIPAL CONTACT) at (ENTER PHONE NUMBER).

Sincerely,

---

Signature of Designated Official

**APPENDIX H**  
**Fiscal Year 2010 Annual Listing of Certifications and Assurances**

**APPENDIX I  
FEDERALLY REQUIRED CONTRACT CLAUSES  
(Page 1 of 3)**

**APPLICABILITY OF THIRD-PARTY CONTRACT CLAUSES**  
*(excluding micro-purchases, except for construction contracts over \$2,000)*

CLAUSES	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Program fraud and false or fraudulent statements and related Acts	All	All	All	All	All
Access to Records	All	All	All	All	All
Federal changes	All	All	All	All	All
Civil Rights (EEO, Title VI & ADA)	All	All	All	All	All
Termination Provisions	All	All	All	All	All
Disadvantaged Business Enterprises (DBEs)	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	All	All	All	All	All
Buy America	≥\$25,000	≥\$25,000	≥\$25,000	≥\$25,000	≥\$25,000
Provisions for resolution of disputes, breaches, or other litigation			>\$100,000	>\$100,000	>\$100,000 (for steel, iron, Manufactured Products)
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000

**APPENDIX I**  
**FEDERALLY REQUIRED CONTRACT CLAUSES**  
**(Page 2 of 3)**

CLAUSES	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel
Fly America	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air
Davis Bacon Act				>\$2,000 (including ferry vessels)	
Contract Work Hours & Safety Standards Act		>\$2,500 (except transportation Services)	>\$2,500	>\$2,500 (including ferry vessels)	
Copeland Anti-Kickback Act				>\$2,500 (including ferry vessels)	
Bonding				>\$ 100,000	
Seismic Safety	A&E for New Buildings & Additions			New Buildings & Additions	
Transit Employee Protective Arrangements		Transit Operations			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit Operations			
Alcohol Misuse and Testing		Transit Operations			
Patent Rights	Research & Development				
Rights in Data and Copyrights Requirements	Research & Development				

**APPENDIX I  
FEDERALLY REQUIRED CONTRACT CLAUSES  
(Page 3 of 3)**

CLAUSES	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Energy Conservation	All	All	All	All	All
Recycled Products		Contracts for Items Designated by EPA, when Procuring \$10,000 or More per year		Contracts for Items Designated by EPA, when Procuring \$10,000 or More per year	Contracts for Items Designated by EPA, when Procuring \$10,000 or More per year
Conformance with ITS National Architecture	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects
ADA Access	Architectural & Engineering	All	All	All	
Notification of Federal Participation	>\$500,000	>\$500,000	>\$500,000	>\$500,000	>\$500,000

**APPENDIX J**  
**FEDERALLY REQUIRED AND OTHER MODEL CONTRACT CLAUSES**

**FEDERAL TRANSIT ADMINISTRATION**  
**BEST PRACTICES PROCUREMENT MANUAL<sup>1</sup>**

**TABLE OF CONTENTS (Appendix A - Governing Documents)**

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1. Fly America Requirements
2. Buy America Requirements
3. Charter Bus and School Bus Requirements
4. Cargo Preference Requirements
5. Seismic Safety Requirements
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31. Drug and Alcohol Testing

<sup>1</sup>The manual can be accessed using the following url: <http://www.fta.dot.gov/fta/library/admin/BPPM/appA1.html#BM29>

## **1. FLY AMERICA REQUIREMENTS**

**49 U.S.C. §40118**

**41 CFR Part 301-10**

### **Applicability to Contracts**

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

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

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

### **Flow Down Requirements**

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

### **Model Clause/Language**

The relevant statutes and regulations do not mandate any specified clause or language. FTA proposes the following language.

### **Fly America Requirements**

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

## **2. BUY AMERICA REQUIREMENTS**

**49 U.S.C. 5323(j)**

**49 CFR Part 661**

### **Applicability to Contracts**

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

### **Flow Down**

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

### **Mandatory Clause/Language**

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

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

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

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

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

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

Date\_\_\_\_\_

Signature\_\_\_\_\_

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

Title\_\_\_\_\_

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

*Georgia Discretionary Capital Program  
Administrative Guide*

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

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

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

**3. 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 \$2,500. These requirements do not apply to micro-purchases.

*Georgia Discretionary Capital Program  
Administrative Guide*

### **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.

## **3. 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 49 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.

## **4. 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 \$2,500. These requirements do not apply to micro-purchases.

### **Flow Down**

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

### **Model Clause/Language**

The MARAD regulations at 46 CFR 381.7 contain suggested contract clauses. The following language is proffered by FTA.

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

- a. 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. 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.); and
- c. 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.

## **5. SEISMIC SAFETY REQUIREMENTS**

**42 U.S.C. 7701 et seq. 49**

**CFR Part 41**

### **Applicability to Contracts**

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

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

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

### **Flow Down**

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

### **Model Clauses/Language**

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

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

## **6. ENERGY CONSERVATION REQUIREMENTS**

**42 U.S.C. 6321 et seq.**

**49 CFR Part 18**

### **Applicability to Contracts**

The Energy Conservation requirements are applicable to all contracts.

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

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

### **Flow Down**

The 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.

**7. CLEAN WATER REQUIREMENTS**  
**33 U.S.C. 1251**

**Applicability to Contracts**

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

**Flow Down**

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

### **Model Clause/Language**

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

**Clean Water** - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

### **8. BUS TESTING** **49 U.S.C. 5323(c)** **49 CFR Part 665**

#### **Applicability to Contracts**

The Bus Testing requirements pertain only to the acquisition of Rolling Stock/Turnkey.

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

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

#### **Flow Down**

The Bus Testing requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

#### **Model Clause/Language**

Clause and language therein are merely suggested. 49 CFR Part 665 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors. Bus Testing Certification and language therein are merely suggested.

**Bus Testing** - The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

- (1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
- (2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- (3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report,

which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

- (4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

#### CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS

The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

### **9. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS**

**49 U.S.C. 5323**

**49 CFR Part 663**

#### **Applicability to Contracts**

These requirements apply only to the acquisition of Rolling Stock/Turnkey.

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

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

#### **Flow Down**

These requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

#### **Model Clause/Language**

- Clause and language therein are merely suggested. 49 C.F.R. Part 663 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors.

- Buy America certification is mandated under FTA regulation, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. 663.13.
- Specific language for the Buy America certification is mandated by FTA regulation, "Buy America Requirements--Surface Transportation Assistance Act of 1982, as amended," 49 C.F.R. 661.12, but has been modified to include FTA's Buy America requirements codified at 49 U.S.C. A 5323(j).

**Pre-Award and Post-Delivery Audit Requirements** - The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

- (1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
- (2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.
- (3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

**BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT**

*(To be submitted with a bid or offer exceeding the small purchase threshold for Federal assistance programs, currently set at \$100,000.)*

Certificate of Compliance

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 C.F.R. 661.11:

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

Certificate of Non-Compliance

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

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

**Applicability to Contracts**

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

**Applicability to Micro-Purchases**

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

**Flow Down**

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

**Mandatory Clause/Language**

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

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

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

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

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

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

name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

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

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

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

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

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

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

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

\_\_\_\_\_  
Date

## **11. 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 \$2,500. These requirements do not apply to micro-purchases.

### **Flow Down**

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

### **Model Clause/Language**

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

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

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in

accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(1 1).

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

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

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

**Sources of Authority:**

<sup>1</sup> 49 USC 5325 (a)

<sup>2</sup> 49 CFR 633.17

<sup>3</sup> 18 CFR 18.36 (i)

## **12. FEDERAL CHANGES**

### **49 CFR Part 18**

#### **Applicability to Contracts**

The Federal Changes requirement applies to all contracts.

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

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

#### **Flow Down**

The 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.

## **13. BONDING REQUIREMENTS**

#### **Applicability to Contracts**

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

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment
- d. bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:

- (1) 50% of the contract price if the contract price is not more than \$1 million;
- (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- (3) \$2.5 million if the contract price is more than \$5 million.

d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

### **Flow Down**

Bonding requirements flow down to the first tier contractors.

### **Model Clauses/Language**

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

#### **Bid Bond Requirements (Construction)**

##### (a) Bid Security

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

##### (b) Rights Reserved

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

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

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

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

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

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

### (a) Performance bonds

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

### (b) Payment bonds

1. The penal amount of the payment bonds shall equal:

- (i) Fifty percent of the contract price if the contract price is not more than \$1 million.
- (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- (iii) Two and one half million if the contract price is more than \$5 million.

2. If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

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

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

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

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

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

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

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.

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

1. The penal amount of payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than \$1 million;

(ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(iii) Two and one half million if the contract price is increased.

### **Advance Payment Bonding Requirements**

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

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

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

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

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

## **14. CLEAN AIR**

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

### **Applicability to Contracts**

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

### **Flow Down**

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

### **Model Clauses/Language**

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

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

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

## **15. 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 \$2,500. These requirements do not apply to micro-purchases.

### **Flow Down**

These requirements flow down to all to all contractor and subcontractor tiers.

### **Model Clause/Language**

No specific clause is mandated, but FTA has developed the following language.

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

## **16. 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), 49 CFR 1 8.36(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 the written request of the contractor, that the applicable

standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

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

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

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

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

**(2) Withholding** - The [ *insert name of 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 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 [ *insert name of grantee* ]

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.

**Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid

(including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1 (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the [ *insert name of grantee* ] for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

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

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

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

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

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

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

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

(3) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

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

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

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

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

## **17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

### **Background and Application**

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, et seq. The Act applies to grantee contracts and subcontracts “financed at least in part by loans or grants from ... the [Federal] Government.” 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 1 8.36(i)(6). Although the original Act required its application in any construction contract over \$2,000 or non-construction contract to which the Act applied over \$2,500 (and language to that effect is still found in 49 CFR 1 8.36(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 work week in which he or she is employed on such work to work in excess of forty hours in such work week 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 work week.

**(2) Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week 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 money 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.

## **18. [RESERVED]**

## **19. 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 \$2,500. These requirements do not apply to micro-purchases.

### **Flow Down**

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

### **Model Clause/Language**

While no specific language is required, FTA has developed the following language.

#### **No Obligation by the Federal Government.**

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

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be

modified, except to identify the subcontractor who will be subject to its provisions.

## **20. 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 \$2,500. These requirements do not apply to micro-purchases.

#### **Flow Down**

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

#### **Model Clause/Language**

These requirements have no specified language, so FTA proffers the following language.

#### **Program Fraud and False or Fraudulent Statements or Related Acts.**

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

**21. TERMINATION**  
**49 U.S.C.Part 18**  
**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 effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

**Flow Down**

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

**Model Clause/Language**

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

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

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

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

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

in which cure is permitted and other appropriate conditions

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

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

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

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

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

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

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

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

**h. Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the

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

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

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

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

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

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

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

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

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

which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

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

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.

## **22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)** **49 CFR Part 29** **Executive Order 12549**

### **Background and Applicability**

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29. 220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29. 300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

### **Clause Language**

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

## **Suspension and Debarment**

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

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

## **23. 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 \$2,500. These requirements do not apply to micro-purchases.

### **Flow Down**

The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

### **Model Clause/Language**

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

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

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those

individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

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

## **24. 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 \$2,500. These requirements do not apply to micro-purchases.

### **Flow Down**

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

### **Model Clause/Language**

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

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

(1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) **Equal Employment Opportunity**- The following equal employment opportunity requirements apply to the underlying contract:

(a) **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq ., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal

statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## **25. BREACHES AND DISPUTE RESOLUTION**

### **49 CFR Part 18 FTA Circular 4220.1F**

#### **Applicability to Contracts**

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

#### **Flow Down**

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

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

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

**Disputes** - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise

furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

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

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

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

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

## **26. PATENT AND RIGHTS IN DATA** **37 CFR Part 401** **49 CFR Parts 18 and 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 \$2,500. These requirements do not apply to micro-purchases.

### **Flow Down**

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.

(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 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.

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.

## **27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS**

**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 \$2,500. These requirements do not apply to micro-purchases.

### **Flow Down**

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. § 53 10(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.

*Section 5309 Georgia Discretionary Capital Program  
Administrative Guide*

§ 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.

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

## **28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)** **49 CFR Part 26**

### **Background and Applicability**

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (see section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

### **Clause Language**

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees

concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

### **Disadvantaged Business Enterprises**

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is \_\_ %. A separate contract goal **[of \_\_ % DBE participation has] [has not]** been established for this procurement.

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

c. *(If a separate contract goal has been established, use the following)* Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

**[Bidders] [Offerors]** must present the information required above **[as a matter of responsiveness] [with initial proposals] [prior to contract award]** (see 49 CFR 26.53(3)).

*(If no separate contract goal has been established, use the following)* The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the **{insert agency name}**. In addition, **[the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the {insert agency name} and contractor's receipt of the partial retainage payment related to the subcontractor's work.]**

d. The contractor must promptly notify **{insert agency name}**, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of **{insert agency name}**.

**29. [RESERVED]**

**30. 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 \$2,500. These requirements do not apply to micro-purchases.

**Flow Down**

The incorporation of FTA terms has unlimited flow down.

**Model Clause/Language**

FTA has developed the following incorporation of terms language:

**Incorporation of Federal Transit Administration (FTA) Terms** - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F 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.

**31. DRUG AND ALCOHOL TESTING**

**49 CFR Part 655**

**49 CFR Part 40**

**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 \$2,500. These requirements do not apply to micro-purchases.

**Flow Down Requirements**

Anyone who performs a safety-sensitive function for the recipient or subrecipient is required to comply with 49 CFR Part 655, with certain exceptions for contracts involving maintenance services. Maintenance contractors for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance subcontractors.

## **Model Clause/Language**

### **Introduction**

FTA's drug and alcohol rules, 49 CFR Part 655, are unique among the regulations issued by FTA. 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 Part 655. 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. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules. Therefore, FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

### **Explanation of Model Contract Clauses**

Under Option 1, the recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 CFR Part 655. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. therefore, this may be a practical option only for those recipients which have a testing program for their employees, and can add the contractor's safety-sensitive employees to that program.

Under Option 2, the recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 CFR Part 655, but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that without adequate monitoring of the contractor's program, the recipient may find itself out of compliance with the rules.

Under option 3, the recipient specifies some or all of the specific features of a contractor's drug and alcohol compliance program. Thus, it requires the recipient to decide what it wants to do and how it wants to do it. The advantage of this option is that the recipient has more control over the contractor's drug and alcohol testing program, yet it is not actually administering the testing program. The disadvantage is that the recipient has to specify and understand clearly what it wants to do and why.

### **Drug and Alcohol Testing Option 1**

The contractor agrees to:

*(a) participate in (grantee's or recipient's) drug and alcohol program established in compliance with 49 CFR Part 655.*

### **Drug and Alcohol Testing Option 2**

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The contractor agrees further to certify annually its compliance with Part 655 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

### **Drug and Alcohol Testing Option 3**

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before (insert date or upon request) a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt (insert title of the Policy Statement the recipient wishes the contractor to use) as its policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval before ( insert date or upon request) a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to: (to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

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<sup>1</sup> Public Law No. 103-272, dated July 5, 1994 codified the Federal Transit Act as amended as Chapter 53 of Title 49 of the United States Code, which required new citations for all Federal Transit Laws. The Public Law repealed the Federal Transit Act and related provisions and reenacted them as Chapter 53 of Title 49 U.S. C. There were no substantive changes to the law due to codification.

<sup>2</sup> The information contained in this document is based on FTA Circular 9300.1B, "Capital Program: Grant Application Instructions", the Georgia Department of Transportation Manual of Guidance and other pertinent Federal and State regulatory guidelines. The information presented herein is not intended to be all inclusive; contact the Office of Intermodal Programs for more detailed instructions related to any topic presented in the document.

<sup>3</sup> In lieu of annual submissions to GDOT certain program compliance documentation must continue to be developed and maintained by grantees. Such documentation will be examined during the FTA Triennial Review but may be requested by DOT or FTA at any time during the project period.