City of Arlington, Texas

PURCHASING MANUAL

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Code of Ethics

The Financial Services Department/Purchasing Division believes that the following ethical principles should govern the conduct of every person employed by the City who procures goods and services.

- Believes in the dignity and worth of the service rendered by the City, and the societal responsibilities assumed as a trusted public servant.
- Is governed by the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the City and the public being served.
- Believes that personal aggrandizement or personal profit obtained through misuse of public or personal relationships is dishonest and will not be tolerated.
- Identifies and eliminates participation of any individual in operational situations where a conflict of interest may be involved.
- Believes that members of the City and its staff should, at no time, or under any circumstances, accept directly or indirectly, gifts, gratuities, or other things of value from suppliers, which might influence or appear to influence purchasing decisions.
- Neither seeks nor dispenses personal favors. Handles each administrative problem objectively and empathetically, without discrimination.

PURCHASING MANUAL

PART I: GENERAL INFORMATION

1.0 INTRODUCTION

The Purchasing Manual serves as a companion to the Procurement Policy, governing procurement of goods and services in the City of Arlington.

The Purchasing Division is a functional support division and should be included in all stages of acquisition, through planning, ordering, and receiving. A professional staff issues purchase orders (POs) and bids, and/or negotiates and executes contracts to deliver goods and services in a timely manner, to ensure compliance with the State of Texas competitive bid statutes and the City's purchasing policies.

2.0 PURPOSE AND SCOPE

The Purchasing Division is committed to providing quality service through effective teamwork and communication with City departments and suppliers alike, in order to fulfill the purchasing needs of the City in a professional, responsive and timely manner in compliance with all City policies and applicable federal, State, and local purchasing laws. Public purchasing entities have the responsibility to obtain the most value for the tax dollar in a fair, efficient and equitable manner. To achieve this objective, the Purchasing Division seeks to foster as much competition as possible. In doing so, we adopt the goal of fairness by ensuring all who wish to compete for the opportunity to sell to the City of Arlington can do so. Our goal is to:

1. Give all suppliers full, fair, prompt and courteous consideration;
2. Keep competition open and fair;
3. Solicit supplier suggestions in the determination of clear and adequate specifications and standards;
4. Cooperate with suppliers and consider possible difficulties they may encounter; and
5. Observe strict truthfulness and highest ethics in all transactions and correspondence.

3.0 OBJECTIVES

The primary objective of the City of Arlington's Purchasing Division is to be open and fair in all aspects of the procurement process. The Purchasing Division is responsible for ensuring that City departments comply with federal, state and local statutes regulating competitive sealed bids, competitive sealed proposals, professional services, high technology purchases, cooperative purchases, and emergency and sole-source purchases when obtaining goods and services. The Purchasing Division solicits for all competitive procurements as required by law, evaluates bids and proposals, and makes final recommendations to the Mayor and City Council for awarding of contracts.

3.1 The general duties of the Purchasing Division are as follows:

1. Observe and enforce the policy and procedures outlined in the City of Arlington Purchasing Policy or as directed by the City Manager or his/her designee;

2. Advise and assist in the formulation of policies and procedures connected with the purchasing activities of the City, and keep the Director of Finance advised of such policies and procedures;

3. Investigate and analyze research done in the field of purchasing by other governmental agencies

and by private industry, in an effort to keep abreast of current developments in the fields of purchasing, price, market conditions and new products;

4. Coordinate, organize, and assist departments in the specification writing process to ensure that specifications are written concisely and are not written in an exclusive manner;

5. Join with other governmental agencies in cooperative purchasing plans when it is in the best interest of the City;

6. Receive, open, and evaluate competitive solicitations;

7. Act in an advisory role as a non-voting member on evaluation committees;

8. Prepare and coordinate with user departments staff reports recommending award of competitive solicitations for City Council approval;

9. Combine purchases of similar items whenever possible and practical, to allow for better pricing and establish a more competitive atmosphere;

10. Assist department heads in the disposition of junk and scrap material such as pallets, scrap pipe, paper products, etc;

11. Dispose of stolen, abandoned and recovered property coming into the possession of the City;

12. Dispose of surplus City property at public auction and record disposition;

13. Issue Sales Tax Exemption Certificates and W-9 Federal Identification Number and Certification to vendors by request; (**Part III/Sections 14.1 and 14.2**)

14. Conduct a purchasing class each quarter for employees who process requisitions, conduct receiving, approve purchase orders, and/or develop specifications in the automated procurement system. Additionally, individual training by the assigned Purchasing Agent is available at the request of departments or as new information or policy updates become available.

3.2 Exceptions to the responsibilities of the Purchasing Division

The Purchasing Division does not issue sealed bid invitations for professional services, major building construction/renovations, street construction, water/sewer line construction, storm sewer, drainage, water towers, or treatment plants. These types of contracts are issued by the Public Works and Water Departments.

4.0 RESPONSIBILITIES OF THE USER DEPARTMENTS

1. **Each City department should plan their work so "rush orders" and emergency requests are kept to a minimum.**

2. Purchases of goods or services anticipated to be greater than $50,000 require bidding and council approval per state law and shall brought to the attention of the Purchasing Division as soon as the need is identified.

3. Departments are required to implement adequate advance planning for major purchases to allow for state-required bid, RFP, and/or quotation process. **Advanced planning requires the involvement of the Purchasing division as soon as the purchase or need is identified**.

4. Non-repetitive purchases of $2,999 or less may be made by departments through the Lawson purchasing system, or, if the purchase meets policy guidelines, using the City's procurement card.

5. Purchases of goods or services less than $100 must be made using the City's procurement card or petty cash, if available.

6. Departments are required to notify purchasing for any repetitive cumulative purchases that reach any designated quote or bid threshold.

7. Each City department shall submit all requisitions for goods & services via the automated procurement system (Lawson). Automated approvals are obtained at the appropriate quote thresholds and user authorities. For goods or services over $3,000, quotes are required per state law, unless otherwise exempted. For any goods or services over $50,000, the appropriate formal solicitation shall occur through Purchasing and appropriate City council approval shall be obtained prior to PO approval. Goods and Services covered by this policy shall not be entered into the eBuilder system, as it is solely for CIP (engineering and construction projects).

8. The department is required to allow sufficient lead-time for all quoted and solicited actions.

   a. The purchases of goods or services more than $3,000, but less than $50,000, shall be made on the basis of a minimum of three quotes. Per state law, at least two of the quotes must be from Historically Underutilized Businesses (HUBs) in Tarrant County, if any such HUBs are available. Verification of non-availability is required.

   b. **Departments are required to notify the Purchasing Division when any purchase is made using any type of federal funding (i.e., grant, transportation, homeland security, etc.)** This is to ensure that proper terms, conditions, and clauses can be added in order to preserve the funding and guarantee reimbursement.

   c. Departments may obtain the required quotes, but determination of the award shall be at the sole discretion of the Purchasing Agent.

   d. The Purchasing Division may assist departments in obtaining quotes, upon request or if determined necessary by the Purchasing Agent.

   e. Each City department should assist the Purchasing Division by suggesting, in writing, the contact information of known suppliers that have access to the particular item or items being requested, especially items of a technical nature.

   f. **No orders shall be placed without an approved PO number** or use of the City procurement card. Departments do not have the authority to order directly from a supplier without an approved purchase order, nor to negotiate any purchases between $3,000 and $50,000, without the consent of the Purchasing Division. (**See section 9.2 Unauthorized Purchases**)

   g. When using cooperative contracts, the department shall work with the Purchasing Division. The department is responsible for ensuring the resulting PO and any payments are in accordance with pricing and terms quoted in the cooperative being used.

   h. Purchases involving IT products, maintenance, or systems must have the prior approval

of the IT Governance Board. The Purchasing Division cannot proceed on these types of purchases without this written approval. The department is responsible for obtaining the approval and providing it to the Purchasing Division.

9. No employee shall purchase supplies, services, materials or equipment of any kind through the City of Arlington for personal use.

10. Each department head shall assume the responsibility of maintaining control of their departmental expenditures, including expenditures on annual contract.

    a. Specific appropriations are made in the annual operating budget for each department's budget.

    b. The Lawson purchasing system will not release requisitions for approval if the associated account number has insufficient budget. The department is responsible for correcting/adjusting budget to ensure orders can be placed.

11. Each department's Fixed Asset Coordinator shall be responsible for the control and safekeeping of the fixed asset inventory items assigned to his/her department.

    a. This control is to include procedures to update inventory for deletions and additions as defined in the Fixed Asset Manual, Appendix C, Fixed Assets.

    b. Prior to trading-in a tagged fixed asset as part of a purchase, the Department's Fixed Asset Coordinator shall notify the Fixed Asset Accountant of the trade; to include the cost of the new equipment without the trade-in.

    c. A copy of the vendor's quote and the Fixed Asset Accountant acknowledgement shall be forwarded to Purchasing prior to approving the purchase.

12. Departments are encouraged to closely monitor vendor performance. In the event that a vendor fails to perform in compliance with specifications, departments should complete and submit to the Purchasing Division, a Vendor/Contractor/Consultant Performance Report.
(**Part III/Section 14.3)**

5.0 PROCUREMENT METHODS

5.1 Quotes

1. Purchases of non-contract goods or services totaling $3,000 or less require no quotation. In such instances, departments should make every effort to use the City's procurement card.

   Except where otherwise exempted by applicable State law, purchases totaling $3,000 or more (but less than $50,000) require a minimum of three quotes, two of which must be from Tarrant County HUB vendors, if available and identified in the CMBL on the State website. All quotations received must be in writing from the vendor and will be evaluated by a purchasing agent who will then authorize and issue a purchase order through Lawson.

   Purchases of supplies and services exceeding $50,000 are processed by the Purchasing Division using sealed bid or other approved competitive solicitation method, and must comply with applicable State laws.

2. Local Government Code Chapter 252.0215 Competitive bidding in relation to HUB vendors, states that a municipality, in making an expenditure of more than $3,000 but less than $50,000, shall contact at least two HUBs on a rotating basis. If the list fails to identify a disadvantaged business in the county in which the City is situated, the City is exempt from this section.

HUB – Certified businesses that are at least 51% owned, operated, and controlled by the qualifying groups which include Asian Pacific Americans, Black Americans, Hispanic Americans, Native Americans and American Women.

To obtain a listing of all businesses certified by the State of Texas for Tarrant County visit https://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. A link to the this database is also available through the Purchasing Portal on the City's intranet.

5.2 Competitive Bids (Goods and Services)

1. Except as otherwise exempted by applicable State law, requisitions for item(s) whose aggregate total cost is more than $50,000 must be processed as competitive solicitations (e.g. sealed bids, request for proposals, and request for offers). Texas Local Government Code, Subchapter B, Section 252.021 defines the requirements for competitive bids.

   Under no circumstances shall multiple requisitions of $50,000 or less be used in combination to avoid otherwise applicable bidding requirements or City Council approval, which is required for all purchases of greater than $50,000. Refer to Purchasing Manual Section **9.0 VIOLATIONS** for details on this Class B Misdemeanor offense

2. The State of Texas Reciprocity Law provides that the State or political subdivision cannot award contracts or purchases to non-resident bidders having local preference laws in their resident states unless their bid is lower than the lowest bid submitted by a responsible Texas resident bidder by the amount that a Texas resident bidder would be required to underbid a nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located.

3. Award of Contract

   Texas Local Government Code, Section 252.043, states, in part:

   (a) If the competitive sealed bidding requirement applies to the contract for goods or services, the contract must be awarded to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the municipality.

   (c) Before awarding a contract under this section, a municipality must indicate in the bid specifications and requirements that the contract may be awarded either to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the municipality.

4. Time Requirements

   The time required for the processing of competitive sealed bids is generally twelve to fourteen weeks, depending on when the Purchasing Division receives the specifications and whether the order will be placed by a one-time purchase order or annual contract. The process consists of the following requirements:

a. Receipt of specifications;

b. Specifications are developed, drafted, and reviewed by the requesting department and the Purchasing Division;

c. Bid is advertised in the printed media and as required by law. By law, the bid cannot be opened until at least the 15th day after the initial advertisement;

d. Bid is posted on DemandStar and the City's own Supplier Portal where potential bidders are notified of the opportunity. Download is available to any interested party;

e. A pre-bid conference is held, if applicable;

f. Addenda are issued, as needed;

g. Bid is opened, tabulated, and evaluated and recommendation of award is forwarded to user department by the Purchasing Agent;

h. Staff report is prepared, presented to City Council for approval;

i. Receipt of all required insurance and bonds; and

j. If awarded, a PO or contract and an award letter are issued;

5.3 Request For Competitive Sealed Proposals (RFCSP)

1. **Texas Local Government Code Chapter 252.042 states:**

   (a) Request for Proposals (RFPs) made under Section 252.021 must solicit quotations and must specify the relative importance of price and other evaluation factors.

   (b) Discussions in accordance with the terms of a request for proposals and with regulations adopted by the governing body of the municipality may be conducted with offerers who submit proposals and who are determined to be reasonably qualified for the award of the contract. Offerers shall be treated fairly and equally with respect to any opportunity for discussion and revision of proposals. To obtain the best final offers, revisions may be permitted after submissions and before the award of the contract.

2. **Texas Local Government Code Chapter 252.049(b) states:**

   If provided in a RFP, proposals shall be opened in a manner that avoids disclosure of the contents to competing offerers and keeps the proposals secret during negotiations. All proposals are open for public inspection after the contract is awarded, but trade secrets and confidential information in the proposals are not open for public inspection.

3. Access to bidder-declared trade secrets or confidential information shall be in accordance with the Texas Government Code Chapter 552, the Public Information Act, and applicable City policies implementing this chapter.

4. Time Requirements

The time required for the processing of a RFCSP (proposal) is generally fourteen to twenty-four weeks, depending on the complexity of the specifications and scheduling of the City evaluation team. The process consists of the following requirements:

a. Receipt of specifications;

b. Specifications are developed, drafted, and reviewed by the requesting department and the Purchasing Division;

c. RFCSP is advertised in printed media as required by law. By law, the RFCSP cannot be opened until at least the 15th day after the initial advertisement;

d. Post proposal on DemandStar and the City's own Supplier Portal where potential bidders are notified of the opportunity. Download is available to any interested party;

e. A pre-proposal conference is held, if applicable;

f. Addenda are issued, as needed;

g. Proposal is opened and evaluated;

h. Presentations by bidders, if applicable;

i. Negotiate, if required;

j. Contract development, if applicable;

k. Staff report is prepared and presented to City Council for approval;

l. Receipt of all required insurance and bonds; and

m. If awarded, a PO or contract and an award letter are issued.

5.4 Professional Services

1. Texas Government Code, Chapter 2254, Subchapter A, Professional Services, states that contracts for the procurement of defined professional services may not be awarded on the basis of competitive bids. Instead, they must be awarded on the basis:

   (1) Of demonstrated competence and qualifications to perform the services;

   (2) For a fair and reasonable price;

   (3) Fees are allowed;

   (4) Must be consistent with and not higher than the recommended practices and fees published by the applicable professional associations; and

   (5) May not exceed any maximum provided by law.

2. Professional Services for the purposes of Government Code Chapter 2254 are defined as those "*services within the scope of the practice, as defined by state law, of accounting,*

architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, or professional nursing, or provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant, an architect, a landscape architect, a land surveyor, a physician, including a surgeon, an optometrist, a professional engineer, a state certified or state licensed real estate appraiser, or a registered nurse."

3. Personal and professional services are exempted from the competitive bidding process and are procured through the use of Request for Qualification (RFQ) documents. The Purchasing Division is available to consult with departments regarding the preparation of information; however, the presentation of technical and qualifications aspects of personal and/or professional services included in the RFQ documents is the sole responsibility of the requesting department.

4. City management has mandated that professional services contracts shall be encumbered through use of a PO in the Lawson financial system. This allows for more accurate tracking and payment in the official system of record.

5. City management has mandated that all professional services contracts shall include the City's Insurance requirements. Departments creating professional services contracts shall contact the City's Risk Management Division for details.

5.5 Automated Information Systems (High Technology Procurements)

1. Purchases involving IT products, maintenance, or automated systems must have the prior approval of the IT Governance Board. The Purchasing Division cannot proceed on these types of purchases without this written approval. The department is responsible for obtaining the approval and providing it to the Purchasing Division

2. Automated information systems include:

   a. The computers on which the information system is automated;

   b. A service related to the automation of the system, including computer software, or the computer; and

   c. A telecommunications apparatus or device that serves as a component of a voice, data, or video communications network for transmitting, switching, routing, multiplexing, modulating, amplifying, or receiving signals on the network.

3. Time Requirements

   a. The time required for the processing of a technology solicitation is fourteen to twenty-six weeks, depending on the complexity of the specifications.

4. Due to the complexity of technology specifications, process, and negotiations, **departments are required to route all technology procurements through the Purchasing Division**.

5.6 Cooperative Purchases

Cooperative purchasing occurs when two or more governmental entities coordinate some or all purchasing efforts to reduce administrative costs, take advantage of quantity discounts, share specifications, and create a heightened awareness of legal requirements. Cooperative purchasing can occur through interlocal agreements, state contracts, piggybacking, and joint purchases.

The Purchasing Division can help locate cooperative options, upon request, but it is the requesting department's is responsible for verifying that a current cooperative remains available for use throughout the life of the purchase. The department is also responsible for verifying that any resulting Purchase Orders and invoices reflect the pricing and terms contained in the referenced cooperative and, in the case of negotiable cooperatives such as State of Texas DIR, the vendor, pricing, scope must be detailed prior to issuance of the Purchase order.

5.6.1 Interlocal Agreement Purchases

Texas Government Code Chapter 791, Interlocal Cooperation Act, allows local governments to contract with and between one another, to provide governmental functions and services, as well as join together in contracting with other entities to provide goods and services.

5.6.2 State Contract Purchases

Texas Local Government Code Chapter 271, Subchapter D, § 271.081-271.083, State Cooperation in Local Purchasing Programs, allows local governments to purchase items on the State's purchasing contracts and allows the State to solicit bids on the local government's behalf when considered feasible by the State.

The Texas Department of Information Resources (DIR) has a web-based bulletin board system service to download price sheets on various products. DIR offers business systems planning, analysis, design, application development, assistance with telecommunications and video-conferencing network planning, management, and implementation. DIR has working agreements with training providers that offer the best pricing available to government organizations, regardless of size. Refer to www.dir.state.tx.us.

5.6.3 Piggybacking

Piggybacking occurs when one governmental agency purchases for itself and for others as a convenience to the others. Both governmental agencies should protect themselves by establishing an agreement in writing, even when the arrangement is informal. The agreement should specify the duties and responsibilities of each party.

5.6.4 Joint Purchases

Joint purchasing occurs when two or more governmental agencies join together to purchase one or more items. This may involve each entity handling part of the administrative duties or agreeing to have one entity handle the transactions under the guidance of other entities. All parties to a purchase must agree to the product specifications so that the result will be a satisfactory purchase for all involved entities.

5.7 Emergency Purchases

The Legislature exempted certain items from sealed bidding in the **Vernon's Texas Codes Annotated - Local Government Code Section 252.022(a)**, including but not limited to:

1. *A procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality;*
2. *A procurement necessary to preserve or protect the public health or safety of the municipality's residents;*
3. *A procurement necessary because of unforeseen damage to public machinery, equipment or*

other property.

5.7.1 Definition of a Valid Emergency Purchase

Valid emergencies are those that occur as a result of the breakdown of equipment which must be kept in operation to maintain the public's safety or health, or whose breakdown would result in the disruption of City operations.

Care should be taken to avoid emergencies created by negligence. Most vendors will charge a premium if labor, supplies or materials are required immediately. Better prices can usually be obtained if the material is purchased on sealed, written bids. Most vendors will go through the manufacturers for a price that is lower than the vendor's wholesale price.

Typical examples of emergencies created through negligence are: depletion of stock due to neglect; emergency orders for materials for projects which could have been planned weeks or months ahead, etc. Abuse of the emergency purchase procedure is justification to withhold issuance of additional confirming POs.

5.7.2 Emergency Purchase Procedures

1. If an emergency arises <u>during</u> normal office hours:

    a. The requesting department should immediately enter a purchase requisition into Lawson and contact the Purchasing Division concerning the fact that an emergency situation exists. If the normal department approver is unavailable, the Purchasing Division can expedite the issuance of a purchase order number.
    b. The department should place the order immediately upon issuance of the purchase order number.

    If an emergency arises <u>after</u> normal office hours:

    a. Requesting department should keep accurate and factual documentation concerning the nature and cause of the emergency. Include price quotations received by telephone and confirmed in writing by the vendor. A requisition for the purchase must be entered into Lawson, if possible. If the purchase can be immediately approved to purchase order, the department may place the order with the vendor, using the resulting purchase order number.

    b. If the purchase can not be immediately approved to purchase order for any reason, the department will maintain all applicable documentation and proceed in placing the order with the vendor.

    c. No later than the following workday, contact the Purchasing Division for appropriate follow-up and issuance of a valid purchase order number. The assigned Purchasing Agent will make all required documentation in Lawson and ensure that the vendor is contacted with the correct purchase order number.

5.8 Sole Source Purchases

5.8.1 Definition

Sole-source purchases are items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies as defined by local government code.

When a department has identified a specific item with unique features or characteristics essential and necessary to the requesting department and no alternate products are available, a detailed written justification must be provided to the Purchasing Division in advance for review and approval.

5.8.2 Legal Definition

The legislature exempted certain items from sealed bidding in the Vernon's Texas Codes Annotated - Local Government Code Section 252.022 (a) 7, in part: Procurement of items available from only one source, including:

A. *items available from only one source because of patents, copyrights, secret processes, or natural monopolies;*

B. films, manuscripts, or books;

C. gas, water and other utility services;

D. captive replacement parts or components for equipment;

E. books, papers, and other library materials for a public library that are available only from the person holding exclusive distribution rights to the materials; and

F. management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits.

5.8.3 Sole Source Documentation

The department shall provide the Purchasing Division with:

1. A completed copy of the sole-source document. (**Section 14.4**)

2. A sole source letter from the vendor, on that company's letterhead, stating why the item being purchased is sole-source. This letter shall include item description, patent, copyright, and/or other pertinent information that will assist the Purchasing Division in making the decision as to whether or not the item is acceptable as sole source. The letter will remain valid for one year from the date of approval.

6.0 CAPITAL ITEMS

All capital items, regardless of dollar amount, are to be procured by the Purchasing Division or as directed by the City Manager or his/her designee. Capital items are those items costing $5,000 or more and having a useful life of more than one year. Items costing less than $5,000 should not be charged to a capital account. Capital items with a purchase price of $5,000 or more are considered fixed asset capital expenditures and should be charged to the appropriate fixed asset accounts.

Contact the Finance Fixed Asset Accountant for instructions regarding procedures for asset tagging and disposition.

6.1 Deficiency in Budgeted Amount for Capital Purchase

The adoption of the annual operating budget by the City Council is an expression of intent on its part to accomplish the projects and purchase capital equipment itemized in the budget document. This expression of intent is based on the estimated costs of projects and capital equipment. If the actual cost

for a capital equipment item exceeds the amount appropriated in the annual operating budget by more than ten percent (10%), including shipping and handling, specific written authorization must be obtained from a Deputy City Manager or his/her designee prior to issuance of a purchase order.

7.0 BIDDING REQUIREMENTS

7.1 Pre-Bid/Pre-Proposal Conferences

Pre-bid and pre-proposal conferences are held whenever it is determined that such a conference is needed and allowed by law. Pre-bid and pre-proposal conferences may be held for projects that involve installation on City property and/or when warranted by the complexity of the work.

7.2 Opening of Bids

Competitive sealed bids shall be publicly opened, read aloud, and recorded at a designated location at the scheduled date and time. All vendors submitting bids are invited to attend these bid openings, as well as City personnel representing the division/department and other interested parties.

The City will return late bids unopened. A photocopy of the time-stamped envelope will be retained in the file. Bids may be withdrawn at any time prior to the official opening. Bids may not be altered, amended or withdrawn after the official opening without the recommendation and approval of the Purchasing Agent.

7.3 Evaluation of Bids

The Purchasing Agent, and other City personnel as required, will evaluate all competitive bids, proposals, and/or offers received in accordance with the evaluation criteria established and included in the solicitation documents. If necessary, an evaluation team will be established.

7.3.1 Lowest Responsive And Responsible Bidder

1. A **responsive** bidder is defined to be one who submits a completed sealed bid packet within the stated time deadline and in accordance with the bid specifications.

2. A **responsible** bidder is defined to be one who demonstrates specific selection criteria responses that define whether the company can successfully deliver the supplies, equipment, or services.

7.3.2 Best Value Bidder

Texas Local Government Code, Section 252.043, states, in part:

In determining the best value for the municipality, the municipality may consider:

1. the purchase price;

2. the reputation of the bidder and of the bidder's goods or services;

3. the quality of the bidder's goods or services;

4. the extent to which the goods or services meet the municipality's needs;

5. *the bidder's past relationship with the municipality;*

6. *the total long-term cost to the municipality to acquire the bidder's goods or services; and*

7. *any relevant criteria specifically listed in the request for bids or proposals*.

7.4 City Council Action – Recommendation for Award

Staff reports are prepared in accordance with City Manager's Office requirements. The Mayor and City Council approve all contracts, purchase orders, and change orders $50,000 or greater. While the Purchasing Division generally submits staff reports, the division/department is responsible for providing any information necessary to complete them.

7.5 Bid Protest

1. Any actual bidder or contractor who is aggrieved in connection with a bid invitation or award of a contract may protest to the City's Purchasing Manager. The protest must be submitted in writing within five (5) business days after public posting of the Recommended Award. Only written protests shall be considered. The protest letter must be signed and include the following information:

   a. Name, address, and telephone number of the protester;

   b. The bid/proposal or contract number;

   c. A detailed statement of the legal and factual grounds for protest, information demonstrating its timeliness, copies of relevant documents, and reasons the protest should be sustained; and

   d. A specific request for a ruling by the Purchasing Manager.

2. Failure to provide this information may result in a determination that the protest is without merit.

3. The decision of the City is final.

   3. If the <u>bid or proposal has not been opened</u> and there is a protest regarding overly restrictive specifications, omissions, ambiguous or indefinite evaluation factors, or other concerns, protesters are to contact the Purchasing Agent to explain any concerns, not later than five (5) business days before the bid or proposal is scheduled to be opened. If the protest is determined to have merit, the Purchasing Agent will make a reasonable effort to issue an addendum, extend the bid opening date, or resolve any issue prior to the bid opening or receipt of bids/proposals.

7.6 Bond Requirements

7.6.1 Bid Bonds/Proposal Guarantees

A bid bond/proposal guarantee, issued by the bidder's/proposer's surety, is a legal document used to bind the vendor to honor the bid/proposal. In the event the vendor fails to honor a bid/proposal, the bid bond/proposal guarantee may be forfeited and the issuing surety shall pay the City the amount of the bond/guarantee to defray the City's cost. Bid bonds/proposal guarantees shall, as a general rule, be five percent (5%) of the bid/proposal amount. In certain procurements a dollar amount may be specified in place of a percentage. The issuing surety must be a company authorized to conduct

business in the State of Texas.

7.6.2 Payment Bonds

A payment bond, generally, in an amount of one hundred percent (100%) of the contract amount is a legal document insuring faithful payment by the vendor of all invoices for materials, labor, subcontractors, taxes, and any/all other expenses relative to the contract. In the event of vendor's failure to pay any/all of the costs relative to the contract, the bonding company becomes liable. In accordance with Texas Government Code Chapter 2253, payment bonds are required for all public works contracts in excess of $25,000.

7.6.3 Performance Bonds

A performance bond in the amount of one hundred percent (100%) of the contract amount is a legal document insuring faithful performance of the work of the contract by the vendor. In the event of contractor's failure to perform the work, the surety is liable for the satisfactory completion of the work or may pay the City up to the full bond amount. A performance bond is required for all public works (construction contracts) in excess of $100,000.

Subject to the requirements of applicable law, the Purchasing Division, with input from the department, shall determine whether a performance bond will be required. While the decision is discretionary, the decision shall take into consideration the work to be performed or system/subsystem to be developed. Performance bonds must be submitted by the successful vendor along with the duly executed contract documents prior to receiving a "Notice to Proceed" for the work.

7.6.4 Other bonds such as fidelity bonds, etc., and additional requirements will be imposed on a case-by-case basis.

7.7 Insurance Requirements

7.7.1 When contract work is to be performed on City property, the contractor must provide proof of required insurance coverage. Standard coverage and requirements have been established by the Management Resources Department, Risk Management Division. (**Exhibit VII**)

7.7.2 The insurance coverage and amounts are determined by the potential risk or loss to the City. These coverage and amounts are established at the time the bid/proposal packages are being prepared and are included as requirements in the package.

7.7.3 The successful bidder or proposer is required to submit an appropriate Certificate Of Insurance (COI) reflecting that all required coverage are in effect and current, along with the executed contract documents and required bonds or proposal guarantee.

7.8 Change Orders to Existing Purchase Orders and Contracts

7.8.1 Change orders are contract changes made after execution of the contract to effect necessary changes to plans and specifications or to increase/decrease the scope or quantity of the work to be performed or the materials, equipment, or supplies to be furnished.

7.8.2 Change orders are only accomplished by the Purchasing Division. The initiating department or vendor can contact the assigned Purchasing Agent to begin the process. Appropriate documentation is required and the Agent will ensure that the documentation is placed with the appropriate bid files. With the exception of a legally defined *emergency purchase*, no contract work or changes may begin prior to the issuance of a *Notice To Proceed*.

7.8.3 Per State law, the original amount of a set-quantity contract may not be increased with a change order by more than twenty-five percent (25%). The original amount of a contract may not be decreased with a change order by more than twenty-five percent (25%) without the written consent of the contractor.

7.8.4 Change orders to the original contracts that are $50,000 or greater must be presented to the City Council for approval.

7.9 Federal Funding

7.9.1 The use of federal funds for City purchases may require the addition of certain assurance clauses or special language. In some cases, this can require use of a specific type of procurement process. Failing to identify use of federal funds during the planning phases of the bid process can result in a deficient bid and threaten the continued availability of the funding. Departments are required to notify the Purchasing Division whenever a bid is to include federal funding.

7.9.2 In the instance of any City-wide contract in which affects the Handitran Division, the Federal Transportation Authority requires the addition of certain assurance clauses. These clauses are required to be included in the bid documents and the owner department is responsible for identifying Handitran participation. Refer to **Section IV, Attachments 1 and 2**, related to Handitran/FTA clauses.

8.0 LEGAL REQUIREMENTS

8.1 Exemptions from Competitive Bidding

Per Vernon's Texas Codes Annotated – Local Government Code, Section 252.022, there are general exemptions to the competitive bidding requirements, including:

a. A procurement made because of public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality;

b. A procurement necessary to preserve or protect the public health or safety of the municipality's residents;

c. A procurement necessary because of unforeseen damage to public machinery, equipment, or other property;

d. A procurement for personal, professional services, or planning services;

e. A procurement for work that is performed and paid for by the day as the work progresses; and

f. A purchase of land or a right-of-way;

g. Goods subsequently sold by the City (i.e., resale).

8.2 Advertising Requirements

Vernon's Texas Codes Annotated - Local Government Code, Section 252.041(a) states:

Whenever the competitive sealed bidding requirement applies to the contract, notice of the time and place at which the bids will be publicly opened and read aloud must be published at least once a week for two consecutive weeks in a newspaper published in the municipality.

The date of the first publication must be before the 14th day before the date set to publicly open and read them aloud. If no newspaper is published in the municipality, the notice must be posted at the City hall for 14 days before the date set to open the bids and read them aloud.

8.3 Identical Bids

Vernon's Texas Codes Annotated - Local Government Code, Section 271.901 states in part:

(a) *If a municipality or district is required to accept bids on a contract and receives two or more bids from responsible bidders that are identical, in nature and amount, as the lowest and best bids, the governing body of the municipality or district shall enter into a contract with only one of those bidders and must reject all other bids.*

(b) If only one of the bidders submitting identical bids is a resident of the municipality or district, the municipality or district must select that bidder. If two or more of the bidders submitting identical bids are residents of the municipality or district, the municipality or district must select one of those bidders by the casting of lots. In all other cases, the municipality or district must select from the identical bids by the casting of lots.

(c) The casting of lots must be in a manner prescribed by the mayor of the municipality or the governing body of the district and must be conducted in the presence of the governing body of the municipality or district. All qualified bidders or their legal representatives may be present at the casting of lots."

8.4 Cumulative Purchases

The legislature defined certain cumulative purchases as "separate", "component" and "sequential" and defined them as follows in the Vernon's Texas Codes Annotated - Local Government Code, Section 252.001:

1. "Component purchases" means purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.
2. “Separate purchases," means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.
3. "Sequential purchases" means purchases, made over a period, of items that in normal purchasing practice would be purchased in one purchase."

Generally accepted purchasing practice interprets these definitions to mean that separating large purchases into multiple small purchases to avoid the competitive bidding process is not legal under the State statutes. The Purchasing Division is making every effort to establish annual contracts for those items that may exceed the $50,000 limit. Departments shall bring to the attention of the Purchasing Department any material, supplies or products that are not on annual contract and for which the anticipated usage will be near or exceed the $50,000.

9.0 VIOLATIONS

9.1 Violations of the Competitive Bidding Statutes

Vernon's Texas Codes Annotated, Local Government Code, Section 252.062 states:

(a) *A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements of Section 252.021. An offense under this subsection is a Class B Misdemeanor.*

(b) *A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly violates Section 252.021, other than by conduct described by Subsection (a). An offense under this subsection is a Class B Misdemeanor.*

(c) *A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly violates this chapter, other than by conduct described by Subsection (a) or (b). An offense under this subsection is a Class C Misdemeanor.*

9.2 Unauthorized Purchases

All purchases must be properly placed and approved by a person granted signature authority. An unauthorized purchase includes any purchase made without proper approval through the Purchase Order (PO), procurement card, or petty cash method. An unauthorized purchase also includes any purchase made without proper management or council approval where required by State of Texas law and/or City of Arlington Administrative Regulations. An unauthorized purchase is the responsibility of the person placing the order. **Departments found in violation of this section will be required in writing to provide detailed description of incident and any corrective actions taken**.

9.3 Penalties For Violation

Vernon's Texas Codes Annotated, Local Government Code, Section 252.063(a) and (b) states:

The final conviction of a municipal officer or employee for an offense under Section 252.062(a) or (b) results in immediate removal from office or employment of that person. For four years after the date of the final conviction, the removed officer or employee is ineligible:

1. to be a candidate for or to be appointed or elected to a public office in this state;

2. to be employed by the municipality with which the person served when the offense occurred; and

3. to receive any compensation through a contract with that municipality.

10.0 EXCESS/SURPLUS PROPERTY

10.1 Surplus Property

Furniture, fixtures, equipment, or supplies, which are no longer needed by a department, become excess or surplus property.

10.2 Recycling Surplus Property

1. Surplus property that is still in good condition and/or mechanically sound shall be retained by the departments and placed on the City surplus item listing located on the Purchasing Portal. If the item is a fixed asset, the department must contact the Fixed Asset Accountant prior to submitting the item to surplus.

2. All City departments may review this listing and make arrangements to obtain the surplus item for City use.

3. Items shall be removed from the City surplus item listing once the items are scheduled for the next auction.

4. Surplus property that is irreparably broken or no longer usable for originally intended purposes shall be classified as obsolete and disposed of accordingly with the approval of the Purchasing Division. Departments are solely responsible for maintaining documentation of broken/irreparable items and method of disposal.

10.3 Methods of Disposition of Surplus Property

Methods of disposing of City property include, but are not limited to the following:

1. On-line auctions;

2. Public auctions;

3. Advertisements for sealed bids;

4. Transfers to other governmental agencies;

5. Soliciting bids from sources, known to use or purchase for sale, like items;

6. Recycling; and

7. Trade-in on new equipment when in the best interest of the City.

PURCHASING POLICY

PART II: CONTRACT ADMINISTRATION

11.0 CONTRACTS/PRICE AGREEMENTS

Contracts and price agreements are established to comply with the statutes where multiple departments use the same or similar products or service and/or the cumulative total of expenditures exceeds $50,000.

City purchasing is decentralized. Departments are solely liable for exercising control and tracking expenditures to avoid violating the competitive bid process on expenditures exceeding $50,000. .

Should the anticipated or cumulative total for any single item, multiples of the same item, components or services be expected to exceed $50,000, the Purchasing Division must be informed to determine the procurement method and whether an annual contract will be required.

11.1 Obligation of City and Contractor to Use Contract

1. The contractor has an obligation to furnish all materials and/or services against the contract and the City has an obligation to order materials and/or services covered by the contract on an as-needed basis from the successful contractor.

2. Items that are on existing contract with a vendor should not be procured from any other vendor. This may constitute a breach of contract and may result in violations of the competitive bidding statutes.

3. The contract takes precedence over all other pricing. For example, if Vendor A holds the contract for office supplies, the City cannot procure said supplies from Vendor B, even though the price may be lower at the time of purchase. *The City is under contractual obligation to purchase from Vendor A*.

11.2 Renewal of Contract/Price Agreements

1. Whenever possible, annual contracts will have an option for extension for at least one (1) year. This option must be exercised prior to the completion of the annual contract and mutually ratified by both parties.

2. The City department(s) utilizing the item(s) on an annual contract will define the requirements and make any recommendations for extension of the contract. Departments are encouraged to fill-out vendor performance evaluation forms to assist in contract management.

3. Recommendations will be based on service, delivery, quality of materials and customer service. Departmental recommendations to renew or cancel annual contracts should be submitted to the Purchasing Division no less than 120 days prior to expiration of the existing contract.

4. The 120-day notice is required to allow sufficient time to notify the contractor of cancellation and to re-bid the contract or to advise the Mayor and City Council of the intent to renew. All renewals are at the discretion of the Mayor and City Council.

5. In the event that the Purchasing Division does not receive a recommendation from the user department, the Purchasing Division will assume the responsibility of preparing the recommendation to either extend the contract or re-advertise for new bids.

12.0 BID/PROPOSAL SPECIFICATIONS

A specification provides an accurate description of a particular commodity or service to be procured. The City specifications, when set forth, shall define the requirement and convey the same meaning to all parties concerned, i.e., the user, purchaser and vendor. Federal and standard specifications shall be used whenever possible.

The specifications describing supplies, materials and equipment to be bid through the Purchasing Division will be developed primarily by the requesting department with the assistance of the Purchasing Division as required. Final approval of all solicitation packages is at the discretion of the Purchasing Division.

12.1 Characteristics of an Effective Specification:

1. SIMPLE: Avoid unnecessary detail, but be complete enough to ensure that requirements will satisfy the intended purpose.

2. CLEAR: Use terminology that is understandable to the City and bidders. Use correct spelling and appropriate sentence structure to eliminate confusion. Avoid legal-type language and jargon whenever possible.

3. ACCURATE: Use units of measure that are compatible with industry standards. All quantities and packing requirements should be clearly identified.

4. COMPETITIVE: Identify at least two commercially available brands, makes, or models (whenever possible) that will satisfy the intended purpose. Avoid unneeded extras that could reduce or eliminate competition and increase costs.

5. FLEXIBLE: Avoid totally inflexible specifications that may prevent the acceptance of a bid that could offer greater performance at a lower cost.

   Use approximate values such as dimensions, weight, speed, etc. (whenever possible) if they will satisfy the intended purpose. If approximate dimensions are used, it should be within a 10% rule-of-thumb, unless otherwise stated.

12.2 Bid Specification Development

1. To expedite the competitive bid process, departments must contact Purchasing prior to beginning the specification development process. Ideally, Purchasing should be contacted as soon as a requirement is recognized.

2. The requesting department will prepare the initial specifications; define its requirements by function, stating how the material or equipment is to be used, and required quantities. The specifications should clearly state the minimum acceptable levels for equipment or supply items.
3. In certain cases, cut sheets, technical handbooks, and industry practices/standards are required to effectively describe the goods or services. This should be done in such a manner as to not restrict competition or be proprietary to a specific manufacturer or supplier. The Purchasing Division is responsible for working with departments to ensure their specifications are as fair and open to competition whenever possible.

4. Samples of the Cooperative Agreement Form, MWBE Form, Specification Checklist, Specification, Bid Cover/Signature Page, Instructions to Bidders, and Terms & Conditions are provided herein. (**Part III/Sections 14 and 15)**

5. The requesting department will enter the requisition into Lawson and forward the *draft* specifications to the Purchasing Division. The assigned Purchasing Agent will then be responsible for working with the department to refine the specifications and obtain any outside technical assistance as required.

6. To ensure that specifications are clear, legal and non-restrictive, the final acceptance of the specifications rests with the Purchasing Division. This ensures proper quality control and avoids specification conflict between departments.

7. Purchasing will forward final specifications to the requesting department(s) for approval prior to the release of the solicitation.

8. The time required for developing the specifications will vary depending upon the complexity of the item(s), the availability of information, and the Purchasing Agent's workload at the time the specification is received. To facilitate the preparation of the solicitation, the requesting department shall supply the Purchasing Division with any/all known acceptable products, acceptable vendors, or any other information regarding the item(s) requested.

12.3 Statement of Work (SOW)/Technical Specifications

1. The requesting department is responsible for submitting a Statement of Work/Technical Specification that functionally defines the needs and requirements.

2. The requesting department is responsible for ensuring that the Statement of Word (SOW) is quantified and structured in such a manner as to:

   a. secure the best economic advantage for the City;

   b. be clearly stated;

   c. be contractually sound;

   d. be unbiased and non-prejudiced toward vendors;

   e. encourage innovative or alternate solutions to the requirement described; and

   f. allow free and open competition to the maximum extent reasonably possible.

13.0 DOCUMENT PROCESSING

13.1 Purchase Requisitions

1. The purchase requisition is used to inform the Purchasing Agent of the needs of a department and to identify the goods or services requested for competitive quotes, bids or proposals that will be considered as one-time purchases. Purchase requisitions are required for all purchases over $3,000. (Refer to **Section 4.0**)

2. Purchase requisitions are used to procure all capital assets (fixed assets).

3. All purchase requisitions for goods/services shall be entered into the automated procurement system.

4. **Contracts for Professional Services shall be entered into the Lawson procurement system so that the resulting PO encumbers the fund and allows centralized tracking**.
The first line of this type of requisition shall read: ***Professional Service***

13.1.1 Sufficient Funds

1. If sufficient funds are not available, the automated system will not route the requisition for approval until the department corrects the deficit.

2. The department may either withdraw the request, request a transfer in budgeted accounts, or provide a budget supplement to cover the cost of the material.

3. A budget transfer or supplement must be submitted in accordance with the policy in The Budget Manual, Section I.C.2, Requests for Transfer of Appropriations.

4. Budgeted accounts are the sole responsibility of the requesting department.

13.1.2 Processing Time Frames

4. Requisitions should be prepared far enough in advance so as not to create an emergency situation. This allows the Purchasing Agent adequate time to secure or assist in obtaining competitive quotes and reasonable delivery by the vendor.

4. For items $3,000 or greater, but less than $50,000, the Purchasing Agent should receive the requisition in the automated system and follow-up documentation (quotes, etc.) at least one week before services or goods are required.

4. Requisitions in the automated system that do not have the appropriate number and type of quotes will not be approved by Purchasing until the required quotes and/or documentation are received by the assigned Agent.

4. Requisitions in the automated system $50,000 or greater will require at least 12-14 weeks to solicit competitive sealed bids or proposals and obtain City Council approval.

13.1.3 Automated Purchase Requisitions

An automated purchase requisition process through Lawson is available to all departments. Hands-on classes are scheduled quarterly through the Purchasing Division. [Refer to Section **3.1 (14)**]

13.1.4 Processing of Requisitions $50,000 or Greater

The Department shall contact the Purchasing Division with enough lead time to allow for the appropriate solicitation, if required. A requisition shall be entered into the automated system and will remain in the system until it is either closed or approved to purchase order by an Agent, after appropriate solicitations and required Council approval are accomplished. The Purchasing Division is responsible for administering and maintaining the bid documents.

After the bid closes, a bid tabulation will be created and the all submittals will be evaluated with the assistance of the department, if required. The Agent will then approve the requisition and create the

purchase order.

13.2 Purchase Orders (PO)

The purchase order (PO) is the vendor's authorization to ship materials or provide services as specified. The PO is also a contract and is designed to control and expedite the City's procurement process. **No orders shall be placed prior to the issuance of a valid PO in the automated system**. The only exceptions to this requirement are items designated for resale and aborted procurement card attempts.

13.2.1 Printing and Viewing of Purchase Orders

In the Lawson procurement system, the requisition number is tied to the purchase order number, which is also tied to any receivers and subsequent payments.

When the purchase order is created, a printed copy is available through the PO printing system. That copy can be emailed or printed and faxed/mailed to the vendor.

Once the purchase order number is issued, it can be viewed by anyone with access to Lawson.

13.2.2 Confirming POs

In some instances, it may be necessary to re-send a purchase order to a vendor. In these cases, the purchase order should be clearly marked as "**Confirming PO Only**", to avoid a double order.

13.2.3 Canceling POs

The Purchasing Agent may cancel a PO upon written request from the requesting department. Upon cancellation of the PO, all encumbered, unused funds are released.

13.3 Emergency DPOs (Departmental Purchase Orders)

The DPO is a hardcopy purchase order form that has a pre-assigned number and signature blocks. When signed by an authorized party, it serves as an official City purchase order for goods and/or services. This form remains under purchasing control and is issued to departments for use only in times of declared emergency or prolonged system outages. (**Part III Section 14.5**)

13.3.1 DPO Procedures

When a requisition cannot be obtained from the Lawson system due to declared emergency or prolonged system outage, the Purchasing Division shall issue paper DPOs to the departments by numbered batches for use during the outage.

1. The DPO shall be filled out completely. If quotes are required, they shall be attached to the DPO. If the purchase is for a contracted item, the contract number shall be listed on the DPO and contract pricing shall be used.

2. The DPO shall contain the signatures of both the requisitioning staff member and the approving supervisor.

3. When filled-out and signed, the document serves as an official PO for the purchase of services or goods.

4. The vendor should be provided a copy of the signed DPO, as the DPO number must be referenced on all subsequent invoices. For payment, the white copy shall be sent to Accounts Payable, the yellow copy shall be sent to the Purchasing Division, and the pink copy shall stay

with the department.

5. Receiving shall be annotated in the “receiving block” of the DPO.

6. After the emergency or prolonged outage, unused DPOs shall be immediately returned to the Purchasing Division. DPOs that have been used will be back-entered into the automated system by the Purchasing Division for record-keeping purposes.

13.3.2 Misuse of DPOs

During a declared emergency or prolonged system outage, department personnel will be held accountable for the proper use and administration of the DPO process. If the DPO is not completed properly, all communication regarding the DPO will be noted in writing and kept for audit purposes. Continual misuse of the DPO may result in the department losing the option of ordering via this method.

13.4 Basic Requisition Guidelines

Departments shall not manipulate the automated procurement system to knowingly circumvent the competitive bid process. Texas statutes have defined separate, component and sequential purchases as items that would normally be purchased at one time, and therefore shall not be split during requisition entry to avoid quotes or solicitations.

Step-by-step instructions for ordering goods and services within the automated procurement system are located on the Purchasing intranet (portal).

13.5 Procurement Card Purchases

The Procurement Card (P-Card) Program provides rapid turnaround for the purchase of low-dollar-value goods and reduces paperwork and handling costs. Also, the payment cycle is dramatically shortened from that of the traditional requisition process. Department personnel who have been issued procurement cards may initiate transactions in person or by telephone/internet and receive goods within the limits of the *Procurement Card Policy and Procedures Manual*, which is located on the Purchasing portal. Under no conditions shall purchases on the procurement card be used to bypass quotation or bid requirements.

13.6 Receiving of Full and Partial Shipments

The automated procurement system contains a receiving module that tracks receipt of goods and services within the City. Immediately upon receipt of ordered items, the receiving department shall enter the receipt into Lawson in accordance with the packing slip or delivery ticket so that prompt payment can be made.

Receiving records shall be precise and accurate. No receivers shall be entered if the goods have not been received or completed.

In the case of partial receipts, enter into the automated procurement system the actual items received, after verifying that the order matches the packing slip. If the order is incomplete or does not match the packing slip, contact the Purchasing Division immediately.

Step-by-step instructions for receiving goods and services within the automated procurement system are located on the Purchasing intranet.

13.7 Invoices

1. An invoice is an itemized statement of merchandise delivered by the vendor. Invoices are based on the purchase order and the actual delivery tickets or packing slips.

2. In the Lawson system, payment of an invoice occurs in a number of ways:

   Three-Way Match: In the case of a regular PO, the quantity and dollar amount match the receiver(s) quantity and invoice dollar amount.

   Two-Way Match: In the case of a service PO or Service Agreement, where no receiver is entered into Lawson. The invoice is received/approved by the authorized signatory in the department, the signed invoice counts as the receiver and payment can be made.

3. The receiving department shall bring any receiving discrepancies or non-payments to the attention of the Purchasing division.

4. As of December 21, 2009, the Accounts Payable function is outsourced to SourceNet Solutions. Two-Way and Three-Way matches are still processed accordingly through an off-site A/P Division. Vendors are to send all invoices to the following address, where they will be electronically routed back to City staff for online verification/approvals.

   City of Arlington Accounts Payable
   PO Box 30143
   College Station, TX 77842

13.7.1 Matching Invoices to PO Lines via SourceNet Solutions/Lawson Interface

1. Periodically, an invoice does not match the PO or receiving document. This situation causes an error in the payment system, resulting in an error report. Due to the sensitive nature of payment timelines, **these errors must be corrected immediately**

2. In any event where the invoice is incorrect, it is the responsibility of the ordering location to request corrected invoices from the vendor and reject any incorrect invoices in SourceNet's Catalyst system.

   a. ***SERVICE* TYPE POs** (two-way match)

      i. These are uploaded into Catalyst by direct mail to SourceNet, or by ordering locations. If Payment cannot be made for any reason, the error will be flagged and sent to the Purchasing queue for research and resolution. The Agent shall then work with in-house AP staff and SourceNet to determine the most appropriate solution.

      ii. It is the responsibility of each ordering department to request corrected invoices from the vendor and reject any incorrect invoices in the Catalyst system.

      iii. If the invoice is correct, but the PO requires modification, the ordering department must provide written guidance/authorization to the Agent as to how the discrepancy is to be repaired. **Under no circumstances will Purchasing staff change POs without prior written consent of the approving supervisor**

of the location that created the PO.

b. ***COMMODITY* TYPE POs** (three-way match)

i. These are items that should pay automatically if the PO, receipt, and invoice match perfectly. When an invoice fails to match, an error report is created and sent to the Purchasing Agent. The Agent shall then work with in-house AP staff and SourceNet to determine the most appropriate solution.

ii. If it is determined that an invoice is incorrect, the department shall be notified to contact the vendor and request a corrected invoice.

iii. If the invoice is correct, but the PO or receiver requires modification, the ordering department must provide written guidance/authorization to perform the modification. **Under no circumstances will Purchasing staff change POs or receiving records without prior written consent of the approving supervisor of the location that created the PO**.

iv. In the event that PO contains more than one line item and the department receives only part of the order or uses multiple receivers for one line, the interface may attempt to match on a first-come/first-served basis, creating a matching error. The Purchasing Agents can identify this type of error and will provide guidance to the department as to the most appropriate solution—**but will obtain written agreement prior to performing any corrections**.

3. The Texas Prompt Payment Act requires payment of correct, valid invoices within thirty (30) days of receipt. Under no circumstances shall the City place itself in violation of state payment law. If errors preventing payment are not corrected in a timely manner, the department director of the ordering location shall be notified in order to authorize resolution of the issue.

4. The Assistant Director of Finance retains the right to make or authorize necessary adjustments in the matching and payment process to ensure compliance with state law.

13.8 Non-PO Payments and Check Requests

Payment Authorizations are no longer used as a form of payment for the City. With the outsourced A/P, non-PO payments, check requests, or reimbursements are entered into the Catalyst System (via the outsourced A/P with SourceNet).

13.8.1 *Non-PO Payment*

Any type of payment to be made that doesn't require a PO, but <u>does</u> have an invoice.
The following examples may apply:

1. Freight bills

2. Organization dues and memberships

3. Pay estimates for construction projects

4. Purchases from vendors who do not accept POs and require check or cash. This will be permitted only when all other required purchasing procedures have been exhausted and

proper written documentation for the vendor is in the system

5. Other invoiced payments authorized by the City Manager and/or City Council

13.8.2 *Check Request*

Any type of payment to be made that doesn't require a PO and does not have an invoice. The following examples may apply:

1. Travel expense advances; training expense or mileage
2. Organization dues and memberships
3. Revenue refunds
4. Reimbursement for personal credit card purchases
5. Other non-invoiced payments authorized by the City Manager and/or City Council

13.9 *Verification of Contracting Vendor in EPLS*

Per contractual agreement, the third party payables contractor is required to set up new vendors in Lawson, to include checking the debarment status of all each new set-up against the federal government's Excluded Parties List System (EPLS) or subsequent system as approved by the federal government.

The Purchasing Division is responsible for verifying the EPLS status of vendors related *only* to Purchasing Division contracts and bid files to include annual agreements, renewals, single-source, and cooperative procurements. Purchasing staff will ensure there are no findings on the EPLS. If an intended awardee is found to have an EPLS status that indicates debarment, that contractor will not be used.

NOTE: *EPLS and other systems will be migrating to the System for Award Management (SAM) starting in 2012 with EPLS, which is the exclusions portion of the Performance Information capability (EPLS).*

GLOSSARY OF PURCHASING TERMS

Agreement
A properly executed and legally binding contract usually written between two or more parties, (contract or PO).

Assignment
The legal transfer of a right or property.

Award
The act of accepting a bid, thereby forming a contract between the City and a bidder.

Bid
An offer to contract with the City submitted in response to a bid invitation issued by the Purchasing Division.

Bid Sample
A sample required to be furnished as part of a bid, for evaluating the quality of the product offered.

Bid Tabulation
The recording of bids and bidding data for purposes of bid evaluation and record keeping.

Bidder
An individual or entity submitting a bid. The term includes anyone acting on behalf of the individual or other entity that submits a bid, such as agents, employees, and representatives.

Brand Name
A trade name or product name, which identifies a product as having been made by a particular manufacturer.

Capital Items
Those items with a unit value in excess of $5,000.00 and having a useful life of more than one year.

Centralized Master Bidders List (CMBL)
A list maintained by the Texas Building and Procurement Commission (TBPC) containing the names and addresses of prospective bidders and HUB suppliers.

Change Order
Modification to an agreement, (i.e., contract or PO).

Commodity
Supplies, materials or equipment (e.g. not a service).

Commodity Book
Published by the TBPC, which contains class and item numbers for a variety of commodities. Available at www.tbpc.state.tx.us/com_book/index.html.

Competitive Bidding
The process of inviting and obtaining bids from competing sources in response to advertised competitive specifications.

Competitive Specifications
A specification stated in such a manner that two or more bidders can meet the specifications.

Component Purchases
Buying parts of an item individually that under standard purchasing practices should be bought together.

Confirming Order
A purchase order number issued to a vendor (placed verbally or otherwise) in advance of the hard copy purchase order, listing the commodities or services and terms of an order. Also called *confirmation order*.

Contract
A written, legally enforceable agreement between the City and one or more other parties to provide a product or service.

Contract Administration
Contract administration is the responsibility of the requesting department. Contract administration generally includes, but is not limited to monitoring of: correct pricing receipt, annual usage and expenditures, vendor performance, and renewal options.

Cooperative Purchasing
A program for qualified entities to use the purchasing resources of other governmental entities.

Discount-From-List
Requires insertion of net unit prices on contracts/price agreements. The manufacturer must submit a printed price list/catalog from which prices are to be figured.

Emergency Purchase
A purchase of goods or services, as defined by State of Texas statute, such that an agency will suffer financial or operational damage unless they are secured immediately.

Escalation Clause
A clause in a bid providing for a price increase under certain specified circumstances.

Expedite
An attempt to persuade suppliers to deliver an ordered item ahead of schedule, which may result in additional costs. This also includes follow-up activities to correct mistakes in pricing, late delivery, etc.

Fixed-Price Contract
A contract, which provides for a firm price, which cannot be increased for the full term of the contract.

Formal Bid
A written bid submitted in a sealed envelope in accordance with a prescribed format.

Freight On Board/Free On Board (F.O.B.)
The legally defined point at which ownership of the goods passes from seller to buyer.

1. **F.O.B. Delivered (also called: F.O.B. Destination)**
   The City of Arlington assumes no liability for goods damaged while in transit and/or delivered in a damaged or unacceptable condition. The contractor shall be responsible for, and handle, all claims with carriers. In the case of damaged goods, the contractor shall ship replacement goods immediately upon notification of damage by the City.

   NOTE: Prices bid and quoted shall always be Freight On Board (F.O.B.) Delivered, to the Municipal Facility, Arlington, Texas, and shall include all freight, delivery and packaging costs.

2. **F.O.B. Origin or Shipping Point**
The City is responsible for the shipping charges as well as filing any claims for damage to goods occurring during shipment. Title passes to the City upon acceptance of the goods by the shipper.

3. **Other F.O.B. Points**
Special F.O.B. points can be established by contractual agreement such as:

(a) Transfer of ownership may occur after goods (or services) have been inspected and accepted.
(b) For large or complicated capital equipment, ownership may transfer after the equipment is delivered, installed, and tested to ensure functional and/or performance specifications have been met.
(c) Consignment inventory can remain the seller's property after receipt, until it is removed from storage for use. Ownership transfers when the goods are consumed by the City.

High Technology
The procurement of equipment, goods, or services of a highly technical nature, including:

1. Data processing equipment, software, and firmware used in conjunction with data processing equipment;

2. Telecommunications equipment and radio microwave systems;

3. Electronic distributed control systems, including building energy management systems; and

4. Technical services related to those items.

Historically Underutilized Business (HUB)
A corporation formed for the purpose of making a profit in which fifty-one percent (51%) or more of all classes of the shares of stock or other equitable securities are owned by one or more socially disadvantaged persons who have a proportionate interest and actively participate in the corporation's control, operation, and management. Groups include: Black Americans, Hispanic Americans, Women, Asian Pacific Americans, and Native Americans.

Informal Bid
An unsealed, competitive bid submitted by letter, telephone, fax, email or other means, used for purchases less than $50,000.

Invitation for Bids (IFB)
A written request for submission of a sealed bid; also referred to as a bid invitation.

Late Bid
A bid that is received, at the place designated in the bid invitation, after the time set for bid opening.

Lease of Equipment
A contract granting use of equipment or other fixed assets for a specified time in exchange for payment. Title remains with the vendor.

Lease-Purchase
An installment sale which gives the lessee the right to purchase the equipment at an agreed upon price under certain conditions. Title passes from seller to purchaser if, and at the time, the option to purchase is exercised.

Letter of Award
Letter of notification announcing award of the contract to bidder. May be used in lieu of issuing a PO to awarded vendor.

Life-Cycle Costing
A procurement technique that considers operating, maintenance, acquisition price, and other costs of ownership in the award of contracts to ensure that the item acquired will result in the lowest total ownership cost during the time the item's function is required.

Local Government
A county, municipality, school district, special district, community college district, or other legally constituted political subdivision of the state.

Manufacturer's Price List
A price list published in some form by the manufacturer, available to and recognized by the trade. The term does not include a price list prepared especially for a given bid.

Minor Technicality
A requirement in a bid invitation which, if waived or modified by the Purchasing Agent when evaluating bids, would not give a bidder an unfair advantage over other bidders or result in a material change in the contract.

Multiple Award Contract Procedure
A purchasing procedure by which the City establishes one or more levels of quality and performance and makes more than one award at each level.

Non-Resident Bidder
A bidder whose principal place of business is not in Texas.

Notice to Proceed
A written notice to the successful vendor to begin work on a specified date.

Obligation
Commitment of resources (money, manpower, etc.) for particular procurements.

OEM
Original equipment manufacturer.

Offer
A proposal by one party to another, which is intended of itself to create legal relations on acceptance by the party to whom it is made.

Pre-bid/Proposal Conference
A conference held by City personnel with potential vendors to discuss the requirements contained in the bid or proposal documents. Conferences are held at the option of the City and are usually set at a time shortly after the second advertisement.

Procurement Card Program
Credit card program designed as a payment method to streamline small dollar purchases.

Proprietary
Products or services manufactured, or offered under exclusive rights of ownership, including rights under patent, copyright or trade secret law. A product or service is proprietary if it has a distinctive feature or

characteristic that is not shared or provided by competing or similar products or services.

Protest Procedures
Identified steps for solving vendor grievances relating to formal solicitations.

Public Bid Opening
The opening of bids at the time and place advertised in the bid invitation, in the presence of anyone who wishes to attend. Bids will be read aloud.

Purchase Requisition
The initial document, transmitted electronically or manually with the appropriate approvals authorizing the purchase of items required, and transferring the authority to expense funds from a budget.

Purchase Order (PO)
A legally binding commitment for material, facilities, or services made between the City and the vendor.

Request for Competitive Sealed Proposal (RFCSP)
A written request for proposals concerning goods or services the City intends to acquire by means of the competitive sealed proposal procedure. The procedure allows changes to be made after other proposals are opened and contemplates that the nature of the proposals and/or prices offered will be negotiated prior to award.

Responsible Bidder
A responsible bidder is defined to be one who demonstrates specific selection criteria responses that define that the company can successfully deliver the supplies, equipment, or services being procured.

Responsive Bidder
A responsive bidder is defined to be one who submits a completed sealed bid packet within the stated time deadline and in accordance with the bid specifications.

Separate Purchases
The procurement of items, made separately or sequentially, to avoid the competitive bidding limitations that in standard purchasing practices would be acquired in one transaction. This is considered a violation of state and local statutes.

Service
The furnishing of skilled or unskilled labor, not including professional services covered by the Professional & Consulting Services Act (defined in Chapter 2254 of the Texas Government Code).

Sole-Source
Products or services manufactured or offered under exclusive rights of ownership, including rights under patent, copyright or trade secret law. A product or service is proprietary if it has a distinctive feature or characteristic, which is not shared or provided by competing or similar products or services.

Specification
A concise, detailed description of an item(s) required by the City and the minimum requirements of the vendor and provides the basis for acceptance and award.

Subcontractor
A person, firm, or corporation that provides labor or material to fulfill an obligation to a contractor, or another subcontractor, for the performance and installation of any of the work required by a contract.

Supplier
A business or individual that could potentially sell goods, services, or both in return for payment.

Terms & Conditions
The legal provisions governing a contract.

Texas Resident Bidder
A bidder with its principal place of business in Texas.

Unit Price
The price of a selected unit of a good or service (e.g., price per ton, per labor hour, or per foot).

Vendor
A business or individual that sells goods, services, or both in return for payment.

(PART III: SECTION 14.1)
SALES TAX EXEMPTION CERTIFICATE

01-339 (Back)
(Rev. 11-95/3)

RESET FORM

TEXAS SALES AND USE TAX EXEMPTION CERTIFICATION

Name of purchaser, firm or agency **CITY OF ARLINGTON**	
Address *(Street & number, P.O. Box or Route number)* **P O BOX 231**	Phone *(Area code and number)* **817.459.6300**
City, State, ZIP code **ARLINGTON TX 76004-0231**	

I, the purchaser named above, claim an exemption from payment of sales and use taxes for the purchase of taxable items described below or on the attached order or invoice form:

Seller: _____

Street address: _____ City, State, ZIP code: _____

Description of items to be purchased or on the attached order or invoice:

Purchaser claims this exemption for the following reason:

I understand that I will be liable for payment of sales or use taxes which may become due for failure to comply with the provisions of the Tax Code: Limited Sales, Excise, and Use Tax Act; Municipal Sales and Use Tax Act; Sales and Use Taxes for Special Purpose Taxing Authorities; County Sales and Use Tax Act; County Health Services Sales and Use Tax; The Texas Health and Safety Code; Special Provisions Relating to Hospital Districts, Emergency Services Districts, and Emergency Services Districts in counties with a population of 125,000 or less.

I understand that it is a criminal offense to give an exemption certificate to the seller for taxable items that I know, at the time of purchase, will be used in a manner other than that expressed in this certificate and, depending on the amount of tax evaded, the offense may range from a Class C misdemeanor to a felony of the second degree.

sign here ➧ Purchaser	Title PURCHASING AGENT	Date

NOTE: This certificate cannot be issued for the purchase, lease, or rental of a motor vehicle.
THIS CERTIFICATE DOES NOT REQUIRE A NUMBER TO BE VALID.
Sales and Use Tax "Exemption Numbers" or "Tax Exempt" Numbers do not exist.

This certificate should be furnished to the supplier. Do **not** send the completed certificate to the Comptroller of Public Accounts.

(PART III: SECTION 14.2)
W-9 FORM

Form **W-9**
(Rev. January 2002)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give form to the requester. Do not send to the IRS.

Print or type
See Specific Instructions on page 2.

Name
CITY OF ARLINGTON

Business name, if different from above
P.O. BOX 90231

Check appropriate box: ☐ Individual/ Sole proprietor ☐ Corporation ☐ Partnership ☒ Other ▶ MUNICIPALITY ☐ Exempt from backup withholding

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

Requester's name and address (optional)

City, state, and ZIP code
ARLINGTON, TX 76004-3231

List account number(s) here (optional)

Part I **Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). **However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 2.** For other entities, it is your employer identification number (EIN). If you do not have a number, see **How to get a TIN** on page 2.

Note: *If the account is in more than one name, see the chart on page 2 for guidelines on whose number to enter.*

Social security number
| | | | | | | | | |

or

Employer identification number
7 5 - 6 0 0 0 4 5 0

Part II **Certification**

Under penalties of perjury, I certify that:

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

Certification instructions. You must cross out item **2** above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item **2** does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 2.)

Sign Here **Signature of U.S. person ▶** **Date ▶**

Purpose of Form

A person who is required to file an information return with the IRS must get your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to give your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify the TIN you are giving is correct (or you are waiting for a number to be issued),

2. Certify you are not subject to backup withholding, or

3. Claim exemption from backup withholding if you are a U.S. exempt payee.

If you are a foreign person, use the appropriate Form W-8. See **Pub. 515,** Withholding of Tax on Nonresident Aliens and Foreign Entities.

Note: *If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.*

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 30% of such payments **after** December 31, 2001 (29% **after** December 31, 2003). This is called "backup withholding." Payments that may be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will **not** be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester, or

2. You do not certify your TIN when required (see the Part II instructions on page 2 for details), or

3. The IRS tells the requester that you furnished an incorrect TIN, or

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under **4** above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions on page 2 and the separate **Instructions for the Requester of Form W-9.**

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of $50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a $500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of Federal law, the requester may be subject to civil and criminal penalties.

Cat. No. 10231X Form **W-9** (Rev. 1-2002)

(PART III: SECTION 14.3)
VENDOR/SUPPLIER PERFORMANCE REPORT

NAME OF CONTRACTOR/VENDOR: _____

ADDRESS: _____

CITY/STATE/ZIP: _____

TYPE OF CONTRACT: ☐ Contractor ☐ Consultant ☐ Vendor

WORK/SERVICE PERFORMED: _____

_____

_____

WORK PRODUCT: ☐ Excellent ☐ Good ☐ Poor

WOULD YOU RE-HIRE? ☐ Yes ☐ No

COMMENTS: _____

_____

_____

_____

Department: _____

Contact/phone: _____

Please return to Purchasing/MS 63-0810

(PART III: SECTION 14.4)
SOLE SOURCE JUSTIFICATION DOCUMENT

Click on the TAB key to begin using this form.

SINGLE / SOLE SOURCE JUSTIFICATION

Preparation Instructions:

The appropriate department representative must complete the single source form below and forward to their Department Head, or his designee, for approval. Upon approval, forward the sole source justification to Purchasing with requisition for review and final approval. Use additional sheets if necessary.

1. What unique features or capabilities does the product or service offer the City?

2. Why are these unique features or characteristics essential and necessary to meet the City's needs?

3. What research has been performed to ensure that no other source is capable of fulfilling the requirement? For instance, list other products or services tested or used and indicate why they are not acceptable.

4. What steps are being taken to foster competition in future purchases of this product or service?

Approved:

_____ _____
Department Head or designee Date

_____ _____
Purchasing Manager or designee Date

(PART III: SECTION 14.5)
Emergency DPO (Departmental Purchase Order)

City of Arlington Texas
P.O. Box 90231
Arlington, TX 76004-3231

DEPARTMENTAL PURCHASE ORDER

DPO -

This Number Must Appear on All Invoices, Delivery Slips, Cases, Cns., Boxes, Packing Slips & B.L.'s

LIMITED SALES TAX PERMIT # 1-75-60000450-3

VENDOR		
NAME		DATE CALLED
ADDRESS		PHONE NO.
CITY	STATE ZIP	PRICES QUOTED BY
☐ NEW VENDOR (Federal Tax ID Required)		Hub Vendor ☐ YES ☐ NO
VENDOR CODE _____	FEDERAL TAX ID NO. _____	TERMS _____ F.O.B. _____

REQUISITIONED BY	DEPARTMENT	REQUISITION DATE	CHARGE TO ACCOUNT NO., PROJECT NO., ETC.

QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT

INSTRUCTIONS:

May be used for non-contract purchases less than $3,000.

Use for all contract purchases in any amount, provide contract information below.

☐ CONTRACT ITEM (Bid Number Required)

(Formal Bid Items) BID # _____

REVIEWED BY _____
PURCHASING AGENT

DELIVERY ADDRESS: _____

MAILSTOP: _____

DATE RECEIVED: _____

RECEIVED BY: _____
PERSON RECEIVING MATERIAL / DEPT. NO.

APPROVED BY: _____
DEPARTMENT HEAD/SUPERVISOR

THIS FORM IS TO BE USED AS A DEPARTMENTAL PURCHASE ORDER AND RECEIVING REPORT.

(PART III: SECTION 15.1)
SPECIFICATION CHECK LIST

A. **Is the specification clear and concise to both the vendor and the purchaser?** *Specifications should be as simple as is possible to ensure exactness but written so that a loophole will not allow a bidder to evade any of the provisions, thereby taking advantage of competitors and the City. Misunderstandings are expensive and often result in re-bids.*

B. **Is the specification identified with a specification or standard that is well known? Have required features or characteristics been identified? Are acceptable alternatives listed?**

C. **Can the specification be verified?** *The specification should describe the method of verification that will govern acceptance or rejection. A specification that cannot be verified is of little value.*

D. **Does the specification have reasonable tolerances?** Extreme *precision is expensive.*

E. **Is the specification as fair as possible to all participating vendors?**

F. **Is the specification written to allow open competition by several vendors?**

G. **Has the end use of the item or service been described?**

H. **Are all stated requirements necessary for the intent of the specification?**

I. **Has the user researched all possible sources of the item or service?** *If, after the search, only one item or service provider is deemed acceptable, has all required documentation, rationale and support been gathered and submitted for the bid file?*

J. **Is the format of the specification simple and logical?**

K. **Is the specification legible?**

FEDERAL TRANSIT ADMINISTRATION

BEST PRACTICES PROCUREMENT MANUAL

TABLE OF CONTENTS (Appendix A - Governing Documents)

A.1 - Federally Required and Other Model Contract Clauses

1. Fly America Requirements
2. Buy America Requirements
3. Charter Bus and School Bus Requirements
4. Cargo Preference Requirements
5. Seismic Safety Requirements
6. Energy Conservation Requirements
7. Clean Water Requirements
8. Bus Testing
9. Pre-Award and Post Delivery Audit Requirements
10. Lobbying
11. Access to Records and Reports
12. Federal Changes
13. Bonding Requirements
14. Clean Air
15. Recycled Products
16. Davis-Bacon and Copeland Anti-Kickback Acts
17. Contract Work Hours and Safety Standards Act
18. [Reserved]
19. No Government Obligation to Third Parties
20. Program Fraud and False or Fraudulent Statements and Related Acts
21. Termination
22. Government-wide Debarment and Suspension (Nonprocurement)
23. Privacy Act
24. Civil Rights Requirements
25. Breaches and Dispute Resolution
26. Patent and Rights in Data
27. Transit Employee Protective Agreements
28. Disadvantaged Business Enterprises (DBE)
29. [Reserved]
30. Incorporation of Federal Transit Administration (FTA) Terms
31. Drug and Alcohol Testing

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.

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 C.F.R. 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 C.F.R. Part 661.5.

Date _____

Signature _____

Company Name _____

Title _____

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

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

Date _____

Signature _____

Company Name _____

Title _____

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

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

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

Date _____

Signature _____

Company Name _____

Title _____

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

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

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

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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.

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: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of -lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

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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.

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.

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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.

Flow Down
The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

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

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

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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.

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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.

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.

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.

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

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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"

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)(11).

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

Requirements for Access to Records and Reports by Types of Contract

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

Sources of Authority:
[1] 49 USC 5325 (a)
[2] 49 CFR 633.17
[3] 18 CFR 18.36 (i)

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12. FEDERAL CHANGES
49 CFR Part 18

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

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.

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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, certifies check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:

(1) 50% of the contract price if the contract price is not more than $1 million;

(2) 40% of the contract price if the contract price is more than $1 million but not more than $5 million; or

(3) $2.5 million if the contract price is more than $5 million.

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

Flow Down
Bonding requirements flow down to the first tier contractors.

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

Bid Bond Requirements (Construction)

(a) Bid Security

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

(b) Rights Reserved

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

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

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

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

Performance and Payment Bonding Requirements (Construction)

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

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).

2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

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

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

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

(iii) Two and one half million if the contract price is more than $5 million.

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

Performance and Payment Bonding Requirements (Non-Construction)

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

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

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).

2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

3. Substantial progress payments are made before delivery of end items starts.

4. Contracts are for dismantling, demolition, or removal of improvements.

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

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).

2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

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

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

1. The penal amount of payment bonds shall equal:

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

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

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

Advance Payment Bonding Requirements

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

Patent Infringement Bonding Requirements (Patent Indemnity)

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

Warranty of the Work and Maintenance Bonds

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

required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

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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.

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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.

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.

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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 18.36(i)(5). The Acts apply to any construction contract over $2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating." 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

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

Clause Language
Davis-Bacon and Copeland Anti-Kickback Acts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) **Withholding -** The [***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.

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

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

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

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

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment

and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

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

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

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

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 18.36(i)(6). Although the original Act required its application in any construction contract over $2,000 or non-construction contract to which the Act applied over $2,500 (and language to that effect is still found in 49 CFR 18.36(i)(6)), the Act no longer applies to any "contract in an amount that is not greater than $100,000." 40 USC 3701(b)(3) (A)(iii).

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

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

Clause Language

Contract Work Hours and Safety Standards

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

(2) **Violation; liability for unpaid wages; liquidated damages -** In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages -** The (***write in the name of the grantee***) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts -** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

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18. [RESERVED]

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19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts
Applicable to all contracts.

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.

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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.

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.

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21. TERMINATION
49 U.S.C. Part 18
FTA Circular 4220.1E

Applicability to Contracts
All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of $10,000 shall contain suitable provisions for termination by the 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 compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

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

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. the contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on 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 contact or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

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

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

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22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

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.

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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.

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.

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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.

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.

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25. BREACHES AND DISPUTE RESOLUTION
49 CFR Part 18
FTA Circular 4220.1E

Applicability to Contracts

All contracts in excess of $100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may

include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

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

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

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

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

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

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.

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

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

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

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide,

through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

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

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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.)

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 the comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

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

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

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

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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.

d. 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.]**

e. 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}**.

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29. [RESERVED]

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30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS
FTA Circular 4220.1E

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

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 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the

event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

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31. DRUG AND ALCOHOL TESTING
49 U.S.C. §5331
49 CFR Parts 653 and 654

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

Flow Down Requirements
Anyone who performs a safety-sensitive function for the recipient or subrecipient is required to comply with 49 CFR 653 and 654, 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 653 and 654, respectively, 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 Parts 653 and 654. 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 653 and 654. 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 653 and 654, 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 653 and 654.

Drug and Alcohol Testing
Option 2

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.

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).

Exhibit 6.1.
A. REQUIRED THIRD-PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over $2,000)

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE
All FTA-Assisted Third-Party Contracts and Subcontracts		
No Federal government obligations to third-parties by use of a disclaimer		§2.f
Program fraud and false or fraudulent statements and related acts		§3.f
Access to Records		§15.t
Federal changes		§2.c(1)
Civil Rights (EEO, Title VI & ADA)		§12
Incorporation of FTA Terms	Per FTA C 4220.1F	§15.a
Energy Conservation		§26
Awards Exceeding $10,000		
Termination provisions	49 CFR Part 18 Not required of states	§11
Awards Exceeding $25,000		
Debarment and Suspension	2 CFR Parts 180 and 1200	§3.b
Awards Exceeding the Simplified Acquisition Threshold ($100,000)		
Buy America	When tangible property or construction will be acquired	§14.a
Provisions for resolution of disputes, breaches, or other litigation		§56
Awards Exceeding $100,000 by Statute		
Lobbying		§3.d
Clean Air		§25.b
Clean Water		§25.c
Transport of Property or Persons		
Cargo Preference	When acquiring property suitable for shipment by ocean vessel	§14.b
Fly America	When property or persons transported by air between U.S. and foreign destinations, or between foreign locations	§14.c
Construction Activities		
Davis Bacon Act	Except for contracts <$2,000 or third party contracts for supplies, materials, or articles ordinarily available on the open market	§24.a

Exhibit 6.1.
A. REQUIRED THIRD-PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over $2,000)

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE
Copeland Anti-Kickback Act Section 1 Section 2	 All Contracts >$2,000	§24.a
Contract Work Hours & Safety Standards Act	Contracts >$100,000	§24.a
Bonding for construction activities exceeding $100,000	5% bid guarantee; 100% performance bond; and Payment bond equal to: • 50% for contracts < $1 M • 40% for contracts > $1 M, but < $5 M • $2.5 M for contracts > $5 M Not required of states	§15.o(1)
Seismic Safety	Contracts for construction of new buildings or additions to existing buildings	§23.e
Nonconstruction Activities		
Nonconstruction Employee Protection (Contract Work Hours and Safety Standards Act)	Applicable to all turnkey, rolling stock and operational contracts (excluding contracts for transportation services) > $100,000	§24.b
Transit Operations		
Transit Employee Protective Arrangements	Applies to Section 5307, 5309, 5311 and 5316 projects	§24.d
Charter Service Operations		§28
School Bus Operations		§29
Drug and Alcohol Testing	Safety sensitive functions. Applies to Sections 5307, 5309 and 5311 projects.	§32.b
Planning, Research, Development, and Documentation Projects		
Patent Rights		§17
Rights in Data and Copyrights		§18
Miscellaneous Special Requirements		
Disadvantaged Business Enterprises (DBEs)	Contracts awarded on the basis of a bid or proposal offering to use DBEs	§12.d
Prompt Payment and Return of Retainage	Per 49 CFR Part 26, if grantee meets the threshold for a DBE program	§12.d
Recycled Products	Contracts for items designated by EPA, when procuring $10,000 or more per year	§15.k
ADA Access	Contracts for rolling stock or facilities construction/ renovation	§12.g
Assignability Clause	Piggyback procurements	§15.a

Exhibit 6.1.
A. REQUIRED THIRD-PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over $2,000)

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE
Special Notification Requirements for States		
Special Notification Requirements for States		§38

Exhibit 6.1
B. REQUIRED CERTIFICATIONS, REPORTS, AND FORMS
(excluding micro-purchases, except for construction contracts over $2,000)

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE
Bus Testing Certification and Report	Procurements of buses and modified mass produced vans	§15.n(4)
TVM Certifications	Procurements of buses and modified mass produced vans	§12.d(1)
Buy America Certification	Procurements of steel, iron or manufactured products > $100,000	§14.a
Pre-Award Audit	Rolling stock procurements	§15.n(3)
Pre-Award Buy America Certification	Rolling stock procurements>$100,000	§15.n(3)
Pre-Award Purchaser's Requirement Certification	Rolling stock procurements	§15.n(3)
Post-Delivery Audit	Rolling stock procurements	§15.n(3)
Post-Delivery Buy America Certification	Rolling stock procurements >$100,000	§15.n(3)
Post-Delivery Purchaser's Requirement Certification	Rolling stock procurements	§15.n(3)
On-Site Inspector's Report	Rolling stock procurements for more than 10 vehicles for areas >200,000 in population and 20 for areas <200,000 in population	§15.n(3)
Federal Motor Vehicles Safety Standards Pre-Award and Post-Delivery Certification	Non-rail rolling stock procurements	§15.n(3)
Excluded Parties Listing System search	Procurements > $25,000	§3.b
Lobbying Certification	Procurements > $100,000	§3.d(1)
Standard Form LLL and Quarterly Updates (when required)	Procurements > $100,000 where contractor engages in lobbying activities	§3.d(1)

Exhibit 6.1
C. OTHER REQUIRED ITEMS

REQUIREMENT	COMMENTS	FTA C 4220.1F REFERENCES
Contract Administration System		Ch. III, §3
Record of Procurement History		Ch. III, §3.d(1)
Protest Procedures		Ch. VII, §1
Selection Procedures		Ch. III, §3d(1)(c)
Independent Cost Estimate		Ch. VI, §6
Cost/Price Analysis		Ch. VI, §6
Responsibility Determination		Ch. VI, §8.b
Justification for Noncompetitive Awards	If applicable	Ch VI, §3.i(1)(b)
No excessive bonding requirements		Ch. VI, §2.h(1)(f)
No exclusionary specifications		Ch. VI, §2.a(4)
No geographic preferences	Except for A&E services	Ch. VI, §2.a(4)(g)
Evaluation of Options	If applicable	Ch. VI, §7.b
Exercise of Options		Ch. V, §7.a

Exhibit 6.2
APPLICABILITY OF THIRD-PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over $2,000)

CLAUSE	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management/ Subrecipients	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal government obligations to third-parties by use of a disclaimer	All	All	All	All	All
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
Incorporation of FTA Terms	All	All	All	All	All
Energy Conservation	All	All	All	All	All
Termination Provisions (not required of states)	>$10,000	>$10,000	>$10,000	>$10,000	>$10,000
Debarment and Suspension	>$25,000	>$25,000	>$25,000	>$25,000	>$25,000
Buy America			>$100,000	>$100,000	>$100,000 (for steel, iron, manufactured products)
Provisions for resolution of disputes, breaches, or other litigation	>$100,000	>$100,000	>$100,000	>$100,000	>$100,000
Lobbying	>$100,000	>$100,000	>$100,000	>$100,000	>$100,000
Clean Air	>$100,000	>$100,000	>$100,000	>$100,000	>$100,000
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)	
Copeland Anti-Kickback Act Section 1 Section 2				All >$2,000 (including ferry vessels)	

Exhibit 6.2
APPLICABILITY OF THIRD-PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over $2,000)

CLAUSE	TYPE OF PROCUREMENT				
	Professional Services/A&E	**Operations/ Management/ Subrecipients**	**Rolling Stock Purchase**	**Construction**	**Materials & Supplies**
Contract Work Hours & Safety Standards Act		>$100,000	>$100,000	>$100,000 (including ferry vessels)	
Bonding (not required of states)				>$100,000 (including ferry vessels)	
Seismic Safety	A&E for New Buildings & Additions			New Buildings & Additions	
Transit Employee Protective Arrangements		Transit operations funded with Section 5307, 5309, 5311 or 5316 funds			
Charter Service Operations		All			
School Bus Operations		All			
Drug and Alcohol Testing		Transit operations funded with Section 5307, 5309 or 5311 funds			
Patent Rights	Research & Development				
Rights in Data and Copyrights requirements	Research & Development				
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Prompt Payment	All if threshold for DBE Program met	All if threshold for DBE Program met	All if threshold for DBE Program met	All if threshold for DBE Program met	All if threshold for DBE Program met
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
ADA Access	Architectural & Engineering	All	All	All	
Special Notification Requirements for States	Limited to states	Limited to states	Limited to states	Limited to states	Limited to states

INVITATION TO BID

BID NUMBER: 13-XXXX **BID FOR:** Annual Requirements Contract for

BID CLOSING DATE: **Month XX, 201X** **BID CLOSING TIME**: **2:00 p.m.**

CONTACT: _____
Purchasing Agent
E-mail: J@arlingtontx.gov
Telephone: 817-459-630_

[ ] No Pre-Bid Conference will be held for this bid.
[ ] A Pre-Bid Conference will be held for this bid. Conference instructions are located in Section D.
[ ] A 5% Bid Security is required for the Bid.

1. Sealed bids original plus two copies, subject to the Terms and Conditions of this INVITATION FOR BIDS and other contract provisions, will be received in the **Purchasing Division, Business Office, 101 S. Mesquite Street, Suite 800, Arlington, Texas 76010**, before the closing time and date shown above.
2. **Bids must be returned in a sealed envelope, addressed to the Purchasing Agent, City of Arlington and have the bid number, closing date, and company name clearly marked on the outside envelope.**
3. Late bids will be returned to the bidder unopened.
4. Bids may be withdrawn at any time prior to the official opening.
5. Bids may not be altered, amended or withdrawn after the official opening without the recommendation and approval of the Purchasing Agent.

The undersigned agrees, if the bid is accepted, to furnish any and all items upon which prices are offered, at the price(s) and upon the terms and conditions contained in the specifications. The period for acceptance of this proposal shall be 90 calendar days unless stated otherwise herein.

THE UNDERSIGNED, BY HIS/HER SIGNATURE, REPRESENTS THAT HE/SHE IS AUTHORIZED TO BIND THE BIDDER FOR THE AMOUNT SHOWN ON THE ACCOMPANYING BID SHEETS AND HEREBY CERTIFIES FULL COMPLIANCE WITH THE TERMS AND CONDITIONS, SPECIFICATIONS AND SPECIAL PROVISIONS OF THE INVITATION FOR BID. BY SIGNING BELOW, YOU SIGNIFY THAT YOU HAVE READ THE ENTIRE DOCUMENT AND AGREE TO THE TERMS AND CONDITIONS THEREIN. BY SIGNING BELOW, YOU ALSO CERTIFY THAT IF A TEXAS ADDRESS IS SHOWN AS THE ADDRESS OF THE BIDDER, BIDDER QUALIFIES AS A TEXAS RESIDENT BIDDER AS DEFINED IN RULE 1 TAC 111.2.

Company Name and Address:	Company's Authorized Agent(Typed or Printed):
	Signature:
Taxpayer ID Number (TIN) or SSN and Name:	Title:
Telephone No.:	Date:
Email address:	

BID PRICE SCHEDULE FOR 12-XXXX

	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXT. PRICE
Bids must be submitted on the form furnished by the City and in accordance with the specifications by the estimated quantities listed below. Estimated quantities listed are based upon the best available data, and serve only as a guide and in no way represents an intended or guaranteed amount. As stewards of public funds, the City maintains all adopted budgetary parameters in the performance of its contracts. The ability to maintain a sense of fiscal responsibility shall be favorably considered in the evaluation of submittals. The City reserves the right to purchase according to actual need and may or may not meet or exceed the estimated quantities shown.					
1	Make / Model _____ Does your bid meet exact specifications? Y [__] N [__] If not, where does it differ? _____ _____			$_____	$_____
2				$_____	$_____
3				$_____	$_____
4				$_____	$_____
5				$_____	$_____
6				$_____	$_____
OPTIONAL ITEMS/SERVICES					
8				$_____	$_____
	GRAND TOTAL			**$**	

In accordance with the terms, conditions, and scope of goods or services set forth herein, the Bidder hereby submits the aforementioned prices listed.

Company Name:		Signature:	
Product shipping from:		Delivery (days) after ARO:	

Above Prices are **F.O.B. DELIVERED**	Terms: **NET 30**	Pricing: **FIRM**

SECTION A **INSTRUCTION TO BIDDERS**

A1. **BID DOCUMENTS:** The Supplier Portal and Demandstar are the only authorized sources for obtaining accurate Bid forms. All addenda and notices related to this procurement will be posted by the City on the Supplier Portal and Demand Star.

Bid forms obtained from any other source may be incomplete and Bidders risk not receiving necessary addenda, or other required documents causing bid to be considered non-responsive, and eliminating the Bid from award. In the event this Bid is obtained through any means other than the City's Supplier Portal or Demand Star, the City will not be responsible for the completeness, accuracy, or timeliness of the final Bid documents received from those other sources. Bidders must use complete bid information for accuracy when preparing bids. The City assumes no responsibility for any errors or misrepresentations that result from the use of incomplete bids.

Location of Bid Documents:

Official City Bids are available after registration at:

- Arlington's Supplier Portal www.ArlingtonTX.gov/finance/purchasing
- Onvia Demand Star located at www.onvia.com,
- Or, may be picked up via hard copy at location **Purchasing Division, Business Office, 101 S. Mesquite Street, Suite 800, Arlington, Texas 76010**,

Registration fees apply and will vary.

A2. **Preparation of Bid:** Bidders are expected to carefully examine all documents that make up this bid, including all addenda, attachments, and exhibits to thoroughly familiarize themselves with all requirements prior to submitting a bid. Upon examination of the solicitation and discovery of any discrepancies, inconsistencies, errors, or ambiguities in, or omissions from the solicitation documents, or should the bidder be in doubt of any meanings, the bidder shall promptly as ***specified in Section D, Special Conditions***. The submission must be in the form of a written request for interpretation or correction thereof. The bidder submitting the request will be responsible for its prompt delivery, and any necessary follow up.

Bid Preparation Costs: All costs associated with the preparation of response for this bid or any other City solicitation shall be borne by the bidder, and not the City.

A3. **Restriction of Communication:**
All communications relating to this solicitation is required to be in writing and directed to the City's Purchasing Agent of Record as identified on the cover of this solicitation under the title "Contact". Any and all other communications between a Bidder and City staff, and/or public official/s concerning any part of this solicitation is strictly prohibited. Failure to comply with this requirement may result in the City disqualifying the Bidder's submittal (bid).

A4. **Minimum Standards:** Specifications listed herein describe the expected minimum standards. If any exceptions are taken by the Bidder, the Bidder is responsible for indicating each deviation from the specifications, including an explanation, justification, or applicable literature for the deviation, and initialed by representative taking exception(s). Any and all exception must be submitted at time of bid submittal. The City reserves the sole right to accept or reject, in whole or part, any proposed exceptions. The absence of any indications will be interpreted as Bidder's complete compliance with the entire specification.

A5. Explanation of Bid Language:

1) It is the intent and purpose of the City of Arlington that this solicitation promotes competitive bidding. It shall be the Bidder's responsibility to advise the Purchasing Agent of Record, at the address or email listed on the cover page of this solicitation, if any language, requirements, or combination thereof, inadvertently restricts or limits the requirements stated in this Bid to a single source. Such notification must be submitted in writing and must be received by the Purchasing Agent of Record as ***specified in Section D, Special Conditions.***

2) Any explanation, clarification, questions, or interpretation desired by a Bidder relating to any part of this solicitation must be requested in writing to the Purchasing Division not less than five (5) business days before bid closing. Request for explanations or clarifications may be emailed to purch@arlingtontx.gov . The request must clearly identify the bidder's company name, point of contact and bid number. Any written information given to one (1) Bidder concerning a solicitation will be furnished to all Bidders in the form of an addendum.

   Interpretations, corrections, or changes to the bid made in any other manner are not binding upon the City, and bidders shall not rely upon such interpretations, corrections or changes. Oral explanations or instructions given before the award of the contract are not binding.

3) **Reservations:** The City expressly reserves the right to:
   (a) Specify approximate quantities in the bid;
   (b) Extend the bid opening date and time;
   (c) Add additional terms or modify existing terms in the bid pursuant to Section D, herein.

A6. Addenda:

1) Any interpretations, clarifications, and changes made will be in the form of written addenda issued by the Purchasing Division.
2) Oral answers received by any member of the Purchasing Division or requesting Department will not be authoritative, and the City will not entertain any protest based on a verbal instruction.
3) It is the bidder's responsibility to obtain, review, sign and return any and all addenda. Receipt of Addenda must be acknowledged by signing and returning Addenda with the bid, or under separate cover prior to the due date.
4) Addenda containing bid pricing should be returned in a sealed envelope marked on the outside with the bidder's name, address, bid number, and the due date and time.
5) Addenda are available through the City's Supplier Portal, Demand Star, and in the main Purchasing office. It is the responsibility of the Bidder to ascertain if any addenda have been issued, to obtain such addenda, and to return executed addenda with their bid. The City will not consider any request to re-open a bid as a result of failure by Bidder to secure addenda in accordance with this bid.
6) Failure to return any and all issued addenda may adversely affect the bidder's opportunity for award.

A7. Bid Compliance:

1) All items contained in the bid must be in total compliance with the specifications in this solicitation.
2) If Bidder is bidding only a portion of the goods or services, please state "No Bid" on the coordinating line item.
3) Alternate bids must be submitted under separate cover, unless stated in Section D, Special Provisions.
4) Each Bidder must furnish the information required by the solicitation on the documents provided. Bids submitted on any other form(s) may be considered non-responsive.
5) Any attempt to alter the wording in the bid may result in rejection of the bid.

6) Bids may not include exempted taxes such as City, State, and most Federal taxes. The successful bidder should request a Tax Exemption Certificate from the Purchasing Division as needed. Under no circumstances shall the City be liable to pay taxes for which the City has an exemption.
7) Conflict of Interest: All Bidders must disclose, with the bid, the name of any officer, director, or agent who is also an officer or employee of the City of Arlington. Furthermore, all Bidders must disclose the name of any City of Arlington officer or employee who owns, directly, or indirectly, an interest of ten percent (10%) or more of the Bidder's firm or any of its branches. Failure to disclose in this manner will result in the immediate disqualification of or cancellation of the bid for work. The City will seek all damages for the recoupment of losses in having to re-bid or re-assign this bid.

A8. **Prices:** Bid pricing for goods and services covered under this specification shall be firm unless otherwise specified. Pricing shall include, but is not limited to, mobilization, labor, material, equipment, tools, license, FOB delivery, unless otherwise requested on the Bid Price Schedule. It is the responsibility of the Bidder to check the unit price being submitted on the solicitation, and shall verify accuracy of pricing by signature on the Bid Price Schedule. No price changes will be allowed after opening. In the event of a discrepancy between unit price and extended price, the unit price shall prevail as accurate.

A9. **Brand Name or Equal:** If the bid indicates brand name or "equal" products are acceptable, the bidder may bid an "equal" product as an alternate bid but must be prepared to demonstrate those features that render it equal. Final determination of a product as an "equal" solely remains with the City.

A10. **Delivery Time:** Delivery time, if stated as a number of days, and shall be interpreted as calendar days. It is understood by Bidder that time is of the utmost with any City purchase; and therefore, if the indicated date cannot be met, or the date is not indicated, the bidder shall state its best delivery time. Failure to meet delivery times quoted may be grounds for cancellation of contract.

A11. **Signature:** The bidder must sign each document in the bid requiring a signature. If addenda are issued, the bidder must execute as an acknowledgement of addenda by signing and returning it at time of bid submittal. The bidder must initial any physical change(s) made to the solicitation document. Bidder's failure to sign required documents may result in the disqualification of the bid.

A12. **Compliance with laws:** The Bidder shall give all notices and comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and lawful orders and decrees of any court, administrative bodies, tribunals, or any public authority in any matter bearing on the performances of the services specified herein. This agreement and the rights and obligations of the parties hereto shall be interpreted, construed, and enforced in accordance with the laws of the State of Texas. The Bidder warrants and covenants to the City that all services will be performed in compliance with all applicable federal, state, county, and city health and safety codes, rules and ordinances including, but not limited to, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment, and licensing laws and regulations, the Texas Industrial Safety and Health Act, and the Workers Right to Know Law.

The Contractor shall maintain all required licenses, certifications, etc. throughout the term of the bid specification. Upon request, the Contractor must furnish the City with satisfactory proof of its compliance.

UNAUTHORIZED WORKERS The City will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act ("INA")]. The City shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Recipient of the employment

provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of this Agreement by the City.

A13. **Bid Submittal:** ***Unless otherwise specified in Section D, Special Conditions***, Bidders are required to submit the following documents: One (1) labeled "original" and bound with a single binder clip; and two (2) labeled "copies," copies may be bound at the Bidder's discretion.

The following documents are required at date and time of submittal:

1) The solicitation Cover Sheet with authorized signature;
2) Bid Price Schedule Form;
3) Copy of W-9 (December 2011 revision) "Request for Taxpayer Identification and Certification";
4) Proof of Insurance on original Acord Form;
5) Experience of Bidder, Attachment 1;
6) Data Intake Form, Attachment 2
   a. MWBE Participation Form, (if applicable);
   b. Cooperative Purchasing Form,
   c. Procurement Opportunity
   d. No-Bid Form, (if applicable);
7) Copy of Licenses, and Certifications when required to provide goods or services; and
8) Proof of Distributorship**. I**t shall be the responsibility of the Bidder(s) to furnish with their bid(s) a letter stating that said Bidder is a factory authorized distributor for the DFW Metropolis area for the items for which said Bidder has submitted their bid.
9) Bid security bond (if applicable)
10) Additional documents requiring Bidder's authorized signature
11) All bids must be submitted in a sealed envelope, plainly marked on the outside with the following information:

Bidder's Name
Address
City, State, Zip
Telephone Number

City of Arlington
Purchasing Division Business Office, 8th Floor
101 S. Mesquite St.
Arlington, Texas 76010

Bid Number: 12-XXXX
Bid Due Date and Time: _____
Bid Name: _____

Procurement Submittals which require more than one sealed envelope or box, must clearly identify it as such. Example: Package 1 of 2, Package 2 of 2; or Package 1 / 2, 2/2...

Any literature or other material submitted with the bid documents by Bidder will not supersede any of the City's terms and conditions.

Bidders are instructed to retain all pages of the solicitation which DO NOT require a signature, and shall be kept as reference and informative material (i.e., Terms and Conditions, Instructions to Bidders, or Specifications, etc.) to successfully complete the bid if awarded.

Bid Submittal Costs: The cost of submitting this bid is considered an operational cost of the Bidder, and shall not be passed on to or be borne by the City.

A14. Receipt of Bids: Bids must be received in the Purchasing Office prior to the due date and time. It is the sole responsibility of the Bidder to ensure timely delivery of the Bid by means chosen by Bidder. The City will not be responsible for failure of service on the part of the U.S. Postal Office, courier companies, or any other forms of delivery service chosen by the Bidder; and the bidder bears all financial obligations to Bid document submittal.

The time stamp clock in the Purchasing Office is the official time of record.

Any Bid received after the required date and time will be considered late, and will not be accepted or considered. Late bids will be returned to the bidder unopened. Bids will not be considered if delivered or received at any other City office or facility.

NOTE: The Municipal Court is located within the City Tower with one entrance into the building. Bidders will be required to enter through the North Entrance and pass through security via metal detector; in addition, all packages will be scanned through x-ray which could result in a lengthy process. The Bid response must arrive on the 8th floor and time stamped no later than 2:00 pm in order to be considered for award.

A15. Modifications, Withdrawal of Bid, or No Bid

Modification of Bids:

1) Bids may be modified in writing at any time prior to the due date and time.
2) Modifications should be returned in a sealed envelope marked on the outside with the bidder's name, address, bid number, and the due date and time.
3) The modification package must include a cover letter clearly stating the page(s) and item(s) being modified, and any further relevant information.
4) No additional or modified Terms and Conditions included with the bid response shall be evaluated or considered. If submitted it is understood and agreed that the general Terms and Conditions, Special Provisions, and all other supporting documents issued within this solicitation are the only applicable terms and conditions, and the bidder's authorized signature, affixed to the bid, attests to this.

Withdrawal of Bids:

1) Bidder may withdraw a bid without prejudice to itself, not later than the day and hour set for opening bids per the following instructions:
   (a) Bidders may withdraw their bids in writing via email or by facsimile (provided that the facsimile is signed by the bidder) at any time prior to the due date.
   (b) Bidder may also withdraw bids in person by a bidder, provided the withdrawal is made prior to the due date. The bidder must sign a receipt of withdrawal, and the City may require proof of agency from person withdrawing bid.
   (c) Withdrawn bids may be resubmitted, with or without modifications, up to the due date.

No Bids:

1) If Bidder chooses not to bid on the solicitation as a whole, please fill out Attachment B, Section "No Bid" and either mail or email to the Purchaser of Record.

A16. **Opening of Bids:** The Purchasing Division representative responsible for opening bids shall confirm the time and announce the bid opening. The representative shall then personally and publicly open and read aloud all bids received on time, in accordance with solicitation type.

A17. **Public Disclosure:** Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (The "Public Information Act").

Proprietary Information: All material submitted to the City becomes public property and is subject to the Texas Open Records Act upon receipt. If a bidder does not desire proprietary information in the bid to be disclosed, each page must be identified and marked proprietary at time of submittal.

The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.

A18. **Americans with Disabilities Act**

Anyone requiring reasonable accommodation for the public meetings specified herein (i.e. Pre-Bid Meeting or Bid Opening Meeting) should contact the person/agent of record named on the first page of this document at least 24 hours in advance of the activity to request accommodations.

A19. **Supplier Code of Ethics:** The City of Arlington, Texas, is committed to a procurement process that fosters fair and open competition, as we are governed by the highest ideals of honor and integrity in order to merit public respect and confidence in the spending of public dollars.

To achieve these goals, the following ethical principles shall govern each Supplier who seeks to do business with the City.

Each Supplier **shall not**:

1) Engage in collusive bidding, price fixing, price discrimination, or make an agreement with any other competing Supplier for the purpose of restricting competition.
2) Disclose pricing or quotes in submitted bids or proposals, directly or indirectly, to any other competing Supplier prior to the closing date for bids or proposals.
3) Make any attempt to induce or coerce any other individual/entity to submit or refrain from submitting a bid or proposal.
4) Under any circumstances, offer or give directly or indirectly, any gifts, gratuities, or other things of value to a City employee or family member, consultant or contractor in connection with the bid or proposal, which might influence or appear to influence purchasing decisions.
5) Initiate, negotiate, or render an offer of employment to any City employee who is directly involved with, or personally participating on behalf of the City with respect to any procurement or other matter involving the Supplier.

Each Supplier **shall**:

1) Disclose any transaction or participation of any individual in an operational situation that presents a conflict of interest as defined paragraph A7.g, herein.
2) Completely perform any awarded contract, at the contracted price, according to the terms set forth in the contract, and will submit timely and accurate invoices for goods and/or services performed.

Violation of any provision of this Supplier's Code of Ethics, may render the Supplier non-responsible, debarred, or in material breach of the contract, which could result in criminal or civil penalties under the State or Federal Law.

SECTION B STANDARD TERMS AND CONDITIONS

B1. APPLICABLE LAW/VENUE - This Contract is entered into subject to the Charter and ordinances of the City of Arlington, as they may be amended from time to time, and is subject to and is to be construed, governed, and enforced under all applicable State of Texas and federal laws. The parties to this contract agree and covenant that for all purposes, including performance and execution that this contract/agreement will be enforceable in Arlington, Texas; and that if legal action is necessary to enforce this contract, exclusive venue will lie in Tarrant County, Texas.

B2. INDEPENDENT CONTRACTOR - Contractor shall operate hereunder as an independent contractor and not as an officer, agent, servant or employee of City. Contractor shall have exclusive control of, and the exclusive right to control, the details of its operations hereunder, and all persons performing same, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants.

B3. ASSIGNMENT - The Contractor shall not sell, assign, transfer or convey any interest in this contract in whole or in part without the prior written consent of the City of Arlington. No assignment, transfer or conveyance under this contract will be effective without the prior written consent of the City.

B4. CONFLICT OF INTEREST – The Contractor covenants and agrees that Contractor and its officers, employees, and agents will have no interest, including personal financial interest, and will acquire no interest, either directly or indirectly, which will conflict in any manner with the performance of the services called for under this Contract. No officer of employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or services, except on behalf of the City or in compliance with the provisions of the City of Arlington Personnel Policies and Procedures Manual. Any violation of this provision shall render this contract voidable at the discretion of the City.

B5. SEVERABILITY - In case any one or more of the provisions contained in this contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this contract, and this contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

B6. MODIFICATIONS - This contract can be modified only by written agreement of the parties.

B7. REMEDIES - No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this contract may be waived without consent of the parties. Forbearance or indulgence by any party shall not constitute a waiver of any covenant or condition to be performed pursuant to this contract.

B8. TARGET ARLINGTON – In performing this contract, Contractor agrees to use diligent efforts to purchase all goods and services from Arlington businesses whenever such goods and services are comparable in availability, quality, and price.

B9. M/WBE – As a matter of policy with respect to the City of Arlington projects and procurements, City of Arlington also encourages the use, if applicable, of qualified contractors, subcontractors and suppliers where at least fifty-one percent (51%) of the ownership of such contractor, subcontractor or supplier is vested in racial or ethnic minorities or women. In the selection of subcontractors, the Contractor agrees to consider this policy and to use its reasonable and best efforts to select and employ such company and persons for work on this contract.

B10. PAYMENT TERMS - All payment terms shall be Net 30, and payments shall be made on approved invoices in accordance with the Texas Prompt Payment Act.

B11. TAXES - The City of Arlington is exempt from Federal Excise and State Sales taxes. Taxes must not be included in bid pricing. Tax exemption certificates will be prepared and executed by the City's Purchasing Division and furnished upon request.

B12. FUNDING – Contractor recognizes that the continuation of any contract after the close of any given fiscal year of the City of Arlington, which fiscal year ends on September 30 of each year, shall be subject to Council budget approval of the City of Arlington providing for or covering such contract item as an expenditure therein. The City does not represent that said budget item will actually be adopted as this determination is within the sole discretion of the City Council. Should funding not be approved by the City Council for any given budget year during the contract term, the contract will terminate and become null and void.

B13. F.O.B. DELIVERED AND DAMAGES - Prices bid and quoted shall always be Freight On Board (F.O.B.) Delivered, to Municipal Facility, Arlington, Texas, and shall include all freight, delivery and packaging costs. The City of Arlington assumes no liability for goods damaged while in transit and or delivered in a damaged or unacceptable condition. The Contractor shall be responsible for and handle all claims with carriers, and in case of damaged goods shall ship replacement goods immediately upon notification by the City of damage.

B14. CONTRACTOR TO PACKAGE GOODS - Contractor will package goods in accordance with good commercial practice. Each shipping container, shall be clearly and permanently marked as follows: (a) Contractor's name and address: (b) Consignee's name, address and purchase order or purchase change order number; (c) Container number and total number of container, e.g., box 1 of 4 boxes; and (d) Number of the container bearing the packing slip. Contractor shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform to requirements of common carriers and any applicable specifications. City's count or weight shall be final and conclusive on shipments not accompanied by packing list.

B15. PLACE OF DELIVERY - The place of delivery shall be set forth in the block of the purchase order or purchase change order entitled "Ship to."

B16. TITLE AND RISK OF LOSS - The title and risk of loss of goods shall not pass to the City of Arlington until the City actually receives and takes possession of the goods at the point(s) of delivery, after inspection and acceptance of goods.

B17. FORCE MAJEURE - Contractor shall not be liable for delay in delivery or performance when such delay is due to factors beyond its control, including but not limited to, explosions, governmental regulations, court orders or decrees, or acts of nature such as flood, wind, earthquake, tornado or hurricane. If the Contractor is unable to perform any of its obligations as a result of force majeure, Contractor shall immediately give written notice to the Purchasing Division of the date of inception of the force majeure condition and the extent to which it will affect performance.

B18. RIGHT OF INSPECTION - City shall have the right to inspect the goods upon delivery before accepting them. Contractor shall be responsible for all charges for the return to Contractor of any goods rejected as being nonconforming under the specifications.

B19. RIGHT TO AUDIT - Contractor agrees that the City shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor involving transactions relating to this Contract. Contractor agrees that the City shall have access, during normal working hours, to all necessary Contractor facilities, and shall be provided adequate and appropriate workspace, in order to conduct audits in compliance with the provisions of this section. The City shall give Contractor reasonable advance notice of intended audits.

B20. PRICE WARRANTY - The price to be paid by the City shall be that contained in Contractor's bid, which Contractor warrants to be no higher than Contractor's current prices on orders by others for products of the kind and specification covered by this contract for similar quantities under like conditions and methods of purchase. In the event Contractor breaches this warranty, the prices of the items shall be reduced to Contractor's current prices on orders by others, or in the alternative upon City's option, City shall have the right to cancel this contract without liability to Contractor for breach or for Contractor's actual expense.

B21. WARRANTY SERVICE CLAUSE - Under the terms of the warranties which arise from these contract documents and/or by the terms of any applicable special warranties required by the contract documents, if any of the work in accordance with this contract is found to not be in accordance with the requirements of the contract documents, the Contractor shall correct such work promptly after receipt of written notice from the City of Arlington or the architect, engineer or other entity as the contract documents may provide. This obligation shall survive acceptance of the work under the contract and termination of the contract. In order to facilitate a prompt response, Contractor agrees to provide for warranty service to the extent practical, from local businesses, including goods and services, when such goods and services are comparable in availability, quality and price. If Contractor fails within a reasonable time after written notice to correct defective work or to remove and replace rejected work, or if Contractor fails to perform the work in accordance with the contract documents, or if Contractor fails to comply with any provision in the contract document, either the City of Arlington or its designee may, after seven (7) days written notice to Contractor, correct and remedy any such deficiency.

B22. ***SAFETY WARRANTY*** - Seller warrants that the product sold to Buyer shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act (OSHA) of 1970, as amended. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at Seller's expense. In the event Seller fails to make appropriate correction within a reasonable time, any correction made by Buyer will be at Seller's expense. Where no correction is or can be made, Seller shall refund all monies received for such goods within thirty (30) days after request is made by Buyer in writing and received by Seller. Notice is considered to have been received upon hand delivery, or otherwise in accordance with **Section B5** of these terms and conditions. Failure to make such refund shall constitute breach and cause this contract to terminate immediately.

B23. ***SOFTWARE LICENSE TO SELLER*** – If this purchase is for the license of software products and/or services, and unless otherwise agreed, Seller hereby grants to Buyer, a perpetual, irrevocable, nonexclusive, nontransferable, royalty free license to use the software. This software is proprietary" to Seller, and is licensed and provided to the Buyer for its sole use for purposes under this Agreement and any attached work orders or invoices. The City may not use or share this software without permission of the Seller; however Buyer may make copies of the software expressly for backup purposes.

B24. ***WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY*** **-** Seller warrants that the goods or **s**ervices do not infringe upon or violate any United States patent, copyright, or trade secret. Seller will defend at its expense any action against Buyer or Buyer as licensee to the extent that it is based on a claim that goods used or services provided used within the scope of the license hereunder infringe upon a United States patent, copyright or trade secret, and Seller will pay any and all costs and damages finally awarded against Buyer or Buyer as licensee in such actions which is attributable to such claim. Should the products or services become, or in Seller's opinion be likely to become, the subject of any claim of infringement, Seller shall either: (a) procure for Buyer the right to continue to use the goods or services; or (b) modify the goods or services to make them non-infringing, provided that such modification does not materially adversely affect Buyer's authorized use; or (c) replace the goods or services with equally suitable, compatible, and functionally equivalent noninfringing goods or services at no additional cost to the Buyer; or (d) if none of the foregoing alternatives is reasonably available to Seller, terminate this agreement and refund to Buyer the payments actually made to Seller under this agreement.

B25. ***OWNERSHIP OF WORK PRODUCT*** – Seller agrees that any and all analyses, evaluations, reports, memoranda, letters, ideas, processes, methods, programs, and manuals that were developed, prepared, conceived, made or suggested by the Seller for the City pursuant to a Work Order, including all such developments as are originated or conceived during the term of the Contract and that are completed or reduced to writing thereafter (the "Work Product") and Seller acknowledges that such Work Product may be considered "work(s) made for hire" and will be and remain the exclusive property of the City. To the extent that the Work Product, under applicable law, may not be considered work(s) made for hire, Seller hereby agrees that this Agreement effectively transfers, grants, conveys, and assigns exclusively to Buyer, all rights, title and ownership interests, including copyright, which Seller may have in any Work Product or any tangible media embodying such Work

Product, without the necessity of any further consideration, and Buyer shall be entitled to obtain and hold in its own name, all Intellectual Property rights in and to the Work Product. Seller for itself and on behalf of its contractors hereby waives any property interest in such Work Product.

B26. NEW MATERIALS - Except as to any supplies or components which the specifications provide need not be new, all supplies and components to be provided under this contract shall be new (not used or reconditioned, and not of such age or so deteriorated as to impair their usefulness or safety), of current production, and of the most suitable grade for the purpose intended.

B27. *RECYCLE MATERIALS* Except as to any supplies or components which the specifications provide need not be new, all supplies and components to be provided under this contract shall be new (not used or reconditioned, and not of such age or so deteriorated as to impair their usefulness or safety), of current production and of the most suitable grade for the purpose intended. If at any time during the performance of this contract the Contractor believes that the furnishing of supplies or components which are not new is necessary or desirable, they shall notify the Purchasing Manager immediately, in writing, including the reasons therefore and proposing any consideration which will flow to the City if authorization to use supplies or components is granted.

The City of Arlington supports a recycling program. Recycled materials are acceptable and will be considered for award. The City desires to use recycled products when a comparable material/product is available. If your company distributes products made of recycled materials please submit an alternate bid for the items requested. All recycled products should meet the minimum standards established in the bid specifications provided. State any exceptions: costs, warranties and percentage of recycle materials used in the manufacture of the material/product. The City will determine the acceptability of the materials/product bid as an alternate.

B28. SAMPLES - Samples, if required, shall be furnished free of expense to the City and if not used or destroyed in examination and testing will be returned to the bidder, if requested, at the bidder's expense. Each sample must be marked with bidder's name, address, and bid number reference. SAMPLES SHOULD NOT BE ENCLOSED WITH BID UNLESS REQUESTED.

B29. SILENCE OF SPECIFICATION - The apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.

B30. INDEMNIFICATION –Contractor does hereby agree to waive all claims, release, indemnify and both hold harmless the City, its officials, agents and employees, in both their public and private capacities, from and against any and all liability, claims, losses, damages, suits, demands or causes of action, including all expenses of litigation and/or settlement, court costs and attorney fees, which may arise by reason of death or injury to persons or loss of, damage to, or loss of use of any property occasioned by any error, omission, or negligent act of the Contractor, its officers, agents, employees, subcontractors, invitees, or other persons for whom the Contractor is legally liable, arising out of or in connection with the performance of this contract, and Contractor will at its own cost and expense defend and protect the City against any and all such claims and demands.

Provided that this contract is not a contract for professional services as described in the Texas Professional Services Procurement Act, Contractor does further hereby agree to waive all claims, release, indemnify, defend and hold harmless the City and all of its officials, officers, agents and employees from and against any and all claims, losses, damages, suits, demands or causes of action, and liability of every kind including all expenses of litigation and/or settlement, court costs and attorney fees for injury or death of any person or for loss of, damages to, or loss of use of any property, arising out of or in connection with the performance of this contract. Such indemnity shall apply whether the claims, losses, damages, suits, demands or causes of actions arise in whole or in part from the negligence of the City, its officers, officials, agents or employees. It is the express intention of the parties hereto that the indemnity provided for in this paragraph is indemnity by the Contractor

to indemnify and protect the City from the consequences of City's own negligence whether that negligence is a sole or concurring cause of the injury, death or damage.

B31. NON-DISCRIMINATION - Contractor shall not discriminate against any employee or applicant for employment of Contractor or of the City of Arlington because of race, age, color, religion, sex, national origin, ancestry, disability, or place of birth. Contractor shall take action to ensure that all persons are employed and/or treated without regard to their race, age, color, religion, sex, national origin, ancestry, disability, or place of birth. This action shall include, but not be limited to the following: employment, promotion, demotion, transfer, working conditions, recruitment, layoff, termination, rates of pay or other forms of compensation, and training opportunities.

B32. ***IMMIGRATION NATIONALITY ACT*** – The City of Arlington actively supports the Immigration & Nationality Act (INA) which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Seller shall verify the identity and employment eligibility of all employees who perform work under this Agreement. Seller shall complete the Employment Eligibility Verification Form (I-9), maintain photocopies of all supporting employment eligibility and identity documentation for all employees, and upon request, provide Seller with copies of all I-9 forms and supporting eligibility documentation for each employee who performs work under this Agreement. Seller shall establish appropriate procedures and controls so that no services will be performed by any worker who is not legally eligible to perform such services. Seller shall provide Buyer with a certification letter that it has complied with the verification requirements required by this Agreement. Seller shall indemnify Buyer from any penalties or liabilities due to violations of this provision. Buyer shall have the right to immediately terminate this Agreement for violations of this provision by Seller.

B33. DISABILITY - In accordance with the provisions of the Americans With Disabilities Act of 1990 (ADA), Contractor warrants that it and any and all of its subcontractors will not unlawfully discriminate on the basis of disability in the provision of services to general public, nor in the availability, terms and/or conditions of employment for applicants for employment with, or employees of Contractor or any of its subcontractors. **Contractor warrants it will fully comply with ADA's provisions and any other applicable federal, state and local laws concerning disability and will defend, indemnify and hold City harmless against any claims or allegations asserted by third parties or subcontractors against City arising out of Contractor's and/or its subcontractor's alleged failure to comply with the above-referenced laws concerning disability discrimination in the performance of this contract.**

B34. TERMINATION FOR DEFAULT - The City of Arlington reserves the right to terminate the contract without prior notice in the event the Contractor defaults or breaches any of the terms and conditions of this contract, or otherwise fails to perform in accordance with the bid specifications. In the event of termination the City reserves the right to complete the work or services in any manner it deems desirable, including engaging the services of other parties therefore and/or awarding the bid to the next lowest responsible bidder. Any such act by the City shall not be deemed a waiver of any other right or remedy of City. If after exercising any such remedy, the cost to City of the performance of the balance of the work or services is in excess of that part of the contract sum, which has not therefore been paid to the Contractor hereunder, Contractor shall be liable for and shall reimburse the City for such excess. Bidders shall for this purpose, keep their bids open and prices fixed for a period of 90 days following the award of this bid.

B35. TERMINATION WITHOUT CAUSE - The City shall have the right to terminate the contract, in whole or in part, without cause any time upon thirty (30) days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease placing orders and all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent funds are appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

B36. COMPLIANCE WITH FEDERAL REGULATIONS: All contracts involving federal funds will contain certain provisions required by applicable sections of CFR 34, Section 80.36(l). The vendor certifies by signing the bid that the vendor and his/her principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in federally funded transactions and may, in certain instances, be required to provide a separate written certification to this effect.

During the term of any contract with the City, in the event of debarment, suspension, proposed debarment, declared ineligible or voluntarily excluded from participation in federally funded transactions, the vendor shall immediately notify the City's Purchasing Manager, in writing. Vendors will also be required to provide access to records, which are directly pertinent to the contract and retain all required records for three years after the City makes final payment. For all contracts involving Federal funds in excess of $10,000, the City reserves the right to terminate the contract for cause, as well as for convenience, by issuing a certified notice to the vendor.

B37. NO THIRD-PARTY BENEFICIARY – For purposes of this contract, including its intended operation and effect, the parties to this contract specifically agree and contract that: (1) the agreement only affects matters/disputes between the parties to this contract, and is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entity may be in a contractual relationship with City or Contractor or both; and (2) the terms of this contract are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either City or Contractor.

B38. *THE AGREEMENT* - In the absence of an otherwise negotiated contract, or unless stated otherwise, the Agreement between Buyer and Seller shall consist of these Standard Terms and Conditions together with any applicable bid documents published by the Buyer and Seller's Response to such bid (the "contract documents"). This Agreement is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of trade shall be relevant to supplement or explain any term used in this Agreement. Acceptance of or acquiescence in a course of performance under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code (UCC) is used in this Agreement, the definition contained in the UCC shall control. In the event of a conflict between the contract documents, the order of precedence shall be these Standard Terms and Conditions, the Buyer's published bid documents and the Seller's response. If Buyer and Seller have otherwise negotiated a contract, this Agreement shall not apply.

B39. HEADINGS – The headings of this contract are for convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

SECTION C EVALUATION FOR AWARD, OR REJECTION OF BIDS

C1. Evaluation: The City reserves the right to accept or reject, in part or in whole, any bid submitted, and to waive any technicalities in the best interest of the City. The City reserves the right to award in whole to a sole Bidders, split the award between multiple Bidders, or may choose not to award some or all items, depending on the best interest of the City.

The Bidder may furnish pricing for all or a portion of the bid, unless otherwise specified herein. Bids that specify an "all or none" award may be considered if a single award is advantageous.

C2. Post Qualification criteria must be presented at time of Bid's submission to be considered for award. Review criteria includes, but is not limited to:

1) Bidder's following Instructions to Bidders, Section A;
2) Submitting only the documentation required as specified in Section D, and in its entirety;
3) Review the Experience of Bidder Form (Attachment 1);
   (a) Bidder must submit the minimum number of specified references within the specified number of year who can substantiate the Bidder meets the minimum qualifications, experience, knowledge, skills, and capability of requirements to successfully complete similar services;
   (b) References shall illustrate Bidder has provided the services as outlined in the specification for size, time, and responsibility;
   (c) Any negative verifications, failure to verify, or other public information may render bid non-awardable.
4) Delivery of Bid is a factor of award. Failure to perform within the delivery deadline set forth herein, or per addenda, shall deem Bid as non-responsive.

C3. Pricing: Pricing shall remain firm for 1 year of the contract period, unless otherwise stated in Section D, Special Provisions; or Special Provisions Supplement attachments C or S. Pricing may be reviewed per the following:

1) **Best Price:** An award will be made without further negotiation based upon sealed competitive bids; therefore, the Bidder's best and reasonable price should be submitted in response to the solicitation.

   (a) Reasonable Pricing will be reviewed as part of Best Pricing. A reasonable unit price must be submitted for each line item. In the event, that any unit pricing is determined to be unreasonably too low or too high, the bid may, in whole or part, be determined non-responsive.

2) **Best Value:** In determining the "best value" the following criteria will be considered as amended in section 252.043 of the Texas Local Government Code:

   (a) Purchase Price;
   (b) Reputation of the bidder and the bidder's goods/services;
   (c) Quality of the bidder's goods or services;
   (d) Extent to which the goods or services meet the municipality's needs;
   (e) Bidder's past relationship with the municipality;
   (f) Impact on the ability of the municipality to comply with laws and rules relating to contracting with historically underutilized businesses and non-profit organizations employing persons with disabilities;
   (g) Total long-term cost to the municipality to acquire the bidder's goods or services; and
   (h) Any relevant criteria specifically listed in the request for bids or proposals.

C4. Reservations: The City expressly reserves the right to, with or without cause, and without recourse:

1) Consider and accept alternate bids, if specified in the bid documents, when most advantageous to the City;
2) Waive as an informality, any minor deviations or technicalities from specifications provided they do not affect competition or result in functionally unacceptable goods or services;
3) Waive any minor informality in any bid or bid procedure (a minor informality is defines as one that does not affect the competitiveness of the Bidder);
4) Reject a bid because of unbalance unit bid prices; or Bidder has previously failed to perform properly, or complete an on-time contract of similar nature, or whom has poor vendor performance documented as part of a public record;
5) To be the sole judge of references;
6) Reject or cancel any or all bids;
7) Reject any part of a bid;
8) Reissue a solicitation for bid; and/or
9) Procure any item by other means.

C5. ***Prohibited Vendors:*** *As of the date of this transaction, Vendor certifies that they are not listed in the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control (see http://www.treas.gov/offices/enforcement/ofac/sdn/).*

In addition, Vendor certifies that they are not listed on the Excluded Parties List System (EPLS) which is found at www.sam.gov. Vendor agrees that should at any time during the term of this contract they become listed on the either the Terrorism List or EPLS, Vendor shall promptly notify the City. The City shall have the absolute right to terminate this contract without recourse in the event Vendor becomes listed on the Terrorism List. Vendors indentified on either list at time of bid review will not be considered for award.

C6. Award: If awarded, the contract or contract(s) shall be based on the City's evaluation criteria and compliance with solicitation requirements.

The City of Arlington shall award the bid(s) to the Bidder(s) who meet both the required specifications, and offers the Best Pricing by the lowest responsive, responsible bidder or provides the Best Value to the City.

A responsive bidder is defined to be one who submits a completed sealed bid packet within the stated time deadline and in accordance with the bid specifications. A responsible bidder is defined to be one who demonstrates specific selection criteria responses indicating that the company can successfully deliver the supplies, equipment, or services being procured.

C7. Post-Bid Documents:

1) **Required From Successful Bidder:**

(a) Certificate(s) of Insurance: Refer Section F.

(b) Payment, Performance, and Maintenance Bonds: When payment, performance, and/or maintenance bonds are required, the bidder must provide the bonds, in the amounts and on the conditions required, within 15 working days after notification of intent to award, or as otherwise required by the bid specifications, applicable requirements will be identified in Section D, Special Provisions.

2) **Required From City:**

(a) Bid Results: The bid tabulation sheet may be available within forty-eight (48) hours after the bid opening and will be posted via Onvia Demand Star System. As an alternate, Bidder may email Contact to request an electronic copy of the bid tabulation.

(b) In the event the proposed bid exceeds legal value thresholds, the Purchasing Agent of Record will submit bid information to City's Council for approval of award. Such process may take eight (8) to twelve (12) additional weeks.

C8. Order of Precedence: This bid specification shall be included and incorporated in the final agreement or purchase order. Unless otherwise expressly provided in the final agreement or purchase order, in the event of any conflict between the terms of the final agreement or purchase order; this bid specification; and the vendor's response, the order of precedence shall be the final agreement or purchase order, followed by the solicitation, and then the response to the solicitation.

C9. Bid and Proposal Grievance Procedures

Any actual bidder or proposer who believes they are aggrieved as a result of a bid or proposal from the City of Arlington may file a grievance. Only written grievances may be considered. The grievance may not be in regards to specific evaluation criteria or weights.

1. The grievance must be in writing and delivered to the Purchasing Manger of the City of Arlington. The grievance may be delivered in person to the department offices located at **101 South Mesquite Street, Ste 800, Arlington, Texas,** or by certified mail, return receipt requested, to the following address:

City of Arlington
Financial Services/Purchasing Division
P.O. Box 90231
Mail Stop 63-0810
Arlington, Texas 76004-3231

2. The Purchasing Division must receive the written grievance **within five (5) business days after** the posting of the City staff's award recommendation being submitted to the City Council for approval.

3. The written grievance must include the following information before it may be considered by the city:

   (a) Name, mailing address, and business phone number of the aggrieved party;
   (b) Identification of the bid or proposal to be reviewed;
   (c) Citation detailing the exact law that is believed to have been violated;
   (d) A precise and short statement of the reason or reasons for the grievance which should provide enough factual information to enable the city to determine the basis of the grievance; and any documentation or other evidence supporting the grievance.

5. All applicable documentation and other information applying to the grievance must be submitted to the Purchasing Manager at the time of grievance.

6. The Purchasing Division, in conjunction with the department responsible for the bid or proposal solicitation, will attempt to resolve the grievance, including, at the Purchasing Manager's option, meeting with the aggrieved party. If the grievance is successfully resolved by mutual agreement, the Purchasing manager shall submit a copy/verification of the resolution to the City Manager or designee.

7. If the Purchasing Division is unable to resolve the grievance, the aggrieved party may request the grievance be reviewed and resolved by the City Manager or designee.

8. A request for the City Manager's review must be in writing and received by the Purchasing Division **within three (3) business days** from the date the Purchasing Division notifies the aggrieved party that the issue(s) cannot be resolved. The request for City Manager review must be delivered in person to the Purchasing Division at the address stated above or by certified mail, return receipt requested, to the mailing address stated above.

9. If the aggrieved party fails or refuses to request a review by the City Manager within the three (3) days, the grievance is deemed finalized and no further review by the city is required.

SECTION D SPECIAL CONDITIONS

D1. PROCUREMENT SCHEDULE

PROCUREMENT Schedule	
Release Date	March 27, 2013
Pre-Bid Meeting	
Last day Questions are Due	April 4, 2013
Release of Addendum 1	April 11, 2013
Bids Due	April 18,2013
Notice of Award	June/August 2013
Project Completed and Invoiced	September 30, 2013

PRE-BID CONFERENCE:

[] No Pre-Bid Conference is required for this solicitation.

[] Non-Mandatory Pre-Bid Conference will be held for this solicitation.

[] Mandatory Pre-Bid Conference will be held for this solicitation.

The purpose of the pre-bid meeting is for City Staff to explain the new requirements relating to the specifications and to open the floor for questions and answers.

Attendance is (required/strongly encouraged), as potential respondents will have an opportunity to ask questions and/or seek clarification regarding any and all aspects of this solicitation, and participate in a physical walk ,and onsite inspection.

Any vendor who submits a bid without attending the scheduled pre-bid conference does so at his own risk. Such vendor who submits a bid and does not attend the scheduled pre- bid conference waives any right to assert claims due to undiscovered conditions.

A pre-bid conference will convene PROMPTLY at _____ AM/PM, (Month & Date), 2011, at the _(Name of Facility), (Physical Address), Arlington, Texas 76***.

"ON TIME" Attendance is REQUIRED. The Sign In sheet will be made available to all parties until **(TIME) AM/PM** at which time it will be removed and any late arrivers will not be allowed to sign in, but may stay to listen in the event there are sub-contracting opportunities, in part or in whole, under this specification. The signature will become record of attendance and will be recognized as meeting said requirement of this bid.

Failure to sign-in on the official sign in sheet will result in non-consideration of award, but will not limit sub-contracting opportunities. Questions, answers, and clarifications will not be reviewed for those people' arriving after the meeting begins.

Although the City may provide tentative responses to questions at the conference, responses are not are only official when they are posted as an addendum to the official bid websites identified as the City's Supplier Portal and Onvia Demand Star .

Special Notes:

D2. AWARD CRITERIA:

[] Sealed Bid - Lowest Responsible and Responsive bid meeting bid specifications.

[] Best Value

D3. BID SUBMITTAL INSTRUCTIONS:

[] No special instructions are required, submit bid packet per section A13.

[] Special Bid Packet Submission Instructions are required as follows:

____ # Copies
____ Binding
____ Supply a CD/Flash Drive

D4. BIDDERS QUALIFICATION: Each bidder is responsible for submitting all relevant, factual, and correct information at time of the bid submittal. If additional sheets are attached to the bid specification, the bidder must clearly cross-reference the appropriate location in the solicitation (i.e. Section and paragraph Number, Attachment and paragraph number, or Exhibit; page number, subject, etc.). The criteria listed below will be assessed as part of the Post Qualification.

1) **Years of Experience:** Bidder shall have a minimum of **three (3)** consecutive years experience in the supply and delivery of goods ,or services to be provided as specified herein. *Recent start-up businesses do not meet the requirements of this Bid Specification.*

   (a) A start-up business is defined as a new company that has no previous operational history or expertise in the relevant business and is not affiliated with a company that has the history or expertise (References). Failure to meet this requirement will result in a non-award.

2) **References:** Bidder must provide a list of three (3) governmental or commercial references on Attachment 1. The bidder shall choose references that illustrate the Bidder's ability, capacity, and skill to perform the contract as specified.
   (a) Bidder may list one (1) previous City of Arlington project that he/she has completed.
   (b) The City reserves the right to inspect any and all known previous locations where services were rendered pursuant to the property owners' expressed permission.

3) **Bankruptcy or Insolvency:** If the successful Bidder shall file a Petition in Bankruptcy, or if the same shall be adjudged bankrupt or insolvent by any Court, or if a receiver of the property of the successful Bidder shall be appointed in any proceeding brought by or against the creditors, or proceedings shall be commenced on or against the successful Bidders' operations of the premises, the City reserves the right to terminate any contractual agreement immediately.

4) **Equipment:** Bidder must provide a list of compliant equipment on Attachment 3, if applicable.
   (a) The City reserves the right to inspect all equipment dedicated for use on this project prior to award of the bid, and during the term of the service.

5) **Public Information:** Any negative vendor performance or information obtained as public record may be cause for consideration of non-award.

6) The City of Arlington reserves and shall be free to exercise the right to evaluate bid in relation to performance record of bidder with the City itself, another municipal corporation of like size, or private corporations during the past two-year period.

7) The City reserves the right to reject a response from a Contractor and/or Sub contractor whose goods and/or services to the City or other government entities have been documented as unsatisfactory in providing the same goods and/or services.

D5. **[] Bonds** are not applicable.
[] Bonds are applicable: Vendor/Contractor must be capable of being bonded in order to receive award of bid.

1) **Bond Types :**

(a) **Bid Security Bonds:** If a Bid Security (or Bid Guarantee) is required for this purchase, the requirement will be reflected on the Cover Sheet of this solicitation. Bond must be for the amount equal to 5% of the total bid price, unless otherwise indicated herein. Such bond are subject to forfeiture to the City in the event the successful Bidder fails to, or refuses to execute the contract documents within fifteen (15) calendar days after the contract has been awarded.

(b) **Payment, Performance, and Maintenance (P/P&M) Bonds** are provided herein and shall be executed and delivered within fifteen (15) calendar days after Notice of Intent to Award Receipt, verification, and authorization must be given prior to beginning work.

1. **Payment Bond -** a Payment Bond shall be executed in the amount of not less than one hundred percent (100%) of the Contract price and shall be executed for the entire duration of the contract of the agreement solely for the protection of all claimants supplying labor and materials in the prosecution of the work.

2. **Performance Bond** – a Performance Bond shall be executed in the amount of not less than one hundred percent (100%) of the Contract price and shall be executed for the entire duration of the contract of the agreement solely for the faithful performance of the contract

3. **Maintenance Bond -** a Maintenance Bond shall be executed in the amount of not less than one hundred percent (100%) of the Contract price for the entire duration of the contract plus (+) an extension of one (1) year beyond the date of final acceptance of all work done under this Contract to cover the guarantee as set forth in these specifications.

2) **Bond Submissions:**

(a) **Bid Security Bonds** are required at time of bid submission to be considered for award and may be presented in the form of a surety bond by an acceptable source, Cashier's Check, or Certified Check.

(b) **P/P & M Bonds:** Bidder will be given no less than fifteen (15) calendar days to acquire, and provide bonds to the Purchasing Division. An actual due date will be noted within the Intent to Award letter pending Council's approval. Should there be a deviation allowed for extended time, a provision will be noted within the Intent to Award Letter, or in a follow up letter sent by the City.

3) **City Approved Bonding Process:** The Vendor/Contractor shall begin the bonding process upon receipt of the [Post Council] Intent to Award letter which will be sent electronically via Purchasing Department. Bonds shall be submitted in accordance as follows:

(a) Acceptable surety in accordance with City requirements. City requirements are defined as:

1. the name of the Surety shall be included on the current Department of the Treasury's Listing of Approved Sureties (Circular 870) or

2. the surety must have capital and surplus equal to ten (10) times the amount of the bond. The amount of the bond shall not exceed the amount shown on the Treasury List or one-tenth (1/10) of the total capital and surplus. If reinsurance is required, the company writing the reinsurance must be authorized, accredited or trusted to do business in Texas; and

3. all bonds shall be executed by a corporate Surety authorized and licensed to do business in the State of Texas and acceptable to the City, and

4. all bonds furnished hereunder shall meet the requirements of V.T.C.A., Government Code, Chapter 2253.

5. No surety will be accepted by the City, which is at the time in default, or delinquent on any bonds or which is interested in any litigation against or averse to the City. Should any surety on the agreement be determined unsatisfactory at any time by the City, notice will be given to the contractor to that effect and the contractor shall immediately provide a new surety satisfactory to the City.

6. Facsimiles of bid guaranties are unacceptable and are cause for rejection of the bid.

(b) If the amount of any bond required hereunder exceeds One Hundred Thousand Dollars ($100,000), the bond must be issued by a surety that is qualified on obligations permitted or required under federal law as indicated by publication of the surety's name in the current U.S. Treasury Department Circular 570.

(c) In the alternative, an otherwise acceptable surety company (not qualified on federal obligations) that is authorized and admitted to write surety bonds in Texas must obtain reinsurance on any amounts in excess of One Hundred Thousand Dollars ($100,000) from a reinsurer authorized and admitted as a reinsurer in Texas who qualifies as a surety or reinsurer on federal obligations as indicated by publication of the surety's or reinsurer's name in the current U. S. Treasury Department Circular 570.

D6. CONTRACT: The bid document, as amended by any addendum, must be returned to the City of Arlington as it conforms to the bid closing date and time, and awarded by the Arlington City Council, shall constitute the contract.

1) **Initial Term of Agreement:** Unless otherwise specified, this contract, if awarded, shall be for a period of One (1) year(s) beginning on the date specified in the Award Letter, to be issued by the City's Purchasing Division.

2) **Probationary Period:** The first ninety (90) days of each contract term will be considered a "probationary" period. When applicable, at the first City Council meeting following a probationary review, the successful Bidder's contract may be terminated, based on the perfomance of the Bidder, and a new award be granted without issuing a second solicitation.

3) **Option to Renew:** The City and Contractor may, upon mutual written consent not earlier than ninty (90) days prior to the expiration of the contract, renew the contract for an additional one-year period, not to exceed four (4) additional one (1) year renewal options after the initial term.

   Bidder may request a price increase at each renewal time at a rate not to exceed the effective percentage change in the Consumer Price Index (CPI-U) for the previous twelve (12) months. At the City's discretion, the effective change rate shall be based on either the local or national index average rate for all items. If agreement cannot be reached, the contract will be terminated at the end of the current contract period and may re-bid solicitation for goods or services. The City will accept price reductions at any time during the contract period.

4) **Option to Extend or Transition of Bidder(s):** In the event that a new Bidder(s) is (are) not selected by the City of Arlington, it shall be incumbent upon the Bidder to continue the contract under the same terms and conditions until new contracts can be completely operational. At no time shall this transition period extend more than ninety (90) days beyond the original expiration date of the existing contract and any extension thereof.

5) **Addition or Deletion:** The City reserves the right to add or remove items as circumstances warrant. The City of Arlington reserves the right to purchase additional units under the terms of this specification.

6) **Cancellation:** The City reserves the right to cancel the contract upon thirty (30) days written notification for failure to supply the required materials or failure to meet delivery schedules, or should funding not be approved by the City Council for any given budget year during the contract term, the contract will terminate and become null and void.

7) **Estimated Quantities:** This is a requirements contract. The quantities listed are based upon the best available data, and serve only as a guide and in no way represents an intended or guaranteed amount. The City reserves the right to purchase according to actual need and may or may not meet or exceed the estimated quantities shown.

8) **Order Placement:** Requests for goods and services will be on an as-needed basis by authorized City of Arlington employees only. The City will supply the successful bidder with the names of personnel authorized to place orders. The City shall place written orders electronically or via email in the form of a purchase order or formal Notice to Proceed which will include a purchase order number.

   (a) **Purchase Orders:** It is the sole responsibility of the supplier to acquire a hard copy purchase order authorizing said purchase of goods or services. Supplier must acquired a purchase order prior to placing any orders or purchasing goods, materials on behalf of the City, or performing services for the City. Failure on behalf of the supplier to obtain a purchase order from the City may result in forfeiture of payment due to lack of authorization to purchase goods or services. Verbal orders from City employees are not an acceptable method of authorization. Such verbal orders shall be forwarded to the Purchasing Agent of record, as identified herein.

(b) **P-Card Purchases**: Only when supplier has obtained written authorization from Purchasing Division may goods or services on contract be purchased via p-card.

9) **Invoicing:** Unless, otherwise specified herein, the Awarded Vendor shall furnish the City the complete and correct itemized invoice for the goods and services.

(a) No payment will be made for goods ordered or services performed without a proper order authorization.

(b) Payment shall not be made until the materials, goods, or services have been received, inspected, and accepted by the City in the quality and quantity ordered.

(c) Invoices resulting from scheduled goods or services shall be received no less than one 30 days apart;

(d) When applicable, invoices shall be compiled per the purchase order number in a 30 day cycle; and

(e) At no time shall an invoice reflect multiple purchase order numbers. Such invoice(s) will be considered incorrect and will not be processed until corrected.

(f) The City will:

1. Not accept an incorrect invoice; or

2. Incur no penalty for late payment if payment is made in thirty (30) days or less from receipt of goods/services and/or a correct/accurate invoice, whichever is later in accordance with the Texas Prompt Payment Act.

3. Dismiss invoices lacking an authorized Purchase Order number, and/or Service Agreement number and Division Code, as such invoice will be considered as incorrect.

(g) Submittal:

Mailed to:

City of Arlington
Accounts Payable
P.O. Box 30143
College Station, TX 77842-0143

Or, **registering with** Catalyst Vendor Self Service – a web-based application that will provide access to invoices/payment status. http://coa.catalyst.sourcenetsolutions.com

(h) Invoice must include**,** at a minimum, the following information:

1. Purchase order number
2. Division Code
3. Coordinating Line Item of PO
4. Company Name
5. Point of Contact who placed order
6. Date of delivery

7. Delivery Address
8. Cost of items as stated on Bid Response and extended price to reflect total cost for number of items

(i) **Questions concerning invoice** status and payment must be directed to 877-629-6295. Purchasing and City staffers will not be able to provide status information.

D7. Federal Clauses: **[]** are **not** applicable under this specification
[] are applicable under this specification and are listed in Supplement F, herein.

D8. Safety: All safety precautions and oversight shall be per OSHA and best practice so to meet the requirements of the Specifications and Scope of Work, defined herein. No direct compensation will be made to the Contractor for furnishing, installing, maintaining, and/or the removal of required safety measures, and thus no costs associated with meeting the specifications and scope of work will be paid as a separate line item.

D9. Misconduct: The City is committed to maintaining an alcohol, drug, and firearm free workplace. Possession or use of firearms, or possession, use of, or being under the influence of alcohol or controlled substances by Contractor's employees or Subcontractors' employees while in the performance of any service(s) or delivery of goods to the City of Arlington, Texas, is strictly prohibited. Violation of this requirement may constitute grounds for immediate cancellation of the Contract. The City reserves the sole right to determine whether this clause is violated, which may be grounds for immediate termination.

D10. Environmental: The City is committed to purchasing goods, and services from suppliers which can provide the least adverse environmental impact within the constraints of statutory purchasing requirements, departmental needs, availability, and sound economic considerations while protecting health and safety, be fiscally responsible, meet State and Federal mandates, and model environmental stewardship, and encourages proactive measures in employee behavior to reduce mobile source air pollution.

D11. Ordinances: The City will make a good faith effort to notify the supplier of City ordinances when applicable; however, neither the City nor any of its staff, employees, agents, or representatives are responsible for notifying the contractor(s) of such ordinances. It will be the sole responsibility of the Contractor performing the services to make him/her aware of such City ordinances. All costs, including but not limited to, fines, fees, tickets, or citations becoming due as a result of violating such ordinances will be handled directly between the Court, the issuing department, and the Contractor. Compensation for costs due to violations will not be warranted under this specification or in conjunction with any portion of work as it is associated with this specification. Should it be discovered that an ordinance conflicts with a project, the Contractor shall notify City in writing at once. The City will acknowledge the information via email and may allow an extended work time when ordinance(s) impede schedule.

D12. Public Emergencies: A Public Emergency shall be defined as, but not limited to, a tornado, flood, hurricane, winter weather, large scale disaster and/or relief thereof which is manmade or natural, or **by an act of God shall herein known as "Emergency."**

It is vital to the citizens and those who seek large scale refuge within the City of Arlington be protected from any such Emergency situation(s) that threatens public health and safety as declared by the City of Arlington; therefore, at any time before, during, or after a public emergency, the City of Arlington may require a "First Priority" for goods and services to be rendered by the awarded Bidder.

The Contractor agrees to rent/sell/lease all goods and service to the City or its governmental entities on a "first priority" basis. The City expects to pay contractual prices for all goods and or services rendered under

this awarded Agreement in the event of such Emergency. Should the Bidder provide the City with products and/or services not under this awarded Agreement, the City expects to pay a fair and reasonable price for all products and/or services rendered or contracted in the event of an Emergency.

SECTION E SCOPE OF WORK

E1. INTENT

The intent and purpose of this invitation to bid is to establish an annual requirements contract for
The City reserves the right to request samples of products being bid prior to award of the bid.

SECTION F INSURANCE REQUIREMENTS (IN THE MINIMUM OF)

The Awarded Contractor will not commence work under this contract until he or she has obtained all the insurance required herein and such insurance has been approved by the City, nor shall Contractor allow any subcontractor to commence work on his or her subcontract until all required insurance of the subcontractor has been obtained and submitted to the City.

The successful bidder shall submit evidence of required insurance on an original ACORD certificate or *state approved form* at time of bid. The bidder will have no longer than fifteen (15) calendar days following notification of award to submit the required Acord form identifying The City as an additional insured to all applicable coverage, including materials, equipment, or supplies provided by the City. Failure to submit the required document(s) may result in rescinding the award. The bid may thereafter be awarded to the next lowest responsible bidder. A current Acord form must be submitted upon policy changes, renewal, or upon request by the City.

An insurance certificate is required to be on file prior to the start of any work.

1. **Commercial General Liability:** $*1,000,000.00 per occurrence, $1,000,000.00* products/completed operations and $1,000,000.00 general aggregate for bodily injury, personal injury and property damage. This policy shall have no coverages removed by exclusions.

2. **Automobile Liability:** *$1,000,000.00* combined single limit per accident for bodily injury and property damage. Coverage should be provided as a "Code 1," *any auto, or hired and non-owned vehicles.*

3. **Workers' Compensation and Employers' Liability:** Statutory. Employers Liability policy limits *of $100,000.00 for* each accident, $100,000.00 policy limit – *Disease, $1,000,000 each employee disease.*

4. **Professional Liability Insurance**: Contractor shall obtain and maintain at all times during the prosecution of the work under this Agreement *follow form* professional liability insurance. Limits of liability shall be $1,000,000 per claim. Contractor shall maintain this policy for a period of four (4) years after the completion of the project or shall purchase extended reporting period or "tail" coverage insurance.

Other Insurance Provisions

1. The City, its officials, employees and volunteers shall be named as an additional insured *with waiver of subrogation in the favor of the City* on the Commercial General Liability and Automobile Liability Insurance policies. These insurance policies shall contain the appropriate additional insured endorsement signed by a person authorized by that insurer to bind coverage on its behalf.

2. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage, *materially changed*, or in limits except after thirty (30) days prior written notice has been provided to the City. If the policy is cancelled for non-payment of premium, only ten (10) days notice is required.

3. Insurance is to be placed with insurers with a Best rating of no less than A:VII. The company must also be duly authorized to transact business in the State of Texas.

4. Workers' Compensation and Employers' Liability Coverage: The insurer shall agree to waive all rights of subrogation against the City, its officials, employees and volunteers for losses arising from the activities under this contract.

5. Certificates of Insurance and Endorsements effecting coverage required by this clause shall be forwarded to:

Financial Services/Purchasing Division - **Bid No. 13-XXXX**
Mail stop 63-0810
City of Arlington
P. O. Box 90231
Arlington, Texas 76004-3231

6. Workers' Compensation Insurance Coverage

   a. **Certificate of coverag**e ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83 or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

   b. **Duration of the project** - Includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

   c. Persons providing services on the project ("subcontractor" in Section 406.096) - Includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries and delivery of portable toilets.

   d. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.

   e. The contractor must provide a certificate of coverage to the City prior to beginning work on the contract.

   f. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the City showing that coverage has been extended.

g. The contractor shall obtain from each person providing services on a project, and provide to the City:

i. a certificate of coverage, prior to that person beginning work on the project, so the City will have on file certificates of coverage showing coverage for all persons providing services on the project; and

ii. no later than seven (7) days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

iii. The contractor shall retain all required certificates of coverage for the duration of the project and for one (1) year thereafter.

iv. The contractor shall notify the City in writing by certified mail or personal delivery, within ten (10) days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

v. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

vi. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

1. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

2. provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

3. provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

4. obtain from each other person with whom it contracts, and provide to the contractor a certificate of coverage, prior to the other person beginning work on the project; and a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

5. retain all required certificates of coverage on file for the duration of the project and for one (1) year thereafter;

6. notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

7. contractually require each person with whom it contracts, to perform as required by paragraphs (1)-(7), with the certificates of coverage to be provided to the person for whom they are providing services.

h. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the City that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

i. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the City to declare the contract void if the contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the City.

ATTACHMENT 1 **EXPERIENCE OF BIDDERS**

1. COMPANY NAME: _____

Number of years in business under this name: _____ **Number of years of experience:** _____

Local Address: _____

City:_____ **State:** _____ **Zip:** _____

Phone: _____ **Fax:** _____

Primary Point of Contact responsible for work performed under these specifications:

Phone: _____ Cell: _____

Email_____

Alternative Point of Contact responsible for work performed under these specifications:

Phone: _____ Cell: _____

Email_____

Has your business operated under any other names? Yes_____ No_____ If so, what name(s):

_____,

and explain the circumstances of the change: _____

_____

2. PERSONNEL: Please provide the dynamics of your current workforce:

DESCRIPTION of personnel currently on staff:	NUMBER
Manager, Supervisors, Shift Leaders	
Specialist, Certified, Licensed, Registered	
Technical, Technicians, Operators	
Clerical, Administrative, Secretarial	
Total number of employees	

3. EXPERIENCE:

Years in Business: _____ Years performing this type of work: _____

Total Value of work currently under contract $_____

Total Value of work in place within the past 12 months $ _____

Percentage of work usually self performed _____%

Subcontractors that you may use for these specifications:

What service/company do you use for pre-employment criminal background screening? _____

Has firm:

1) Failed to complete a contract _____ Filed Bankruptcy _____ If so, when _____

2) Pending judgment claims or suits against company _____ If so, explain why under separate cover.

4. SAFETY

Have you had an OSHA fine within the past three (3) years? _____ Yes _____ No

Have you had any job related fatalities within the past five (5) years? _____ Yes _____ No

If you answer YES to either question above, you MUST submit, on a separate sheet the details describing the circumstances surrounding the incident(s).

Has any other incident occurred which you wish to self declare? _____ Yes _____ No

5. INSURANCE AGENCY:

Agent: _____ Phone: _____

Total Bonding Capacity: $ _____ Work Presently Bonded $ _____

6. LOCAL SERVICE FACILITY: In the event of a breakdown, where would your equipment be serviced?

Name of local service center: _____

Address of local service center: _____

Telephone number: _____

Point of Contact:_____

7. **WORK EXPERIENCE:** Form must be completed in its entirety on form supplied by City.

- The bidder must submit three government or commercial references who:
  - Substantiates the Contractor's ability to provide goods or services as specified herein; and
  - Confirms Contractor meets the minimum qualifications, and experience as specified herein.
- References must be of same size, and have successfully received similar scope of work as requirements of this specification;
- References listed below are subject to onsite visits when applicable to review routine aging and wear of goods or services;
- Services must have been completed or Goods must have been supplied within the prior three year to be considered for award; and
- *ANY NEGATIVE VERIFICATIONS, FAILURE TO VERIFY, OR OTHER PUBLIC INFORMATION MAY RENDER BID NON-AWARDABLE.* The City will be the sole judge of references.
- **Supplemental reference and/or project list must include all information listed in this section, failure to provide required information may result in non-award.**

REFERENCE 1:

Company/Agency Name: _____

Address: _____

Point of Contact:_____ Phone Number: _____

Email: _____

Project Description: _____

Total Contract Amount: _____ Completion Date: _____

REFERENCE 2:

Company/Agency Name: _____

Address: _____

Point of Contact:_____ Phone Number: _____

Email: _____

Project Description: _____

Total Contract Amount: _____ Completion Date: _____

REFERENCE 3:

Company/Agency Name: _____

Address: _____

Point of Contact:_____ Phone Number: _____

Email: _____

Project Description: _____

Total Contract Amount: _____ Completion Date: _____

ATTACHMENT 2 **DATA INTAKE FORM**

Company's Authorized Agent(Typed or Printed): _____

Signature: _____

COOPERATIVE PURCHASING FORM

If you, the Vendor/Contractor check "yes" to the statement below, the following will apply:
Government entities utilizing Inter-Governmental Contracts with the City of Arlington, Texas, will be eligible, but not obligated, to purchase materials/services under this contract(s) awarded as a result of this bid. All purchases by Governmental Entities other than the City of Arlington will be billed directly to that Governmental Entity and paid by that Governmental Entity. The City of Arlington will not be responsible for another Governmental Entity's debts. Each Governmental Entity will order their material/service as needed.

Should other Government Entities decide to participate in this contract, would you, the Vendor/Contractor, agree that all terms, conditions, specifications, and pricing would apply? **Yes_____ No_____**

FOR MINORITY AND/OR WOMAN OWNED
BUSINESS ENTERPRISES
(To be completed only if applicable)

Minority and/or Woman Owned Business Enterprises are encouraged to participate in Arlington's procurement process. In order to be identified as a Qualified Minority and/or Woman Owned Business Enterprise in the City of Arlington, Texas, this form, along with a copy of your certification, must be returned to the City of Arlington Purchasing Division. You should return these documents with this response, unless you have previously submitted this information within the past 36 months.

INDICATE ALL THAT APPLY**: __ Minority Owned Business Enterprise __Woman Owned Business Enterprise**

MINORITY STATUS: Has this firm been certified as a minority, women or disadvantaged business enterprise by any governmental agency? ____Yes No ____ (If yes, please specify government agency)

The above information is for information only.
The City of Arlington encourages minority business participation; however no preferences shall be given.

PROCURMENT OPPORTUNITY

How were you notified of this procurement opportunity:

____ City of Arlington Supplier Portal
____ Fort Worth Star Telegram
____ City of Arlington employee (other than Purchasing)
____ City's Television Station
____ Bid Notification Service
____ City Website
____ Chamber of Commerce _____
____ Other: _____

NO BID SHEET

If your firm has chosen not to submit a bid for this procurement. ***Please check item(s) that apply:***

_____ Do not sell the item(s) required	_____ Insufficient time to respond
_____ Unable meet the Specifications	_____ Specifications are unclear/ambiguous
_____ Unable to be competitive	_____ Unable to provide Bonding
_____ Cannot provide Insurance	_____ Job too large

_____ Unable to comply with Indemnification _____ Do not wish to do business with the City	_____ Job too small _____ Other reason: _____

EXHIBITS

DEFINITIONS

For the purpose of these specifications, the following words or terms shall be defined hereinafter set forth:

1. **29 CFR 1910:** Code of Federal Regulations – Occupational Safety and Health Standards

2. **Assigned Project Area(s):** The geographic areas of the City designated to receive specified delivery or service.

3. **Bid:** The offer made by the Bidder

4. **Bidder** – The person with the authority to make an offer, enter into a binding agreement with the City of Arlington. The Bidder may be identified the vendor, bidder, prime contractor, or contractor. The Bidder is solely responsible for the quality, performance, and acceptable completion of the awarded contract.

5. **Binding Agreement:** The offer and acceptance of the solicitation

6. **Breach:** A breach occurs when failure to perform, or fulfill the responsibilities under these specification in a diligent, efficient, timely, or careful manner, and in strict accordance with the provisions of this Contract; or fail to use an adequate number or quality personnel or equipment to complete the work.

   6.1. Minor Breach is one that affects a small or minor detail(s) of the agreement and may not affect the outcome of the overall success of the contract.

   6.2. Major Breach is one that is so substantial that it defeats the purpose of the contract; therefore, affecting the outcome of the contract's success. This is known as a material breach. When a material breach occurs, the City has the right to cancel the contract, and damages may be sought.

7. **City:** Shall mean the City of Arlington, Texas, and entity which has final acceptance of a bid.

8. **Contract Coordinator** – Shall mean the designated representative of the City of Arlington who is responsible to administer, monitor, review, and audit of work performed per the bid specifications. The Contract Coordinator shall have no duty to inspect, but may inspect at his/her discretion and will record details of contractor's progress.

9. **Director** - Shall mean the duly appointed officer of the Department of _____ of the City of Arlington who is empowered by the City of Arlington Charter or by the City Council to enter into a Contractual agreement on behalf of the City of Arlington.

10. **Entertainment District Events**- Contractor is responsible to stay informed of all events involving the Dallas Cowboys Stadium, the Ball Park in Arlington, Six Flags, or Hurricane Harbor together known as the Entertainment District. Contractor shall not work in the Entertainment District unless approved by the Contract Coordinator or designee. Upon approval to proceed with contracted services, the contractor must complete work and remove all equipment prior to the next event, or as directed by the Contract Coordinator or designee. It will be the responsibility of the Prime Contract to see that Subcontractor is in compliance with requirement. All scheduled work days and times are subject to change due to event schedules that have not been identified at the time of this bid.

11. **U.S. Environmental Protection Agency's** - EPA

12. **Inclement Weather** - Shall mean weather that makes the conditions unfavorable for satisfactory work, resulting in poor quality, and/or could pose a potential safety hazards to operators and citizens. Inclement weather is defined as moderate rain, sleet, snow, heavy fog, heavy dew on pavement surface, or high winds during any given day. The City reserves the sole right to determine when conditions are acceptable/ favorable to precede with work. More than two refusals to cease work during inclement weather; or resume work after conditions become favorable will result in further measures being taken as identified in the Section E, Scope of Work.

    The National Weather Service (NWS) shall be the weather forecasting and reporting agency and may be found at www.noaa.gov . Forecasts by the NWS shall be deemed to extend for a period of only twelve (12) hours. Notwithstanding anything to the contrary, the Department of _____ shall have the final decision on whether operations may be performed or ceased.

13. **Inspector** - Shall mean the authorized designee who may report back to the Contract Coordinator, and who shall have the right to monitor or inspect the Contractor's progress within the Assigned Project Area for the purpose of ensuring that the plans and specification are complied with, and that the work is completed satisfactorily. The inspector shall have no duty to inspect, but may inspect at his/her discretion and will record details of contractor's progress.

14. **Schedule** - Shall mean the time frame established for the project or contract.

15. **Notice-to-Proceed** –The official written notification from the City of Arlington to initiate _____ services according to bid specifications within the Assigned Project Area(s). Work shall commence within ten (10) calendar days after each Notice to Proceed has been executed by Contractor. There will only be one Notice to Proceed letter issued at the beginning of the project's start date.

16. **OSHA** - Occupational Safety and Health Administration

17. **PPE -** Personal Protective Equipment to be worn as required by OSHA Section 5(a)(1), Section 5(a)(2), and Section 5(b), and 29 CFR Subpart I in its entirety.

18. **Solicitation –** The document which is publically accessible for the purpose of review by potential Bidders who are interested in bidding on proposed goods or services.

19. **Specifications** – All documents including, but not limited to, Cover Sheet, Bid Price Schedule, Instruction to Bidders, Terms and Conditions, Special Provisions, Scope of Work, and other Attachments and Exhibits as described herein which are required for evaluation, award, and successful completion of contract.

20. **Subcontractor** – One who is acting as an extension of the Prime Contractor and therefore is considered an agent and/or employee of the Prime Contractor. Any acts or omissions of the subcontractors and/or any persons directly or indirectly acting on behalf of Prime Contractor will be deemed to be the acts or omissions of the Prime Contractor.

21. **Time Frame:** The calendar days identified in the solicitation which are allowable for mobilization, performance, and satisfactorily completed project or contract. The start (date) time frame will be identified in the Notice to Proceed letter.

    21.1. Time frames may be broken into smaller fragments with an aggregate total not to exceed the total number of calendar days allowed herein,

21.2. Total allowable days shall include the mobilization of crew and equipment initially, and through the duration from APA to APA, as well as, the final and accepted inspection by the Contract Coordinator or designee.

21.3. Time frames exceeding the allowable calendar days without authorization from the City will result in liquidated damages.

21.4. Time frames which have been extended with the written authorization by the City may not be subject to liquidated damages. It is the responsibility of the Contractor to obtain the written authorization, failure to do so may result in liquidated damages.

22. **Work Record Summary** - Shall mean a written record detailing times and locations of when the Contractor and employees were on the job site completing work per Contract specifications.