

CAPITAL PROCUREMENT HANDBOOK

Rural Public Transportation Program

FTA Section 5311



Arizona Department of Transportation
Multimodal Planning Division

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CAPITAL PROCUREMENT HANDBOOK

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I. INTRODUCTION

Arizona Department of Transportation (ADOT) – Multimodal Planning Division manages the Federal Transit Administration (FTA) Section 5311 grant program providing funding to non-urbanized or rural communities with populations of less than 50,000. In addition to providing funding for the operation of transportation systems and related administrative expense, funding for capital expenditures is also awarded to rural transit agencies.

State and Federal procurement regulations are detailed, complex, and changing. Moreover, Federal laws and regulation require the FTA to ensure that its recipients use the Federal assistance prudently and in compliance with all applicable Federal requirements. It is difficult for local grantees to be aware of and comply with all requirements. The purpose of this *ADOT Capital Procurement Handbook* is to provide guidance in addressing capital procurements regulations, identify resource documents, and explain accompanying ADOT requirements for the capital procurement process. This handbook is not intended to be an all-inclusive source of information, but rather provide the foundation and resources to conduct fair and equitable procurements.

FTA Circular 4220.1F, most recently revised March 14, 2009, summarizes the requirements a grantee must adhere to in the solicitation, award and administration of third party contracts using FTA grant funding. Third party contracts refer to a grant recipient's contract with a vendor or contractor financed with Federal assistance awarded by FTA.

Several overarching Federal policies, referenced in *FTA Circular 4220.1F*, apply to the procurement process. The impact of these policies on individual grantees is important to consider:

- **Policy:** While FTA will provide guidance, Federal agencies must refrain from “substituting their judgment for that of recipients unless the matter is primarily a Federal concern.”
 - **Impact:** *City/county/organization procurement/purchasing policies can be used as framework for bid process.*
- **Policy:** FTA relies on validity of each grantee's self-certification.
 - **Impact:** *Many of the self-certifications made in the ADOT/Grantee contract carryover to the procurement process.*
- **Policy:** General procurement standards that are applicable to all procurements include: Conformance with State and Local Law, Must have contract administration system and must have written standards of conduct.
 - **Impact:** *City/county/organization procurement/purchasing policies generally include these elements.*

In summary, most standard state and Federal procurement regulations have already been incorporated in local government purchasing policies and procurement procedures. These local policies and procedures, used in managing all transit agency business, will be the foundation for completing a successful procurement process. Important support is generally provided by other departments such as the Finance Department and/or legal counsel assisting the transit agency.

The requirements in *FTA Circular 4220.1F* are based on common grant rules, Federal Statutes, Executive Orders, implementing regulations and FTA Policy. The recently issued *FTA Circular 4220.1F* is significantly larger (over 150 pages versus *FTA Circular 4220.1E* at 20 pages), and expands the level of detail of information as well as provides helpful checklists and matrices to locate specific references. There is also an extensive listing of definitions that are helpful in clarifying the directives. This document and any subsequent updates can be accessed on the FTA website, <http://www.fta.dot.gov/>. (Go to Legislation, Regulations, Guidance, then to FTA Circulars, then to C 4220.1F) This document is constantly changing and it is up to the grantee to download the information pertinent to your particular procurement.

For rural transit agencies in Arizona, several “ground rules” for understanding these regulations will be helpful:

- **Who’s Who:**
 - Federal Transit Administration (FTA) is the funding source for Section 5311 non-urbanized or rural communities with populations of less than 50,000.
 - Arizona Department of Transportation is *recipient* of FTA funds and administers the Section 5311 grant program. The administrative responsibility for grant program is assigned to the Multimodal Planning Division. Funding is distributed nationwide to States on a formula basis with each State determining how funding is awarded to local transit providers.
 - The individual transit agency awarded a grant is technically the *sub-recipient* of the funding. However, the *individual transit agency* is often referred to as the *grantee* or *recipient*.
- **What are Third Party Contracts?**
 - A third party contract, in FTA terms, can be as small as a credit card purchase or as large as a contract to construct a facility. The term Third Party Contract refers to a recipients/sub-recipients contract or purchase from a vendor or contractor financed with Federal assistance awarded by the FTA.
 - In other words, the First Party is the FTA, the Second Party is the Recipient/Sub-Recipient/Grantee, and the Third Party is the vendor, supplier, or contractor providing the goods/services.

- ***Use of Local Purchasing Procedures:***
Whenever goods/services are purchased by an transit agency/organization using public funds (including from the FTA), there will be existing established purchasing procedures that have been developed under county/town/organization policies and/or ordinances. *These local procedures will cover the vast majority of the purchases made by your organization.* This Handbook focuses on the most frequent *capital purchases* made by rural transit agencies that require additional :
 - Purchase of Rolling Stock (Vehicles)
 - Other Capital Purchases (Passenger Amenities-Operating Equipment/Office-Computer Equipment)
 - Capital Construction Projects

The *ADOT Capital Procurement Handbook* is organized in five chapters:

- Chapter I provides an *introduction* to the documents/principles that govern capital procurement using FTA funds.
- Chapter II provides an *overview of the information in C 4220.1F* as well as a framework for the bid process and important resources.
- Chapter III addresses procurement of *Rolling Stock* (vehicles) using an agency directed process or the “piggyback” alternative.
- Chapter IV addresses procurement of *Other Capital* such as office equipment and operating/maintenance tools and equipment.
- Chapter V addresses the procurement process for *Construction Projects* such a bus storage and maintenance facilities and passenger amenities like transit centers/shelters..

In summary, the *ADOT Capital Procurement Handbook* includes :

Chapter I	Introduction
Chapter II	Overview of FTA Circular 4220.1F Third Party Contracting Guidance/Resources
Chapter III	Process for Procurement of Rolling Stock
Chapter IV	Process for Procurement of Other Capital (office/operating/shop equipment)
Chapter V	Process for Procurement Construction Projects (facilities/passenger amenities)
Appendix A	Federally Required Clauses and Certifications by Purchase Category/Matrices from C 4220.1F
Appendix B	Overview of Procurement Process
Appendix C	Checklists/Required Forms for Rolling Stock: Independent Agency Procurement
Appendix D	Checklists/Required Forms for Rolling Stock: Interagency/Piggyback Procurement
Appendix E	Required Forms for Other Purchases
Appendix F	Checklist/Required Forms for Facility Construction

II. OVERVIEW OF RESOURCES

There are multiple regulatory documents and guidance to direct procurement with federal funding. Included are:

FTA Circular 4220.1F	Third Party Contracting Guidance
FTA Master Agreement	Contains Standard Terms/Conditions
Federal Transit Laws	Title 49 USC Chapter 53
Uniform Administrative Requirements	Title 49 USC Part 18 (Procurement, Part 18.36
FTA Triennial Reviews	FTA Website, Highlights Area of Compliance
Best Practices Procurement Manual (BPPM)	Suggested Procedures, Model Clauses

These materials, which are constantly changing and amended, can be accessed at the FTA website, www.fta.dot.gov. Because of its importance, an outline of the information included in FTA Circular 4220.1F has been provided. Important resources have also been identified.

Overview of FTA Circular 4220.1F: Third Party Contracting Guidance

While this *ADOT Capital Procurement Handbook* will focus on procurement requirements for capital projects, it is important to be aware that *FTA Circular 4220.1F* provides the framework for all procurements – including capital - made with Federal funds. While individual purchasing situations will need to be researched in detail, it will be helpful to have an overview of the organization and topics included in this document providing guidance for all third party contracting procurements. (The FTA definition of a Third Party Contract refers to a recipient’s contract with a vendor or contractor, including procurements by purchase order or purchase by credit card, which is financed with Federal assistance awarded by FTA.)

This Circular, reissued in November 2008 and revised in April 2009, has significant changes. In order to assist grantees in accessing this document, an overview by chapter has been prepared.

Chapter I provides statutory references that provide the authority for these requirements, contact information, and most important, an extensive glossary of terms used throughout the procurement process.

Chapter II identifies the wide range of FTA assisted procurements that are subject to the information in the circular. A description of the relationship of a grant recipient, subrecipient, or third party contractor for an FTA assisted project as well as projects/contracts subject to the circular is provided. The authority to use existing State and/or local procedures is clarified.

Chapter III outlines specific recipient responsibilities. Included are:

- Must have written standards of conduct covering such things as conflict of interest, no solicitation of gifts, etc.
- Clarifies that self-certification provided as part of original grant application is applicable.
- Must maintain capacity to contract including having written procurement procedures, agree to pass on to contractors Federal provisions as required, must have adequate record keeping, including preparing a written procurement history, and allows use of electronic technologies.
- Audits, in addition to required single annual audit, may be extended to contract or independent audits.

Chapter IV identifies the process for determining recipients needs and provides a listing of the more typical requirements and restrictions that will affect the procurement.

- Recipient must clarify need and may only use funds for purpose of award, purchases must not be duplicative or in excessive quantities. Joint or smaller procurement options are discussed.
- Examples of associated regulations and restrictions based on various contract/service procurements are listed:
 - Contractor Selection: for example requires determination of capability, civil rights compliance including socio-economic programs such as DBE, lobbying disclosure, etc.
 - Administrative Restrictions on Acquisition of Property and Services: for example requires proof of sound business judgment including use of Federal cost principles, supporting standard payment provisions, and procedures for addressing contract performance, etc.
 - Socio-Economic Requirements on Acquisition of Property and Services: for example requires procurement to be consistent with labor protection laws and regulations, civil rights including Title VI, environmental justice, Limited English Proficiency (LEP), Americans with Disabilities Act ADA, environmental protections, etc.
 - Technical Restrictions on Acquisitions of Property and Services: for example must be compatible with National Intelligent Transportation Systems (ITS) requirements, etc. (Note: ITS encompass a broad range of wireless and wire line communications-based information and electronics technologies integrated into the transportation system's infrastructure and in vehicles. It does not include office computers or basic dispatch/maintenance software. For more information go to www.itsoverview.its.dot.gov)
 - Rolling Stock – Special Requirements: for example must be accessible, be subject to minimum service life and spare ratios, must meet bus testing standards, etc.
 - Public Transportation Services – Special Requirements: for example requires programs such as Drug and Alcohol testing, charter restrictions, etc.
 - Architectural Engineering (A&E) and Related Service – Special Requirements: for example must include qualification based standard that

relate to the nature of the service to be performed, must be congruent with equivalent state law, must include indirect cost rates, etc.

- Construction – Special Requirements: for example contracts must include bonding for both performance and payment, encourages value engineering, must include provisions for EEO, pay prevailing wages, provide a safe work environment, etc.
- Research, Development, Demonstration, Deployment, and Special Studies – Special Requirements: for example must address patent rights, rights to data, etc.
- Audit Service: for example if awarded more than \$500,000 in a single year, subject to the Single Audit Act, must audit project costs for duplication of costs, establish indirect cost rates, etc.

Chapter V provides examples of the sources that may be used to purchase materials or services.

- Force Account – recipient uses own labor force and equipment. The concern from the FTA’s perspective is that the agency has the necessary technical capacity to perform the work.
- Shared Use – is encouraged if economical and feasible.
- Joint Procurements – two or more purchasers (agencies) agree from the outset to use a single solicitation document and enter into single contract for delivery of property or services.
- State or Local Government Purchasing Contracts – State or local government establishes several or many vendors who agree to provide specific property at established prices.
- Federal Excess and Surplus Property – Managed by the GSA Federal Property Management.
- Federal Supply Schedules – FTA recipients in restricted locations (Washington DC, American Samoa, etc.) are eligible for full use of GSA pricing schedules. Limited use is expanded for such thing as major disasters, information technology.
- Existing Contracts – refers to a contract that, when formed, was intended to be limited to the original parties and does not include any State or government parties. This alternative has very specific “permissible” and “impermissible” actions. Details need to be carefully reviewed for factors such as assignment of contract rights, joint procurement limitations, Cardinal Changes and contract expansions, etc.
- Open Market – the most likely source of procurement.

Chapter VI provides detailed guidance for *open market procurements*.

- Competition Required - must be full and open. If agency complies with the solicitation requirements outlined by FTA, solicitation will fulfill requirements. An unsolicited proposal must also meet these requirements for information.
- Solicitation Requirements and Restrictions - based on Common Grant Rules, each solicitation must provide:

- Description of Property or Services, must include detailed specifications, clear statement of quantities or options, “brand name or equal” description must identify salient characteristics and must allow equal product. The description must not have exclusionary or discriminatory specification such as excessive qualifications or bonding requirements. In-State or local geographic restrictions are not allowed with the exception of such things as local licensing. Organization conflict of interest is restricted to prevent impaired objectivity and unequal access to information or biased ground rules. Restraint of trade, often evidenced by identical bid prices or a pattern of awards must be identified. No arbitrary actions may be taken during the procurement process
- Evaluation factors must be identified in the bid or proposal.
- Contract type must be identified. Typical contract types include Firm Fixed Price, and Cost Reimbursement. Prohibited contract types include Cost Plus a Percentage of Cost and Time and Materials may only be used if no other contract is suitable and must have a firm ceiling price.
- Other Federal Requirements Affecting the Property or Services must be identified in the solicitation.
- Other Federal Requirements Affecting the Bidder of Offeror and the Contractor must be identified in the solicitation.
- Award to Other Than Low Bidder must be clearly stated. If agency intends to award on criteria other than low bidder, this must be clearly stated.
- Rejection of All Bids must be clearly stated. Agency must clearly reserve right to reject all bids in the solicitation document.
- Methods of Procurement - The recipient of FTA funds can select the most appropriate method for a specific procurement, and must comply with local and state requirements. This overview summarizes the most salient features of the various methods. Prior to selection, recipients must review the details of each options.
 - Micro purchases are purchases of \$3,000 or less. It is required that these purchased be distributed equitably among qualified suppliers, division. Reduction of a procurement is not allowed to qualify as a micro purchase and documentation that the price is fair and reasonable must be made. Construction projects exceeding \$2,000 are still subject to Davis-Bacon wage requirements.
 - Small purchases may be applied to purchases between \$3,000 and \$100,000 unless state or local law sets lower thresholds. Recipient must obtain price or rate quotes from an “adequate” number of qualified sources and again, division or reduction of procurement is not allowed. (Note: Rolling stock does not qualify as a small purchase.)
 - Sealed bid are generally used when bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to lowest price bidder who conforms to all material terms and conditions. A sealed bid is considered appropriate when there are precise specification, there are two or more responsible bidders identified, the procurement lends itself to firm fixed price contract, and costs can be determined for all performance factors. While a

pre-bid conference may be held, it is assumed under a sealed bid that additional discussion with bidders are unnecessary.

Procedures that apply to sealed bid procurements include invitation for bids must be publicly advertised, there must be an adequate number of known suppliers, the specification must be in sufficient detail and sufficient time must be allowed to prepare bids. All bids must be publicly opened at the time and place noted and a firm fixed price contract is usually awarded in writing to the lowest responsive and responsible bidder. If all bids are rejected, there must be a sound documented business reason.

- Competitive Proposal (Request for Proposals - RFP) is a widely accepted method to obtain competitive proposals when recipient expects several sources are willing and able to submit an offer or proposal. An RFP process is considered appropriate when specifications can be described, there may be an uncertain number of bidders, price alone will not be the determining factor in the award, and discussions are expected with the individual bidders. Procedures that apply to RFP solicitations include proposal must be publicly advertised, evaluation factors and relative importance must be specified, evaluation methods must be established and used on all bids, other factors may be evaluated in addition to price, and if allowed by State or local law, contract may be awarded on “best value” basis following an analysis of the tradeoff of qualitative technical factors along with price and cost.
- Two-Step Procurement is allowed for both sealed bid and RFP process if it would be helpful to narrow the competitive range of prospective contractors by demonstrating technical qualifications prior to soliciting bids.
- Architectural Engineering (A&E) Services and Other Services procurements are subject to the “Brooks Act” and rely on qualification based procurements. Price is excluded as an evaluation factor with the contract negotiated with the most qualified offeror. If that negotiation is not successful, the next most qualified offeror may be considered. Identification of indirect costs are important.
- Design-Bid-Build requires separate contracts for design services and for construction.
- Design-Build consists of contracting for design and construction simultaneously with contract award to a single contractor, team or partnership. Recipient is expected to calculate the estimated total value of each element – design and build. If the construction cost is predominant, the competitive negotiations for the entire procurement should be based on cost. This is the most usual circumstance. If design services were predominant, then qualifications based procurement procedures should be used for evaluation.
- Other Than Full and Open Competition is limited to those circumstances when full and open competition is not possible. At least one of the following circumstances must be present:
 - Specifications have been reviewed and determined to be not unduly restrictive
 - Services are determined to have a unique availability due to such things as innovative concept, patent restrictions, unacceptable delay.

- If a single bid is received, it must review specifications and survey other potential sources to determine possible restrictions.
- There is an unusual or compelling urgency with potential for serious injury to the recipient.
- There are allowances for the FTA to authorize exemptions under specific circumstances.
- Failure on the part of the recipient to complete advanced planning or limited assistance from the FTA is not justification for use of sole source procurement. Justification for any single source offer must be presented in writing.
- Eligible costs – must be consistent with both local and Federal cost principles.
- Incentive Costs and Payments – are limited to specific capital projects, primarily fixed guideway.
- Cost and Price Analysis – recipient must make an independent estimate before receiving bids/proposals. Details on developing cost and price analysis are provided.
- Evaluation standards must be developed before and communicated to bidders. Evaluators must have experience in related technical or public policy matters.
- Contract award must be consistent with bid (low bid or other than low bid). Recipient must verify that bidder is responsible and review performance record prior to award.

Chapter VII provides detailed steps/procedures to resolve all contractual and administrative issues arising out of the procurement process including evaluation and selection, protests of awards, disputes and claims.

This overview has been provided to give rural Arizona transit agencies a framework for the regulations and requirements included in the body of *Circular 4220.1F*. In addition, there are several useful appendices attached to the Circular:

- Appendix A
 - Provides statutory references that would be of interest to legal counsel.
- Appendix B
 - Provides FTA administrative contact information.
- Appendix C
 - Provides is series of checklists that provides detailed cross-references by topic.
- Appendix D
 - Provides a matrices of required model clauses and provisions.
 - *Because of the importance of these clauses in developing procurement documents, this matrices of FTA requirements based on procurement type and dollar amount is attached in **Appendix A** of this handbook.*

See Appendix A for Matrices of Federal Clauses

FTA Website

The FTA website, www.fta.dot.gov provides an excellent resource to information pertaining to Third Party Contracting. Go to Grants/Financing, then Third Party Procurement, see menu on right side of screen. In addition to the relevant Circulars, there are several very useful tools:

- Best Practice Procurement Manual (see description below)
- Online Tools/Resources
- Frequently Asked Questions (helpful as organized by topic and provides details of various scenarios that may be similar to your situation)
- Submit-a-Question if further direction needed

FTA's Best Practice Procurement Manual (BPPM)

The FTA has an extensive procurement manual available to guide recipients through the conduct of third party procurements and to assist them in meeting the standards of FTA Circular 4220.1F. This Manual consists of suggested procedures, method, and examples that are encouraged by the FTA. There is also an extensive Appendix of Model Clauses that includes a legal background to the individual clauses, model Clause Language, and Sample Clauses. This resource will be helpful for legal staff reviewing these requirements.

Overview of Procurement Process

While FTA Circular 4220.1F recognizes that city/county/organization procurement procedures and purchasing policies can be used as a framework for the bid process, it is important that these procedures contain mandated elements. A framework of a standard procurement process has been developed in **Appendix B**. This overview details the five major steps that should be included in a successful procurement process:

- 1) Pre-Bid Process
- 2) Bid Package
- 3) The Bid
- 4) Bid Review and Award
- 5) Post-Delivery Activities

See Appendix B for Overview of Procurement Process

III. PURCHASE OF ROLLING STOCK

For rural transit agencies, the most frequent capital procurement will be the replacement of vehicles used to provide current service or acquisition of new vehicles to support expansion of service.

There are two common approaches to purchasing of vehicles. Historically, most transit agencies have elected to issue an invitation for a bid or request for proposal independent of other transit agencies. Under this process, the individual transit agency is responsible for completing all the steps in the procurement process. These steps are outlined in **Appendix B**, *Overview of Procurement Process*.

More recently, agencies have been able to partner with another transit or government purchasing agency and submit a joint, interagency or “piggyback” procurement.

Chapter Three will address specific requirements for:

- ***Common requirements for all vehicle procurements***
 - Special Requirements from Circular FTA C 4220.1F
 - Preparation of Independent Cost Estimate
 - Title and Insurance Documentation
- ***Vehicle Procurement by agency independently***
- ***Vehicle Procurement by agency using assignment*** of another agencies contract rights, including the ***“piggyback”*** processes

Common Requirements for Procurement of Vehicles

Special Requirements from Circular FTA C 4220.1F

Chapter IV, Section 2.e of Circular FTA C 4220.1F identifies requirements that may affect rolling stock procurements. Included are:

- Vehicles must be accessible under Americans with Disability requirements. (Under limited circumstances, agencies operating demand response service may be able to purchase non-accessible vehicles. See CFR 37.77 + Appendix C)
- A transit vehicle manufacturer (TVM) must provide a TMV Certification confirming compliance with the FTA’s DBE requirements. (Note: The TMV Certification is prepared annually by the FTA/Office of Civil Rights, then distributed to bus manufacturers/dealers. A bus manufacturer submits DBE information to the Office of Civil Rights and, if in compliance, is included in a listing of TVM’s eligible to bid on Federally funded transit agency contracts. Manufacturers or dealers will be able to provide a file copy. The TMV Certification does not need to be submitted to ADOT)

- Vehicle being replaced must meet minimum service life established by the FTA:
 - Large (35'-40'), heavy duty, 12 years or 500,000 miles
 - Medium (app. 30'), heavy duty, 10 years or 350,000 miles
 - Medium (app. 30'), medium duty, 7 years or 200,000 miles
 - Medium (app. 25'-30'), light duty, 5 years or 150,000 miles
 - Other light duty, small buses and regular and specialized vans, 4 years or 100,000 miles
- Spare ratio must be reasonable, no excessive number of vehicles not in regular service.
- Air pollution and fuel economy of vehicle must be considered.
- Pre Award and Post Delivery Review must be completed.
- Bus testing must have been completed and certification provided. (Commonly referred to "Altoona Tested")
- Bid distribution may not be limited to in-state dealers only.
- Bid may be awarded on cost or performance, life cycle costs or other factors identified in the request for bid through a competitive procurement process.
- Multi-year contracts must not exceed five years.

Preparation of Independent Cost Estimate For Rolling Stock Purchase

A relatively new requirement for all procurements is the development of an "Independent Cost Estimate." Detailed information for this requirement can be found in Circular 4220.1F (Chapter VI-6, a-c) for all procurement contracts. While this process is complex for facility construction processes, it is relatively straightforward for vehicle purchases.

The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but several strategies to get obtain this estimate for a vehicle purchase include:

- Past competitive procurements updated with inflation factors.
- Contacting other agencies that obtained competitive bids for the same make/model of vehicle
- Price ranges from dealers/manufacturers

Documentation of the estimate should be in writing and kept on file. This documentation is not submitted to ADOT.

Title and Insurance Documentation

A Copy of "Application for Arizona Certificate of Title" showing ADOT as lien holder must be provided prior to reimbursement on any vehicle purchase. Vehicle liens will be retained by ADOT for a minimum of either:

- 4 years or 100,000 miles for vans (up to 15 passengers)
- 5 years or 200,000 miles for mini buses (up to 30 passengers); and
- 7 years or 400,000 miles for buses (up to 30 passengers or 30 ft. vehicles)

(Note: The mileage/year factors have been modified from the FTA standards to accommodate the majority of vehicles operated in rural Arizona.)

All vehicles procured with Section 5311 funding must be covered by adequate insurance. Current minimum liability coverage required is based on vehicle size and includes:

Vehicle Capacity	Levels of Insurance Coverage
15 passengers or less	\$1,000,000 vehicle liability \$300,000 uninsured motorist
16 passengers or more	\$5,000,000 vehicle liability \$300,000 uninsured motorist

To comply with this requirement, the grantees are required to submit a copy of the insurance certificate yearly based on renewal date, a copy of the insurance binder indicating the proper amount of insurance is placed in the each vehicle in the fleet.

Insurance policies for vehicle must show ADOT as an “additional insured.” Vehicle subject to an ADOT lien must also show ADOT as “loss payee.”

Independent Agency Procurement of Vehicle

See Appendix C for Required Checklists

When an agency makes the decision to procure a vehicle using the independent process, they must complete all the steps of the procurement process (**Appendix B**) including development of an RFP/IFB, solicitation of bids, evaluation of bids received, and award of vehicle. Most agencies will find that after completing the process for the first time, subsequent years are less difficult. Purchasing a vehicle independently allows for more local control over the development of the specifications of the vehicle and in general more freedom to deal directly with the vehicle dealer.

Unless there are extenuating circumstances, the bid format will most likely be an Invitation to Bid (IFB). This format is tailored to a bid that has a specific description of vehicle and any modifications requested well as warranty and delivery terms. Bids not responding to bid terms would be rejected as non-responsive and the bid would be awarded to the lowest responsive bidder.

In addition to the preparation of the bid proposal, other necessary elements of an independent vehicle purchase include:

Vehicle Specifications

Circular 4220.1F, (Chapter VI-1, a-c) requires a full and open competition. Along with other standards, grantees are prohibited from “specifying only a “brand name” product instead of allowing “an equal” product to be offered without listing its’ salient characteristics.

However, grantee may define characteristics in commonly used language such as:

“(a) ‘Original Equipment Manufacturer (OEM) part #123 or approved equal that complies with the original equipment manufacturer’s requirements or specifications and will not compromise any OEM warranties; or

(b) ‘Original Equipment Manufacturer part #123 or approved equal that is appropriate for use with and fits properly in (describe the bus, engine, or other component the part must be compatible with) and will not compromise any OEM warranties.”

Another significant challenge is clarifying communication between the grantee and vendor in terms of vehicle specifications. To accommodate both the federal requirements and need for clear understanding of the components of the vehicle bid, the following format for vehicle specification **will be required by ADOT**.

Component	Specification	Yes	No/Approved Equal
Alternator	Heavy Duty, 200 amp output at idle minimum		
Steering	Power. Heavy Duty. Gear will be Saginaw 710 with a 17:5:1 ratio. Douglas Tilt and Telescopic column.		

*Important: “Yes-No/Approved Equal” format is a **required** by ADOT*

Federally Required Forms/Certifications

There are multiple FTA required forms/certifications. Some of these forms are required in all third party contracts; others are based on dollar threshold limits or types of purchases. These forms service two functions:

- Communicate information between the procuring agency and the prospective bidders/proposers
- Certify compliance by the procuring agency and contractors with federal requirements.

When making an independent purchase of rolling stock, these forms must be included in all RFP documents and subsequent contracts.

An excellent matrix of all potential clauses/forms from FTA Circular 4220.1F is found in **Appendix A**. Those clauses **specific** to *rolling stock procurements* include:

Requirement	Comments
Bus Testing Certification	Procurements of buses and modified mass produced vans
TVM Certifications	All rolling stock procurements
Buy America Certification	Procurements of steel, iron or manufactured products exceeding \$100,000
Preaward Review	Rolling stock procurements exceeding procurements exceeding \$100,000
Preaward Buy America Certification	Rolling stock procurements exceeding procurements exceeding \$100,000
Preaward Purchaser's Requirement	Rolling stock procurements exceeding procurements exceeding \$100,000
Post Delivery Review	Rolling stock procurements exceeding procurements exceeding \$100,000
Post Delivery Buy America Certification	Rolling stock procurements exceeding procurements exceeding \$100,000
Post Delivery Purchaser's Requirement	Rolling stock procurements exceeding procurements exceeding \$100,000
On-Site Inspector's Report	Rolling Stock procurements for more than 10 vehicles
Federal Motor Vehicles Safety Standards (Preaward and Post Delivery)	Motor vehicle procurements (49 CFR 571)
Lobbying	Procurements exceeding \$100,000
Standard Form LLL and Quarterly Updates (when required)	Procurements exceeding \$100,000 where contractor engages in lobbying activities

Note: Each grantee is responsible for reviewing and including the appropriate clauses based on the type of purchase, dollar amount of purchase and contract documents being issued.

To summarize both Federal compliance and ADOT management requirements for a single agency or for several agencies to jointly procure vehicles by an independent bidding process, two checklists have been developed:

- Agency Procurement Process Checklist
- Agency Bid Package Checklist

These checklist are available in **Appendix C** and must be submitted to ADOT prior to reimbursement payment. Each grantee is responsible for reviewing these Checklists and verifying that the proper clauses/certifications are included.

Assignment/Piggyback Procurement of Vehicles

See Appendix D for Required Checklists

The FTA encourages grantees to utilize available state and local intergovernmental agreements for procurement of capital goods. This allows smaller agencies to utilize the expertise of larger organizations that have procurement departments with the legal and technical resources to ensure compliance with the many requirements of purchasing capital equipment with Federal funds.

The various alternatives for partnering with other government or transit agencies are outlined in FTA Circular 4220.1F, Chapter V and include:

Joint Procurements – when two or more purchasers agree from the outset to use a single solicitation document. The procedures for this process will be the same as for the “Independent Agency Procurement of Vehicles” with two or more agencies participating. (C 4220.1F, V-3, a-b)

State or Local Government Purchasing – when an arrangement with a state or local government has been established with several or many vendors to purchase from established price list. The procedures for this process will include completing the Agency Procurement Process Checklist in **Appendix C**. It is important to obtain the Buy America Certification. (C 4220.1F, V-4, a-b)

Intergovernmental or Piggyback Agreements – when an existing contract that was intended for the original party, generally larger transit agencies, is used by other parties, generally smaller transit agencies, to “piggyback” on the original procurement process. This allows the smaller agency the access to a procurement process conducted by skilled staff. (C 4220.1F, V-7, a-b)

Over the past several years, several grantees have successfully worked together with other agencies to procure equipment. Examples include partnering with the University of Arizona, City of Tucson, and Valley Metro. These large organizations issued a bid proposal for equipment for their internal service needs and included an option for additional purchases in the original bid along with an assignability clause. Bus vendors are often a good source of identifying agencies that may have purchased vehicles that are consistent with the needs of the smaller agencies.

There are several important requirements for completing a piggyback process:

- Must have obtained a copy of original solicitation and contract document. Generally, once a “cooperating agency” is identified, this document will be available on a website. Agency files only need to include solicitation cover, vehicle specifications, bid evaluation, and Buy America Pre and Post Delivery audits.

Agencies must also verify by reviewing the solicitation and contract documents that:

- Contract has assignability clause on file.
- Contractor submitted certifications.
- Contract includes federal clauses.
- Piggyback quantities were included in original solicitation.
- Original contract showed an indefinite quantity, the solicitation and contract contains a reasonable minimum and maximum quantity.
- Option provision still valid.
- State law allows piggyback procedures. (Note: Arizona law allows this process)
- Cost or price is reasonable when compared to the Independent Cost Analysis you completed at the start of this process.
- Contract term is within five-year limit.
- Original contracting agency completed a proper evaluation of bids.
- Any changes are within the scope of contract, not cardinal change. (C 4220.1F, V, b, (2).)

To summarize Federal compliance and ADOT management requirements for purchasing a vehicle from an established price list from a State or Local Government, the following checklists have been developed:

- Bid Package Checklist/Agency Purchases from State/Local Agency or Piggyback Procurement Process Checklist
- FTA Intergovernmental Procurement Review Checklist

To summarize Federal compliance and ADOT management requirements for purchasing a vehicle using a Intergovernmental or Piggyback Agreement the following checklists have been developed:

- Bid Package Checklist/Agency Purchases from State/Local Agency or Piggyback Procurement Process Checklist
- FTA Intergovernmental Procurement Review Checklist
- Piggybacking Worksheet

These checklists are available in **Appendix D** and must be submitted to ADOT prior to reimbursement payment. Each grantee is responsible for reviewing these Checklists and verifying that the proper clauses/certifications are included.

Both of these types of procurement processes, Intergovernmental or Piggyback, require a *Memorandum of Record*. This is basically a history of the procurement process and can generally be limited to one page. This record should include:

- The rationale for the method of procurement such as:
 - advantage of partnership to ensure all federal requirements are met
 - take advantage of existing contracts in terms of administration
 - cost savings, etc.
- Selection of contract type such as:
 - intergovernmental procurement agreement met needs of agency
 - joint procurement leveraged needs of multiple small agencies, or
 - assignment/piggybacking of other agencies procurement was available, etc.
- Reasons for contractor selection:
 - contract was awarded based on qualification
 - experience etc.
- Basis for Contract Price:
 - contract was awarded based on low price
 - consistent with Independent Cost Estimate
 - best delivery, etc.

IV OTHER CAPITAL PURCHASES

Passenger Amenities/Operating and Maintenance Equipment Office/Computer Equipment

The majority of capital funding grants from the ADOT Section 5311 program are used to purchase buses and facility construction. However, other capital projects eligible for funding include passenger amenities, operating and maintenance equipment, and office equipment.

Passenger amenities includes shelters and bus stop signs and accessories. Operating equipment could include mobile radio units, GPS systems, and fare boxes. Maintenance equipment could include vehicle lifts, tire changers and other shop equipment. Office equipment could include furniture, computers, and dispatch software. In most instances, city/county/organization procurement/ purchasing policies can be used as a framework for the bid process.

These purchases, considered micro or small purchases under FTA regulations, need to comply with the following standards:

- *Micro purchases* are purchases of \$3,000 or less. It is required that these purchased be distributed equitably among qualified suppliers, division. Reduction of a procurement is not allowed to qualify as a micro purchase and documentation that the price is fair and reasonable must be made. (Construction projects exceeding \$2,000 are still subject to Davis-Bacon wage requirements.)
- *Small purchases* may be applied to purchases between \$3,000 and \$99,000 unless state or local law sets lower thresholds. Recipient must obtain price or rate quotes from an “adequate” number of qualified sources and again, division or reduction of procurement is not allowed. (Note: Rolling stock does not qualify as a small purchase.)
- *Purchases over \$100,000 (excluding vehicles and facilities)* must complete one of the methods of procedure shown in C 4220.1F, VI-3, c to e. This includes a sealed bid, RFP, or Two-Step Procedure.

Generally, *micro purchases* will be completed subject to the agency and/or local government purchasing policies. These purchases can be made without obtaining competitive quotations and are exempt from Buy America requirements. However, there should be equitable distribution among qualified suppliers and no splitting of procurement to avoid competition.

FTA requirements state that “documents must be maintained on file to show that the price is fair and reasonable and how this determination was reached.” However, for these smaller purchases that are often made repetitively, documentation has generally already been obtained – catalogs, market prices of commercial products sold in quantities to the general public, etc. No additional documentation is required.

Small purchases, in this instance between \$3,000 and \$99,000, call for written price or rate quotation from qualified sources – generally at least three. Sources to determine an independent cost estimate include prior purchase records, businesses/suppliers, websites, and catalogs. The agency needs to develop a “Request for Quote” so that potential suppliers provide comparable price quotes. Qualified sources to receive the request for price quotation include business/suppliers with the proper experience, skills, and product lines

Keep in mind these two purchase categories, Micro and Small purchases may have different purchasing requirements based on dollar amounts in your local policies/procedures. The FTA allows the recipient to set lower thresholds for small purchases based on local policies.

Larger purchases of passenger amenities (shelters/benches), bus equipment such as farebox systems, shop tools/equipment and office equipment including software packages that are anticipated to cost over \$100,000 are generally solicited by issuing some sort of competitive proposal – either through sealed bid, request for proposal, or two-step (qualifications and price). The steps for developing the bid documents are found in Appendix B.

A listing of the standard Federal Clauses required for many “Materials and Supplies” procurements has been provided in **Appendix E**. This “Special Terms and Conditions” document provides notice to vendors that the purchase will be made with Federal funds. These clauses should not interfere with or create additional responsibilities for the vendors; the requirements are consistent with normal business practices. Each agency must review these terms and conditions to determine applicability to individual procurements.

*See Appendix E Sample Terms and Conditions
for Purchases over \$100,000*

Steps to be documented and maintained on file at the agency offices during the process of for completing a larger purchase include:

- Maintain records to detail history of procurement.
- Prepare Independent Cost Estimate (ICE). (See Best Practices Procurement Manual for sample formats of ICE)
- Develop Clear, Accurate Specifications.
- Have Written Procurement Selection Procedures. Provide to all vendors/bidders.
- Complete Cost/Price Analysis after receiving bids.
- FTA Required Clauses must be included in process and provided to potential bidders..
- Conduct fair and open competition.
- Award to a responsible contractor.

Remember, the FTA normally requires that the recipient must provide for “full and open” competition when soliciting bids or proposals. However, under certain circumstances you may be only able to identify one source. In this instance, refer to FTA C 4220.1F, Chapter VI, page 15 for information to include in file to verify efforts to identify potential bidders.

V CAPITAL CONSTRUCTION PROJECTS Facility/Related Construction

Based on the complexity and variety of construction projects, no single document will provide all the information needed to comply with the myriad of regulations. Documents that will provide valuable information include:

- FTA Circular 4220.1F Third Party Contracting Requirements
- FTA Circular 9300.1B Capital Program: Grant Application Instructions
- Best Practices Procurement Manual Prepared to assist grantee in meeting standards of FTA Circular 4220.1F

Above documents are available at www.fta.dot.gov Go to Legislation, Regulations, Guidance, Go to FTA Circulars

- Construction Project Management Handbook Released September 2009 is a comprehensive overview of project management under FTA requirements. For example, contains listing of documentation needed for Environmental Compliance, Request for Categorical Exclusion. (Chap. 4.2)

Available at www.fta.dot.gov Go to Technical Assistance, Reports/Publications

To encourage compliance with federal procurement requirements, several common requirements have been identified and background information developed. This guidance must be supported by a thorough review of state, federal and local government purchasing policies and procurement policies relevant to specific projects.

Common requirements that are addressed include:

- ***Sample Terms and Conditions*** for Facility Construction
- ***Overview of Requirements*** Related to Bus Facilities
- ***Environmental Review/Categorical Exclusion Option***
- ***Appraisal of Land*** for Local Match
- ***Davis-Bacon Wage Requirements***
- ***Independent Cost Estimate (ICE)***

Sample Terms and Conditions for Facility Construction

*See Appendix F for Sample Terms and Conditions,
Categorical Exclusion Format, Guide to Land Appraisal,
Davis-Bacon Wage Determination*

There is a wide array of terms and conditions that must be included as terms of RFP/RFB as well as attached to the Contract. While a summary listing of these clauses is included in **Appendix F**, it is mandatory that these clauses be reviewed by local counsel based on the specifics of each project.

While some of these clauses must be included as shown, other model clauses can be modified locally. For reference, see FTA C 4220.1F, Appendix D, Federally Required and other Model Clauses and Best Practices Procurement Manual, Appendix A, Governing Documents. (Available at fta.dot.gov)

Overview of Requirements Related to Bus Facilities

FTA Circular 9300.1B, Grant Applications, Chapter III, Section 8 specifically addresses requirements for bus facilities. A summary of the important issues addressed include:

- Facility Size. FTA's general policy is to provide assistance for facilities that are adequate for the grant applicant's present needs and that will meet in a realistic way needs of the future. Thus, for a transit agency that at the present time operates 20 vehicles, a request for a bus maintenance garage that will accommodate 20 vehicles and have space for a 10 to 25 percent growth would be considered an acceptable grant request. For the same transit agency, a grant request for a garage for 40 vehicles would not be acceptable, unless the transit agency was absolutely committed to expanding its fleet to 40 vehicles in a relatively short time. In either case, however, the purchase of enough land for the future expansion of the fleet and the garage may be justifiable.
- Project Staging. When applying for a grant to build a facility, a grant applicant must be able to fully describe the project and estimate the cost of the facility. Prior planning may include a feasibility study/need assessment for the project that provided preliminary cost estimated, funding sources, and possible site locations. The first request for funds would be for engineering and design, which would include costs for development of an environmental document and real estate appraisals.

- Planning Justifications. There must be a planning basis for every project or for every group of projects. Planning studies at varying levels of detail should be undertaken in support of projects to acquire, install, or construct major transit facilities. For Section 5311 recipients, this information is generally available in the Five-Year Transit Plan.
- Various Kinds of Facilities Projects .
 - Passenger Shelters Passenger shelters proposed at load and transfer points, park-and-ride stations, employment concentrations, and housing concentrations for the elderly and persons with disabilities are eligible for FTA assistance. A map indicating the transit network and shelter location should be developed and available upon request.
 - Transfer Facility or Transportation Center The basis for a new transfer facility or transportation center should be documented in a planning study. Elements would include a determination of transit demand and other use, an evaluation of existing transfer facilities or sites to satisfy existing and future transit needs, evaluation and selection of sites if a new facility is warranted, preliminary concept design, environmental documentation and cost estimate of the transit transfer facility.
 - Park-and-ride Facilities The basis for a new park-and-ride lot should be documented in a planning study. Generally, activities would include an evaluation of demand and service needs, evaluation of sites to satisfy existing and future transit needs, preliminary concept design of the park-and-ride lots, development of a staging and financing plan, and environmental documentation for the new facility.
 - Maintenance and Administrative Facilities The basis for new maintenance and administrative facilities or major expansions or renovations of existing facilities should be documented in a planning study. Activities would include an evaluation of the condition and adequacy of the existing facility, development of site evaluation criteria, identification and evaluation of alternative sites based upon site evaluation and design requirements, final site selection and preliminary concept building design, environmental documentation, and the development of a staging and financing plan.

Some factors that might expedite or delay the completion of a facility project include availability of local share, environmental requirements, site selection (sometimes a major delay), design review process, various construction permits, construction problems, labor relations, and local politics.

Environmental Review/Categorical Exclusion Option

FTA's environmental review process has two primary objectives: to fully disclose the probable environmental impacts resulting from a proposed project and to develop measures that will avoid or mitigate adverse environmental effects. Expanded information about the environmental protection requirements under the National Environmental Protection Act (NEPA) can be found in FTA Circular 9300.1B, Chapter III-2.

Capital Facility projects have a wide range of environmental effects and thus require varying levels of documentation and review. Many rural facility projects do not involve significant environmental impacts. The joint FHWA/FTA environmental regulations use the term "*categorical exclusions*" (*CE*) to describe those projects that are excluded from the requirement to prepare an environmental document. Projects not qualifying for a CE must complete an "*environmental assessment*" (AE) or "*environmental impact statement*" (EIS)). These regulations are found at 23 CFR Part 771, FHWA/FTA, Environmental Impact and Related Procedures, effective April 23, 2009.

In accordance with the regulations, limited bus and bus-related facility projects that normally do not require any further NEPA review or administrative approval including:

- Construction of bicycle and pedestrian lanes, paths, and facilities;
- Installation of fencing, signs, pavement markings, *small passenger shelters*, and traffic signals where no substantial land acquisition or traffic disruption will occur;
- Alterations to buses or facilities to make them accessible for the elderly and persons with disabilities; and
- Purchase and installation of bus operating or maintenance equipment to be located within an existing facility, with no significant impacts off the project site;

If the project falls under this category, a business letter must be sent to the ADOT Program Manager identifying the specific reason for exclusion.

Bus facility projects often involve more construction and greater potential for off-site impacts. Examples are new construction or expansion includes:

- Construction of new bus storage and maintenance facilities in areas used predominately for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic
- Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facility where only minor amounts of additional land are required and there is not a substantial increase in the number of users

- Construction of bus facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.

Additional information needed to support a request for Categorical Exclusion if provided in **Appendix F**. For any project not meeting the conditions for a categorical exclusion, the grant applicant must prepare an Environmental Assessment (EA) documenting the impacts of the proposed project and consideration of alternatives to the proposed site or design. An EA is subject to public comment.

If significant environmental impacts are identified for a bus category project, an Environmental Impact Statement (EIS) will be required. For example, the new construction or extension of a separate roadway for buses or high-occupancy vehicles which is not located within an existing highway right-of-way normally requires an EIS. Based on National Environmental Policy Act (NEPA) review, a finding of no significant impact (FONSI) or Record of Decision (ROD) will be issued depending on the scope and magnitude of the probable environmental impacts.

Appraisal of Land: For Purchase or as Local Match

If you are planning to use land as part of the local matching funds or will be acquiring real property with Federal funds, the transaction must be carried out pursuant to the requirements in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Uniform Act), as amended. The Uniform Act is implemented by regulation (49 CFR Part 24).

In order for land to be purchased or used as local match, a professional appraisal must be available. The appraisal must be submitted to the ADOT Program Manager. Standards for completing the appraisal is included in Appendix F.

Davis-Bacon Wage Requirements

The Davis-Bacon Act provides that contracts in excess of \$2,000 to which the United States is a party (i.e., federal funds are involved) for construction, alteration, or repair (including painting and decorating) of public buildings or public works within the United States shall contain a clause that no laborer or mechanic employed directly upon the site of the work shall receive less than the prevailing wage rates as determined by the Secretary of Labor. Practical issues surrounding the requirements of the Act and the regulations implementing it include:

Federal Wage Determinations - When a construction project is being performed with federal funds, laborers and mechanics employed directly upon the site of the work shall be paid a minimum wage which is determined by the Secretary of Labor. That rate of pay

is referred to as the "Davis-Bacon wage rate" and is specifically identified in the contract between the Recipient and the Contractor.

Types of Wage Determinations - Federal wage determinations are of two types: (a) General Wage Determinations and (b) Project Wage Determinations. *General wage determinations* contain prevailing wage rates for the types of construction designated in the determination, and they are used in contracts performed within a specified geographical area. They contain no expiration date and remain valid until modified, superseded, or canceled by a notice in the Federal Register by the Department of Labor. These determinations should be used whenever possible.

Project wage determinations are issued at the specific request of the grantee. They are used only when no general wage determination applies and they are effective for 180 days from the date of the determination.

It is the obligation of the contracting agency to ensure that a copy of the most current wage determination of the Department of Labor (DOL) is actually included in the solicitation and ensuing contract. The Wage and Hour Division of the DOL is responsible for the publication of wage determinations. Such determinations are numbered, dated, and issued as different rate schedules, depending upon the type of construction involved (building, residential, highway, or heavy construction). Directions for obtaining current wage levels for specific areas are included in Appendix F of this document.

Independent Cost Estimate

[FTA Circular 4220.1F.1](#), Chapter VI-6 requires that grantees must perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates **before** receiving bids or proposals.

For a vehicle purchase, the Independent Cost Estimate can be completed by contacting other transit agencies to verify that bid cost is consistent. For a facility project, local construction costs must be reviewed. One resource could be other local projects that have been recently completed.

In the Best Practices Procurement Manual discussion of Independent Cost Estimates, suggestions included:

- It is normally cost-effective to have an independent cost estimate that also satisfies the Federal requirement and to have such an estimate at some time before receiving bids or proposals. You may obtain such estimates from published competitive prices, results of competitive procurements, or estimates by in-house or outside estimators.

- BPPM Appendix B.20 – Independent Cost Estimate Form provides a format and guidance for grantee in-house estimators that should be helpful. This form was developed by a small urban transit agency to assist its user organizations with the development of independent cost estimates and statements of work. This form is considerably more complex than what will be required in a rural area, but provides a good overview of the process.
- The purpose of these estimates include:
 - it ensures a clear basis for the grantee's determination that the benefits of the procurement warrant its cost;
 - it provides essential procurement and financial planning information
 - it provides a basis for price analysis, which may assist in obviating the need for a more burdensome cost analysis.
 - The cost estimate gives the contracting official some indication of the complexity of the project. It is also the basis for determining which procurement procedures apply to the project. If the cost estimate exceeds \$100,000, for example, a competitive solicitation is normally required. (State or local requirements may be stricter.)
 - A final purpose of the independent cost estimate is for price analysis. Either a cost or price analysis is required for every contract and every change order so that the essential objective of a reasonable price is assured. The adequacy of the price or cost analysis is a critical responsibility of the contracting official.

APPENDICES

Appendix A	Federally Required Clauses and Certifications by Purchase Category/Matrices from C 4220.1F
Appendix B	Overview of Procurement Process
Appendix C	Checklists/Required Forms for Vehicles: Independent Agency Procurement
Appendix D	Checklists/Required Forms for Vehicles: Interagency/Piggyback Procurement
Appendix E	Required Forms for Other Purchases
Appendix F	Checklists/Required Forms for Facility Construction Sample Formats/Information for Categorical Exclusion Real Estate Appraisal Davis-Bacon Wage Information

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APPENDIX A
From FTA C 4220.1F, Appendix D
FEDERALLY REQUIRED AND OTHER MODEL CLAUSES
A. REQUIRED THIRD PARTY CONTRACT CLAUSES

(excluding micro-purchases, except Davis-Bacon requirements apply to 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
False or Fraudulent Statements or Claims – Civil and Criminal Fraud		§ 3.f
Access to Third Party Contract Records		§ 15.t
Changes to Federal Requirements		§ 2.c(1)
Civil Rights (Title VI, EEO, ADA)		§ 12
Disadvantaged Business Enterprises (DBEs)	Contracts awarded on the basis of a bid or proposal offering to use DBEs.	§ 12.d
Incorporation of FTA Terms	Per FTA C 4220.1F	§ 15.a
Awards Exceeding \$10,000		
Terminations	If 49 CFR Part 18 applies	§ 11
Awards Exceeding \$25,000		
Suspension and Debarment		§ 11
Awards Exceeding the Simplified Acquisition Threshold (\$100,000)		
Buy America	When tangible property or construction will be acquired.	§14.a
Resolution of Disputes, Breaches, or Other Litigation		§ 52
Awards Exceeding \$100,000 by Statute		
Lobbying		§ 3.d
Clean Air		§ 25.b
Clean Water		§ 25.c

FEDERALLY REQUIRED AND OTHER MODEL CLAUSES**A. REQUIRED THIRD PARTY CONTRACT CLAUSES (Continued)**
(excluding micro-purchases, except Davis-Bacon requirements apply to contracts over \$2,000)

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE
Transport of Property or Persons		
Cargo Preference	When acquiring property suitable for shipment by ocean vessel	§ 14.b
Fly America	When property or persons are transported by air between U.S. and foreign destinations, or between foreign locations	§ 14.c
Construction Activities		
Construction Employee Protections – Davis-Bacon Act	For contracts exceeding \$2,000	§ 24.a
Construction Employee Protections – Contract Work Hours & Safety Standards Act	For contracts exceeding \$100,000	§ 24.b
Construction Employee Protections – Copeland Anti-Kickback Act	All contracts	§ 24.a
Bonding for Construction Activities Exceeding \$100,000	5% bid guarantee bond 100% performance bond Payment bond equal to: – 50% for contracts < \$1M – 40% for contracts >\$1M – < \$5M – \$2.5M for contracts > \$5M	§ 15.o(1)
Seismic Safety	Construction contracts for new buildings or for existing buildings	§ 23.e
Nonconstruction Activities		
Nonconstruction Employee Protection – Contract Work Hours & Safety Standards Act	For all turnkey, rolling stock, and operational contracts (excluding transportation services contracts) in excess of \$100,000	§ 24.b
Transit Operations		
Transit Employee Protective Arrangements		§ 24.d
Charter Bus Operations		§ 28
School Bus Operations		§ 29
Drug Use and Testing	Safety sensitive functions	§ 32.b
Alcohol Misuse and Testing	Safety sensitive functions	§ 32.b

FEDERALLY REQUIRED AND OTHER MODEL CLAUSES

A. REQUIRED THIRD PARTY CONTRACT CLAUSES (Continued)
 (excluding micro-purchases, except Davis-Bacon requirements apply to contracts over \$2,000)

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE
Planning, Research, Development, and Demonstration Projects		
Patent Rights		§ 17
Rights in Data and Copyrights		§ 18
Special Notification Requirements for States		
Special Notification Requirement for States		§ 37
Miscellaneous Special Requirements		
Energy Conservation		§ 26
Recycled Products	Contracts when procuring \$10,000 or more per year of items designated by EP	§ 15.k
Conformance with National ITS Architecture	Contracts and solicitations for ITS projects	§ 15.m
ADA Access	Contracts for rolling stock or facilities construction/renovation	§ 12.g
Assignability Clause	Procurements through assignments	§ 15.a

FEDERALLY REQUIRED AND OTHER MODEL CLAUSES**B. REQUIRED CERTIFICATIONS, REPORTS, AND FORMS**

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE
Bus Testing Certification	Procurements of buses and modified mass produced vans	§ 15.n(4)
TVM Certifications	All rolling stock procurements	§ 12.d(1)
Buy America Certification	Procurements of steel, iron or manufactured products exceeding \$100,000	§ 14.a
Preaward Review	Rolling stock procurements exceeding procurements exceeding \$100,000	§ 15.n(3)
Preaward Buy America Certification	Rolling stock procurements exceeding procurements exceeding \$100,000	§ 15.n(3)
Preaward Purchaser's Requirement	Rolling stock procurements exceeding procurements exceeding \$100,000	§ 15.n(3)
Post Delivery Review	Rolling stock procurements exceeding procurements exceeding \$100,000	§ 15.n(3)
Post Delivery Buy America Certification	Rolling stock procurements exceeding procurements exceeding \$100,000	§ 15.n(3)
Post Delivery Purchaser's Requirement	Rolling stock procurements exceeding procurements exceeding \$100,000	§ 15.n(3)
On-Site Inspector's Report	Rolling Stock procurements for more than 10 vehicles	§ 15.n(3)
Federal Motor Vehicles Safety Standards Preaward and Post Delivery)	Motor vehicle procurements (49 CFR 571)	§ 15n(3)
Lobbying	Procurements exceeding \$100,000	§ 3.d(1)
Standard Form LLL and Quarterly Updates (when required)	Procurements exceeding \$100,000 where contractor engages in lobbying activities	§ 3.d(1)

FEDERALLY REQUIRED AND OTHER MODEL CLAUSES**C. OTHER REQUIRED ITEMS**

REQUIREMENT	COMMENTS	FTA C 4220.1F REFERENCES
Contract Administration System		§ 7.b
Record of Procurement History		§ 7.i
Protest Procedures		§ 7.1
Selection Procedures		§8.c
Cost/Price Analysis		§ 10a-b
Justification for Noncompetitive Awards	If Applicable	§ 9.h
No Excessive Bonding Requirements		§ 8.a
No Exclusionary Specifications		§ 8.a
No Geographic Preferences	Except for A&E Services	§8.b
Evaluation of Options	If Applicable	§ 9.I

FEDERALLY REQUIRED AND OTHER MODEL CLAUSES

APPLICABILITY OF THIRD PARTY CONTRACT CLAUSES

(excluding micro-purchases, except Davis-Bacon requirements apply to construction contracts over \$2,000)

TYPE OF PROCUREMENT					
CLAUSE	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.
Civil Rights (Title VI, EEO, ADA)	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Suspension and Debarment	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$100,000	>\$100,000	>\$100,000
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			For property transported by ocean vessel.	For property transported by ocean vessel.	For property transported by ocean vessel.
Fly America	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.
Davis-Bacon Act				>\$2,000 (including ferry vessels)	
Contract Work Hours and Safety Standards Act		>\$100,000 (except transportation services)	>\$100,000	>\$100,000 (including ferry vessels)	

FEDERALLY REQUIRED AND OTHER MODEL CLAUSES**APPLICABILITY OF THIRD PARTY CONTRACT CLAUSES**

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts over \$2,000)

TYPE OF PROCUREMENT					
CLAUSE	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Copeland Anti-Kickback Act				>\$2,000 (including ferry vessels)	
Bonding				\$100,000	
Seismic Safety	A&E for New Buildings & Additions			New Buildings &	
Transit Employee Protective Arrangements		Transit Operations			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit Operations			
Alcohol Misuse and Testing		Transit Operations			
Patent Rights	Research & Development				
Rights in Data and Copyright Requirements	Research & Development				
Energy Conservation	All	All	All	All	All
Recycled Products		Contracts for items designated by EPA, when procuring \$10,000 or more per year		Contracts for items designated by EPA, when procuring \$10,000 or more per year	Contracts for items designated by EPA, when procuring \$10,000 or more per year
Conformance with ITS National Architecture	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States	Limited to States	Limited to States	Limited to States	Limited to States

APPENDIX B

Overview of Procurement Process

While FTA Circular 4220.1F recognizes that city/county/organization procurement procedures and purchasing polices can be used as a framework for the bid process, it is important that these procedures contain mandated elements. This overview identifies the five major steps should be included in a successful procurement process:

- 1) Pre-Bid Process
- 2) Bid Package
- 3) The Bid
- 4) Bid Review and Award
- 5) Post-Delivery Activities

Priorities/information required by ADOT as part of its oversight of the recipients are shown in italics.

1) **Pre-Bid Process**

a. Determine the Scope of the Procurement

Scope of procurement must coincide with the approved Section 5311 capital grant from ADOT.

b. Establish Oversight Working Group/TAC

The parties involved must be identified. Effective, clear establishment of the parties involved will facilitate the overall process. *Transit Advisory Committee (TAC) must review bid package to meet ADOT requirements.*

i) Internal Agency Involvement

Internal staff that may be helpful for the process, in addition to transit agency administrative staff, include drivers and maintenance personnel as well as staff from finance and legal departments.

ii) External Resources

Smaller agencies or agencies with limited procurement experience may need outside. .

c. Plan the Process

The staff involved in the procurement process, including the TAC, should meet to plan the following:

- Review agency resources in terms of managing the procurement process, and determine if others need to be involved.
- Establish a bid and procurement timeline.
- Assign specific responsibilities to each participant.
- Create advertising policy for bid solicitation.

- Review local, state and federal government requirements.
- Clearly identify bidder responsibilities.
- Establish a communication and reporting process for the working group.
- Establish target dates for completing tasks and future meeting schedule.

d. Determine Procurement Method

An important initial consideration will be the type of procurement method to use. There are two basic methods: Invitation for Bid (IFB) and Request for Proposal (RFP). *The ADOT capital procurement process generally lends itself to the IFB process because of the nature of the procurement, specifically vehicles and other transit equipment.*

i) Invitation for Bid (IFB)

This is the most common method used to obtain prices for specific goods and services, including transit vehicles and other equipment. In the IFB process, the award is given to the lowest responsible bidder. Design specification of goods and services to be procured under an IFB are not subject to negotiation, and bids that deviate from specifications are rejected. Typically, the IFB includes two parts: technical and financial. Bidder's responses to each part are evaluated separately; bids that deviate from the specifications are rejected as non-responsive.

ii) Request for Proposal (RFP)

The RFP is a competitive procurement method used when a general, rather than specific, description of goods and services is used. This method allows for the procurement of goods and services without detailed design specifications. The primary consideration in awarding bids need not be price. When using an RFP, bidders typically submit a "Statement of Work" and "Cost Proposal." Contractors have flexibility in how the goods or services are produced, and the award is based on an evaluation of price and quality. The RFP method is typically used for services or planning and engineering studies and "softer" procurements where not every detail of the work to be done can be stated, and/or when creativity on the part of the bidder is desired.

e. Establish Evaluation/Appeal Process

The procuring agency must make every effort to award a contract in a fair manner following bid review, evaluation, and award procedures.

Under an IFB, the Award of Contract is generally made to the bidder quoting the lowest total bid, including delivery charges, provided the bid is responsive to stated requirements.

Under an RFP, the review and evaluation includes a broader range of items since price is not the only criteria for selection. Evaluation criteria should be developed in each category:

- Technical
- Qualifications and Resources
- Management
- Price
- Other Financial Impacts

For either an IFB or an RFP, the procuring agency must have in place a policy to handle protests by contractors should a bidder feel that a contract award has been made unfairly or improperly,. The policy should include internal appeal procedures and time frames, and address confidentially and award withholding. The contractor has the right to protest the award and must follow the administrative procedure established by the procuring agency. If the contractor disagrees with the appeal decision, it may further appeal the decision and file a protest in compliance with Circular 4220.1F and local and state regulations.

2) Bid Package

a. Solicit Bid

Bid package will contain a “Bid Solicitation” page at the front of the package that provides prospective bidders with important information regarding the bid package:

- Scope of the procurement,
- Date for the pre-bid conference,
- Deadlines for contractor communications
- Proposal due date.

b. Develop Draft IFB or RFP

Develop the draft IFB or RFP understanding that once the bid is awarded, it is likely to become a binding contract and protections for the agency are important. It is prudent to contact the agency’s governing body, city council, or finance and/or legal departments for assistance. The document will include the following items:

- i) Uniform Terms and Conditions
Terms most advantageous to include are: Termination for Convenience, Termination for Default, Risk of Loss, Inspection and Testing, and Nonconforming Tender.
- ii) Develop Specifications
Detailed specifications for IFB or general description of good to be purchased for RFP are established. This portion of the bid package will describe exactly what is to be purchased. Again, the IFB process will be most often used.
- iii) Appropriate Levels of Insurance
Awarded supplier should provide the recommended insurance levels: \$1,000,000 General Liability (per occurrence), \$100,000 Workman’s

Compensation, and Commercial Automobile Liability in a combined single limit of not less than \$1,00,000 for all owned, leased, hired and non-owned vehicles. These are recommendations only. For specific limits, contact the Risk Manager or insurance representative.

iv) **Warranty Specification**

Should be included in the IFB or RFP. Extended warranties may also be requested from the bidder. However, the federal and state government will not reimburse for extended warranties and thus are the responsibility of the contracting agency.

v) **Outline of Evaluation Process.**

vi) **Required and Recommended Clauses and Assurances**

Under the 5311 program, the procurement process required forms must be included to address specific state and federal requirements. Additional recommended clauses have been developed as a means to communicate information between the prospective bidder and procuring agency.

vii) Any special submittal requirements such as number of copies, formatting standards, separate qualifications and cost elements, etc.

c. Review of IFB or RFP

i) The draft IFB or RFP should be transmitted to the oversight-working group for review.

ii) *The IFB or RFP must be reviewed by the 5311 Program Manager prior to being sent out for bids. This assures compliance with state and federal regulations and assures the specifications in the proposed procurement comply with what ADOT has approved for funding.*

3) Bid Issuance

a) Identify and Notify Potential Bidders

Once the IFB or RFP has been approved by the ADOT 5311 Program Manger, a list of prospective bidders must be identified.

The bid must be advertised. Local or regional newspapers should be used to advertise the bid. Verify city/county requirements for notice of bid.

Advertisement should state agency information, the nature of the procurement, due dates and the date of the Pre-Bid Conference.

b) Send Bid Package to Interested Parties

Transmit the bid package to the list of qualified contractors the agency has identified and those that contact the agency because of advertisements. Every effort should be made to have a minimum of three potential bidders. Document efforts to identify potential bidders carefully in case three cannot be obtained.

c) Conduct a Pre-Bid Conference

A pre-bid conference allows bidders to ask questions regarding the desired purchase. The date for the pre-bid conference is stated in the Bid Solicitation.

Hold the conference soon after the invitations to bid have been sent so that

unclear areas may be addressed. The pre-bid conference is more effective if prospective bidders submit written questions for review prior to the conference. Attendance by prospective bidders is usually optional but can be required if desired. It is also possible for interested bidders to participate by phone.

4) Bid Review and Award

a) Convene a Review Committee

A review committee should be convened to evaluate the bids, the qualifications of the bidders, and to determine the competitiveness of the bids. This committee would logically include some or all of the individuals and functional areas represented in the Oversight Working Group. The committee should review bids or proposals, arrange for negotiations with the bidders if necessary, and select the final bidder.

b) Conduct Evaluation Process and Criteria

Evaluation process must be reviewed by Oversight Committee and provided to bidders in Bid Document.

c) Review Bids for Required Elements/Responsiveness

Bids or proposals must be reviewed to determine whether they contain all required elements. The contractor must submit the original bid and required number of copies by the due date as stated in the Bid Solicitation.

A bid tabulation sheet that reflects the evaluation process established by the Oversight Committee and communicated to the bidders in the IFB/RFB must be completed and reviewed. by staff for review by the Oversight Committee.

Proposals are typically not opened publicly and are often kept confidential. Only the selection committee and evaluation team should review the proposals.

d) Notify Selected and Rejected Bidders

Once a final decision is reached on which contractor to award the bid, a representative from the agency must sign the solicitation "Award" form and deliver it to the successful bidder. Unsuccessful bidders should be notified of the final award decision.

e) Handling Appeals

A bidder has the right to protest a decision if it feels the bid was made improperly or unfairly. The procuring agency must follow the internal protest policies and procedures as established earlier in the procurement process and inform the protesting contractor of related decisions in a timely manner. The contractor may appeal the decision by filing a protest in compliance with the FTA Circular 4220.1F, as well as state and local regulations.

f) ADOT Notified of Award

ADOT requires that the 5311 Program Manger be advised of bid award and for vehicle procurements, given a copy of the completed Pre-Award Audit Form with accompanying documents.

5) Post-Delivery Activities

Once vehicles or other equipment have been delivered, several activities must be addressed.

- a) Warranty Arrangements must be made with the dealer.
- b) For vehicle procurement, Post Delivery Audit Form must be sent to ADOT with copies of the following:
 - Insurance certificate with ADOT listed as additional insured
 - Copy of title showing ADOT as lien holder

After the vehicle or other equipment had been put into service, grantees must comply with the reporting requirements included in the Section 5311 Guidebook, including performance reports, ADOT vehicle inspection, site visits and lien releases.

APPENDIX C

Documentation for
Independent Agency Procurement of Vehicles

Several checklists have been prepared to track the procurement process and **must be submitted to ADOT prior to reimbursement payment.**

- Agency Procurement Process Checklist
- Bid Package Checklist/Agency Procurement

In addition, there are three Federal Forms that must be submitted for all vehicle procurement whether over \$100,000 or not. Samples are included for review:

- Pre-Award Audit
- Post-Delivery Audit
- Overall Federal Regulation Compliance

Also provided are samples of:

- Application for Arizona Certificate of Title
- Certificate of Insurance is also provided.

(Each agency must review required clauses/certifications to determine applicability to individual procurement. A matrices of these forms can be found in FTA C 4220.1F, Appendix D. For convenience, information for vehicle procurements has been included in Capital Procurement Handbook in Appendix A, pp. 6-7)

AGENCY PROCUREMENT PROCESS CHECKLIST

Agency Level Procurement

Pre-Bid Process

- Determine scope of procurement
- Establish oversight-working group
- Plan the procurement process
- Determine procurement method (IFB or RFP) including evaluation process
- Establish appeal process

Bid Package

- Develop draft IFB or RFP
 - Uniform terms and conditions
 - Warranty specifications
 - Insurance requirements
 - Detailed specifications (IFB) or general description (RFP)
 - Required and recommended forms (*From C 4220.1F, Appendix D, Located in Capital Procurement Handbook in Appendix A, pp. 6-7*)
 - Bid Solicitation Form
 - Information about evaluation process
- Oversight Working Group and TAC review of IFB or RFP
- First Review Point: ADOT Program Manager Review of IFB or RFP***

The Bid Itself

- Identify and notify potential bidders
- Advertise IFB or RFP
- Distribute bid package to interested parties after ADOT authorization
- Conduct pre-bid conference

Bid Review and Award

- Convene a bid review committee
- Conduct evaluation process and based on established criteria
- Notify selected and rejected bidders
- Handle protests
- Second Review Point: Submit successful bid results to ADOT (Include Pre-Award Audit form)***

Post-Delivery Activities

- Warranty arrangement made with dealer
- Third Review Point: Post delivery audit form completed and submitted with:***
 - Insurance certificate showing ADOT as additional insured***
 - Copy of application for title showing ADOT as lien-holder***
- Request to ADOT for federal match

****Indicates ADOT Section 5311 Program Manager review and/or approval points***

AGENCY BID PACKAGE CHECKLIST
Local Transit Agency Conducting Own Procurement Process

	ADOT Management Requirements:	When Required:	Completed By: (Initial)
<input type="checkbox"/>	Agency Procurement Process Checklist	Prior to Reimbursement	
<input type="checkbox"/>	Agency Bid Package Checklist	Prior to Reimbursement	
	ADOT Form Requirements:		
<input type="checkbox"/>	Pre-Award Audit	Prior to Reimbursement	
<input type="checkbox"/>	Post Delivery Audit	Prior to Reimbursement	
<input type="checkbox"/>	Overall Federal Regulation Compliance	Prior to Reimbursement	
<input type="checkbox"/>	Copy of AZ Title Application/ ADOT as lien holder	Prior to Reimbursement	
<input type="checkbox"/>	Certificate of Liability Insurance/ ADOT as Additional Insured	Prior to Reimbursement	
	Bid Package Including:	Prior to Reimbursement	
<input type="checkbox"/>	Bid Solicitation Summary	Optional	
<input type="checkbox"/>	Equipment Specifications	Must include Yes/No/ Approved Equal Format	
<input type="checkbox"/>	Request for Change or Approved Equal	Optional	
<input type="checkbox"/>	Acknowledgment of Addenda	Optional	
<input type="checkbox"/>	Bidder Service and Parts Support Data	Optional	
<input type="checkbox"/>	Buy America Certification	Contracts over \$100,000	Manufacturer
<input type="checkbox"/>	Debarment and Suspension Certification	Contracts over \$100,000	Vendor
<input type="checkbox"/>	Lobbying Certification	Contracts over \$100,000	Vendor and Manufacturer
<input type="checkbox"/>	DBE Approval; Certification	Contracts over \$250,000	Manufacturer
<input type="checkbox"/>	Certification of Compliance with Bus Testing Requirements	All contracts	Manufacturer
<input type="checkbox"/>	Overall Federal Regulation Compliance	All contracts	Vendor
<input type="checkbox"/>	ADOT Forms (Pre-Bid, Post-Delivery, Compliance)	All contracts	
<input type="checkbox"/>	Any Additional Certification/Clauses See FTA C 4220.1F, Appendix D	Review for Specific Procurement	
<input type="checkbox"/>	Form for Proposal Deviation	Optional	
<input type="checkbox"/>	Pricing Schedule	Optional	
<input type="checkbox"/>	Offer	Optional	
<input type="checkbox"/>	Award	Optional	

The forms that must be completed and submitted to ADOT in order for grantees to be reimbursed for the federal share of the procurement are:

- Pre-Award Audit
- Post-Delivery Audit; and
- Overall Federal Regulation Compliance

As stated in the “Offer” form in Appendix C-page 33, a copy of these forms should be included in the bid package in order that bidders are aware of the need to execute these forms if selected.

Pre-Award Audit (Required from Grantee to ADOT)

Applicability: This form assures ADOT that the procurement process is in compliance with FTA Pre-Award Audit Requirements.

Summary Description: Grantees must submit this form to ADOT. The form must include the signature of bidders to whom a contract was awarded. It is therefore suggested that this form be included in the bid document, as indicated in the Offer form of the suggested bid package (*see* Appendix Two).

What To Do With This Form: This form should be executed by bidders and submitted with bids to the procuring agency. The procuring agency then executes its part of the form and submits it to ADOT prior to being reimbursed for the federal share of project expenditures.

**Pre-Award Audit
(Required Form, Grantee to ADOT)**

Solicitation Number: _____

Equipment Being Purchased:

Vendor Name: _____

Vendor Address: _____

_____ Buy America

- 60% + domestic content?
- Final assembly in U.S.?
- Meets all activities related to final assembly?
- Manufacturer certifies that it will comply.
- Manufacturer certifies that it cannot comply. Explain:

_____ Bid meets solicitation specifications, including but not limited to:

- _____ Altoona Bus Testing Regulations?
- _____ Americans With Disabilities Act (ADA) Requirements?

_____ Federal Motor Vehicle Safety Standards (FMVSS)?

_____ Vendor/manufacturer understands that a similar post-delivery review will be conducted, which will include, but may not be limited to, evaluation of the above-noted items.

_____ Manufacturer/vendor satisfactorily meets all of the above-stated criteria.

_____ Grantee Representative _____ Vendor/Manufacturer Representative

_____ Grantee Representative _____ Vendor/Manufacturer Representative

_____ Date(s) Audit/Review Conducted

**Post-Delivery Audit
(Required from Grantee to ADOT)**

Applicability: This form assures ADOT that the procurement process is in compliance with FTA Post-Delivery Audit Requirements.

Summary Description: Grantees must submit this form to ADOT. The form must include the signature of bidders to whom a contract was awarded. It is therefore suggested that this form be included in the bid document as indicated in the “Offer” form of the suggested bid package (*see Appendix Two*).

What To Do With This Form: This form should be executed by bidders and the procuring agency prior to acceptance of delivery of equipment. The procuring agency then submits the completed form to ADOT prior to being reimbursed for the federal share of project expenditures.

**Post-Delivery Audit
(Required Form Grantee to ADOT)**

Solicitation Number: _____

Equipment Being Purchased:

Vendor Name: _____

Vendor Address: _____

- _____ Buy America
- 60% + domestic content?
 - Final assembly in U.S.?
 - Meets all activities related to final assembly?
 - Subcomponent and manufacturer list provided?
 - Manufacturer certifies that it will comply.
 - Manufacturer certifies that it cannot comply. Explain:

_____ Vendor/Secondary Manufacturer additionally understands that failure to comply with or accurately report on Buy America provisions may result in forfeiture of invoice payment and rejection by ADOT of rolling stock per federal regulations?

- _____ Bid meets solicitation specifications, including but not limited to:
- _____ Altoona Bus Testing Regulations?
 - _____ Americans With Disabilities Act (ADA) Requirements?

_____ Federal Motor Vehicle Safety Standards, including FMVSS 220 (School Bus Roll Over) Certification provided?

_____ Debarment Certification provided?

_____ Lobbying Certification provided?

_____ Manufacturer/vendor satisfactorily meets all of the above-stated criteria (i.e., vehicles have been delivered or are in the process of final delivery to ADOT which meet or exceed above criteria).

Grantee Representative

Vendor/Manufacturer Representative

Date of Audit Review Completed by Grantee _____

**Overall Federal Regulation Compliance
(Required From Grantee to ADOT)**

Applicability: This form assures ADOT that the procurement process is in compliance with federal and state regulations.

Summary Description: Grantees must submit this form to ADOT and it is suggested that grantees also require bidders to execute the form.

What To Do With This Form: This form should be executed by bidders and submitted with bids to the procuring agency. The procuring agency then executes this form and submits it to ADOT prior to being reimbursed for the federal share of project expenditures.

Overall Federal Regulation Compliance
(Required form, Grantee to ADOT)

All contractual provisions required by USDOT, as set forth in the FTA Circular 4220.1 E dated May 1, 1995, 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 (grantee) requests which would cause (grantee) to be in violation of the FTA terms and conditions.

 Grantee Representative

 Vendor Representative

 Grantee Agency

 Vendor Company

Date: _____

These forms must be submitted by all applicants:

- Copy of "Application for Arizona Certificate of Title." Must show ADOT as lienholder.
- Copy of "Certificate of Liability Insurance." Must show ADOT as Additional Insured.

Sample Application for Arizona Certificate of Title

STAPLE HERE		APPLICATION FOR ARIZONA CERTIFICATE OF TITLE				REGISTRATION EXPIRES LAST DAY OF
Type or print in BLACK INK.		When validated, THIS IS YOUR REGISTRATION and must be carried in vehicle at all times.				
48-0508 (S) R696						
APP. TYPE	Check the type of application desired:					
	<input type="checkbox"/> DUPLICATE (see below) <input type="checkbox"/> TITLE ONLY <input type="checkbox"/> TRANSFER <input type="checkbox"/> DISMANTLING <input type="checkbox"/> SALVAGE <input type="checkbox"/> OTHER <small>If duplicate is checked, the original certificate of title must not have been assigned and/or surrendered to anyone. The original certificate has become: (check one)</small> <input type="checkbox"/> LOST <input type="checkbox"/> DESTROYED <input type="checkbox"/> MUTILATED <input type="checkbox"/> ILLEGIBLE (Mutilated or illegible title must be attached)					
VEHICLE	PLATE NO.	TAB NO.	VEHICLE ID NO.	MAKE	BODY STYLE	YEAR
	MTHYFR	MODEL	LIST PRICE	GVWGOW	FUEL	ODOMETER READING * <input type="checkbox"/> Actual <input type="checkbox"/> B <input type="checkbox"/> C
APPLICANTS INFORMATION	NAME (First/Middle/Last)			OR, AND/OR	DATE OF BIRTH	DRIVER LICENSE OR ID NO
				MAILING ADDRESS		
				CITY/STATE/ZIP CODE		
	RESIDENCE ADDRESS OF OWNER OR LESSEE (if different from mailing)			CITY	STATE	
LIENHOLDER	1ST LIENHOLDER NAME			AMOUNT	DATE	
	MAILING ADDRESS					
	2ND LIENHOLDER NAME			AMOUNT	DATE	
MH	3RD LIENHOLDER NAME			AMOUNT	DATE	
	MAILING ADDRESS					
	MOBILE HOME MANUFACTURER			PHYSICAL LOCATION OF MOBILE HOME		
APPLICANTS CERTIFICATION <small>Must Be Completed in Full</small>	The vehicle was acquired <input type="checkbox"/> New <input type="checkbox"/> Used on _____ 19 ____			Are your registration rights under suspension? <input type="checkbox"/> Yes <input type="checkbox"/> No		
	from Name _____			Is the vehicle specially constructed or reconstructed? <input type="checkbox"/> Yes <input type="checkbox"/> No		
	City/State _____			Will the vehicle be rented without a driver? <input type="checkbox"/> Yes <input type="checkbox"/> No		
	I warrant the vehicle described above to be free from all liens and encumbrances except those indicated above. I certify that the information contained on this application is true and correct. I acknowledge that the odometer reading above is qualified by the seller and that it is not the responsibility of the Division to determine the accuracy of the odometer statement. I understand that vehicles registered for use in, or being used to commute to, the Phoenix or Tucson metropolitan areas may be subject to emissions testing. <input type="checkbox"/> I do not want my name and address released for commercial mailing lists.					
ALL APPLICANTS MUST SIGN HERE						
1. _____ 2. _____ Additional Applicants						
LEGAL STATUS "OR" ONLY	The undersigned having applied for a certificate of title in our names, do hereby state that we hold this property as joint tenants and furthermore empower and authorize each other as attorney in fact to assign the certificate of title by his or her signature alone and thereby transfer, sell, mortgage or otherwise encumber the vehicle in the same manner as though all joint owners had acted and signed.					
	FOR "OR" LEGAL STATUS, ALL APPLICANTS MUST ALSO SIGN HERE					
1. _____ 2. _____ Additional Applicants						
MVD USE	BATCH NO/DATE/COUNTY/BRANCH	CAT	STATUS	PLATE CANCELLED/PLATE NO./AGENT		
				<input type="checkbox"/> F <input type="checkbox"/> R		
	NEW TITLE NO.	NEW FILM REFERENCE NO.		TYPE		
	PREVIOUS TITLE NO.	STATE	PREVIOUS FILM REFERENCE NO.	MVD TAX ACCT NO.		
FEES VLT _____ REG _____ CRF _____ WGT _____ LWT _____ EIF _____ AQF _____ SPL _____ COL _____ TRN _____ LOP _____ UTX _____ DOR _____ SNO _____ PST _____ PEN _____ TTL _____ TOTAL _____ * See Reverse Side						
						VALIDATE HERE
						MVD

Sample Certificate of Insurance

ACORD CERTIFICATE OF LIABILITY INSURANCE		ID CR CATHO-3	DATE (MM/DD/YY)
PRODUCER THE MAHONEY GROUP - TUCSON P. O. Box 42950 Tucson AZ 85733 Phone: 520-795-8511 Fax: 520-795-8542		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
		INSURERS AFFORDING COVERAGE	
INSURED		INSURER A:	Scottsdale Insurance Company
		INSURER B:	
		INSURER C:	
		INSURER D:	
		INSURER E:	

COVERAGES						
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE	\$
					FIRE DAMAGE (Any one fire)	\$
					MED EXP (Any one person)	\$
					PERSONAL & ADV INJURY	\$
					GENERAL AGGREGATE	\$
					PRODUCTS - COM/POP AGG	\$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> Uninsured Motorist <input checked="" type="checkbox"/> Underinsured	CAS0052776	08/01/99	08/01/00	COMBINED SINGLE LIMIT (Ea accident)	\$ 1000000
					BODILY INJURY (Per person)	\$
					BODILY INJURY (Per accident)	\$
					PROPERTY DAMAGE (Per accident)	\$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
					OTHER THAN EA ACC	\$
					AUTO ONLY: AGG	\$
A	EXCESS LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$	XLS000499201	08/01/99	08/01/00	EACH OCCURRENCE	\$ 500000
					AGGREGATE	\$ 500000
						\$
						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATU- TORY LIMITS	
					OTH- ER	
					E.L. EACH ACCIDENT	\$
					E.L. DISEASE - EA EMPLOYEE	\$
					E.L. DISEASE - POLICY LIMIT	\$
	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
 CERTIFICATE HOLDER IS ADDITIONAL INSURED AS REQUIRED BY CONTRACT WITH INSURED TO PROVIDE SIERRA VISTA TRANSIT SERVICES. ALSO NAMED AS LOSS PAYEE WITH RESPECTS TO 99 FORD BUS VIN# 1FDXE40S4XHA88311 & 99 FORD BUS #1FDFF30F5XHA70648.

Important:
 Show ADOT as additional Insured.

CERTIFICATE HOLDER	<input checked="" type="checkbox"/> ADDITIONAL INSURED; INSURER LETTER: ADOT--1	CANCELLATION
Arizona Department of Transportation 206 S. 17th Ave (340B) Phoenix AZ 85007		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. Theresa E. White <i>Theresa E. White</i>

ACORD 25-S (7/97)

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APPENDIX D

Documentation for

State/Local Purchasing of Vehicles
Assignment/Piggyback Procurement of Vehicles

Several checklists have been prepared to track the procurement process and **must be submitted to ADOT prior to reimbursement payment.**

State/Local Purchasing of Vehicles

- Bid Package Checklist
State/Local Purchasing and Piggyback Procurement Process Agreement
- FTA Intergovernmental Procurement Review Checklist

Assignment/Piggyback Procurement of Vehicles

- Bid Package Checklist/Agency Purchases from State/Local Agency or Piggyback Procurement Process Checklist
- FTA Intergovernmental Procurement Review Checklist
- Piggybacking Worksheet
(There are some duplications in these two worksheets, however both should be completed)

(Note: When procuring vehicle through assignment/piggyback, there are fewer FTA Required Forms that must be submitted. The entire Certification package was submitted to the original bidder.)

BID PACKAGE CHECKLIST
State/Local Purchasing and Piggyback Procurement Agreement

	ADOT Management Requirements:	When Required:	Completed by: (Initial)
<input type="checkbox"/>	Minutes from TAC/Advisory Meeting approving procurement of selected vehicle/equipment.	Prior to Reimbursement	
<input type="checkbox"/>	FTA Intergovernmental Procurement Review Checklist	Prior to Reimbursement	
<input type="checkbox"/>	Piggybacking Procurement Checklist (if applicable)	Prior to Reimbursement	
<input type="checkbox"/>	Memorandum of Record	Prior to Reimbursement	
<input type="checkbox"/>	Application for AZ Certificate of Title/ADOT as lien holder	Prior to Reimbursement	
<input type="checkbox"/>	Certificate of Liability Insurance/ADOT as Additional Insured	Prior to Reimbursement	
	FTA Required Forms:	Prior to Reimbursement	
<input type="checkbox"/>	Buy America Certification	Contracts over \$100,000	Manufacturer
<input type="checkbox"/>	Debarment and Suspension Certification	Contracts over \$100,000	Vendor
<input type="checkbox"/>	Lobbying Certification	Contracts over \$100,000	Vendor and Manufacturer
<input type="checkbox"/>	DBE Approval; Certification	Contracts over \$250,000	Manufacturer
<input type="checkbox"/>	Certification of Compliance with Bus Testing Requirements	All contracts	Manufacturer
<input type="checkbox"/>	Overall Federal Regulation Compliance	All contracts	Vendor

INTERGOVERNMENTAL PROCUREMENT REVIEW CHECKLIST

	Yes	No
1. Did you determine that the contract is still in effect or can be modified by the awarding Agency to permit sufficient lead time to make the required deliveries to you Agency?		
2. Did you determine that the specifications in the existing contract would meet your needs?		
3. Did you review the terms and conditions carefully to determine that they are acceptable to you, e.g. warranty provisions, insurances requirements, etc?		
4. Did you determine that the requirements needed by your agency would not be beyond the scope of the existing contact?		
5. Did you determine that the contract was awarded competitively, either through sealed bids or competitive proposals?		
6. Did you determine that the contract prices originally established are still fair and reasonable?		
7. Did you determine that the contract has submitted all federally required certification to the awarding agency?		
8. Did you complete the Piggybacking Worksheet"? <i>(Some of the items on the Piggybacking Worksheet may overlap this Checklist)</i>		
9. Did you prepare a Memorandum of Record documenting your analysis of the various items mentioned above?		

PIGGYBACKING WORKSHEET

	YES	NO
1. Have you obtained a copy of the contract and the solicitation document, including the specifications and any Buy America Pre-award or Post-delivery audits?		
2. Does the solicitation and contract contain an express “assignability” clause that provides for the assignment of all or part of the specified deliverables?		
3. Did the Contractor submit the “certifications” required by Federal regulations”? See BPPM Section 4.3.3.2 for more information.		
4. Does the contract contain the clauses required by Federal regulations?		
5. Were the piggybacking quantities included in the original solicitation; i.e. were they in the original bid and were they evaluated as part of the contract award decision?		
6. If this is an indefinite quantity contract, did the original solicitation and resultant contract contain both a minimum and maximum quantity, and did these represent the reasonable foreseeable needs of the parties to the contract?		
7. If this piggybacking action represents the exercise of an action in the contract, is the option provision still valid or has it expired?	Valid	Expired
8. Does Arizona state law allow for the procedures used by the original contracting agency: e.g. negotiations vs. sealed bids?		
9. Was a cost or price analysis performed by the original contracting agency documenting the reasonableness of the price? Obtain a copy for your files.		
10. If the contract is for rolling stock or replacement parts, does the contract term comply with the five-year limit established by the FTA? See FTA Circular 4220.1F, Chapter IV, 2(14)(i)		
11. Was there a proper evaluation of the bids or proposals? Include a copy of the analysis in your files.		

APPENDIX E

Small Purchases: Between \$3,000 and \$100,000

No RFP Required

*Must solicit from an “adequate number” of qualified sources
Rely on agency procurement standards*

Materials and Supplies Purchases over \$100,000

Must use competitive process:

Sealed Bid, or

RFP, or

Two-Stop Procurement (RFQ/RFP)

*Attach Special Terms and Conditions
to Request for Proposal Documents*

(Each agency must review required clauses/certifications to determine applicability to individual procurement. A matrices of these forms can be found in FTA C 4220.1F, Appendix D. For convenience, information for facility construction procurements has been included in Capital Procurement Handbook in Appendix A, pp. 6-7)

Vendor must submit One Page Acceptance of Federal Terms

Only if Applicable, Vendor submits:

DBE Certification

Buy America Certification

FEDERAL TRANSIT ADMINISTRATION
SPECIAL TERMS AND CONDITIONS

This project is funded by Federal Transit Administration and the Arizona Department of Transportation – Multimodal Planning Division grants and is subject to FTA Third Party Contract requirements.

1. **No Obligation by the Federal Government** – The *(insert name of local government/agency)* 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 *(insert name of agency)*, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. **Program Fraud and False or Fraudulent Statements or Related Acts** - 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.
3. **Access to Third Party Contract Records** - Where the *(insert name of local government/agency)* is a State and is the FTA *(insert name of local government/agency)* or a subgrantee of the FTA *(insert name of local government/agency)* in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the *(insert name of local government/agency)*, 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. FTA does not require the inclusion of these requirements in subcontracts.
4. **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 *(insert name of local government/agency)* 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.
5. **Termination** - (May be modified to reflect local requirements.
 - a. **Termination for Convenience (General Provision)** The *(insert name of local government/agency)* 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 *(insert name of local government/agency)* to be paid the Contractor. If the Contractor has any property in its possession belonging to the *(insert name of local government/agency)*, the Contractor will account for the same, and dispose of it in the manner the *(insert name of local government/agency)* 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 *(insert name of local government/agency)* 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 *(insert name of local government/agency)* 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 *(insert name of local government/agency)*, 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 *(insert name of local government/agency)* 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 *(insert name of local government/agency)* 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 *(insert name of local government/agency)* directing setting forth the nature of said breach or default, *(insert name of local government/agency)* 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 *(insert name of local government/agency)* 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 *(insert name of local government/agency)* elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by *(insert name of local government/agency)* shall not limit *(insert name of local government/agency)* remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. 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 *(insert name of local government/agency)* may terminate this contract for default. The *(insert name of local government/agency)* 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 *(insert name of local government/agency)*.

6. **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.
- 7 Disadvantaged Business Enterprises (DBE)** - 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% and the Arizona Department of Transportation's FFY 2008 Transit Goal is (insert)%. A separate contract goal has not been established for this procurement. If you are a DBE certified contractor, please fill out the certification attached stating your letter of intent to perform services as a DBE if applicable.
- 8 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.
- 9 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 name of local government/agency)*. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to *(insert name of local government/agency)*, 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.

- 10 **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.

A bidder or offeror must submit to the FTA (*insert name of local government/agency*) the appropriate Buy America certification (attached) 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.

- 11 **Resolution of Disputes, Breaches, or Other Litigation** (May be modified for contract)
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 *((insert name of local government/agency) [title of employee]*). This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by *(insert name of local government/agency)*, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

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

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the *(insert name of local government/agency)* 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 *(insert name of local government/agency)* 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 (*insert name of local government/agency*) 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.

- 12 **Lobbying** Contractors who apply or bid for an award of \$100,000 or more shall file the attached 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 (*insert name of local government/agency*).
- 13 **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 (*insert name of local government/agency*) and understands and agrees that the (*insert name of local government/agency*) 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.
- 14 **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 (*insert name of local government/agency*) and understands and agrees that the (*insert name of local government/agency*) will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- 15 **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.
- 16 **ADA Access** The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities.

ACCEPTANCE OF FEDERAL TERMS
(Must be submitted)

PLEASE PROVIDE THE FOLLOWING INFORMATION AS ACCEPTANCE OF THESE TERMS.

VENDOR BUSINESS:

NAME: _____

TITLE: _____

SIGNATURE: _____

DATE: _____

LETTER OF INTENT TO PERFORM AS A DBE
(Submit only if applicable)

Project Title or Description:

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

_____ a prime contractor _____ a subcontractor
_____ a joint venture _____ other (please specify)

If applicable, name of prime contractor or joint venture partner:

The disadvantaged status of the undersigned is confirmed on by the attached
documentation:

1. Submit copy of certification papers, etc.

Date: -

Name of DBE Contractor: _____

By: _____
(Signature & Title)

BUY AMERICAN
(Only if over \$100,000)

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 _____

APPENDIX F

CAPITAL CONSTRUCTION PROJECTS

Facility Construction Checklist

(Must be provided to ADOT)

Special Terms and Conditions to Construction Request for
Proposal/Contract Documents

*(Each Agency Must Review Terms And Conditions To Determine Applicability To
Individual Facility Project)*

Sample Information/Format For Requesting Categorical Exclusion

Guide To Preparing a Real Estate Appraisal

Davis-Bacon Act Wage Rate Determination

**FACILITY CONSTRUCTION CHECKLIST
(Requirements when using FTA funding)**

The following checklist/forms must be provided to ADOT:

Contact Person: _____

Agency: _____

Phone number: _____

Email: _____

Required Documentation	When Required:	Provided by:	Yes/No
Planning Justification (generally from most recent Five Year Plan)	Prior to award/construction	Recipient	
Minutes from TAC/Council approving Construction	Prior to award/construction	Recipient	
Environmental Review: NEPA process or Categorical Exclusion Approval	Prior to construction	Recipient	
Appraisal of Land (if purchased with FTA funds or used as local match)	Prior to construction	Recipient	
Plan Document for Facility must meet standards of FTA C-9300.1B, III-8	Prior to construction	Recipient	
RFP/Contract Documents			
RFP/RFP must be consistent with guidance in <u>FTA C 4220.1F</u> . Chapter VI provides specific guidance.	Prior to contract award	Recipient	
Cost and Price Analysis completed prior to receiving bids	Prior to contract award	Recipient	
Evaluation Standard developed and included RFP.	Prior to contract award	Recipient	
Federally Required/Model Clauses			
Sample Attached:	With RFP/Contract	Recipient	
Must be included as terms of RFP/RFB and Contract. Should be reviewed by local Counsel. While some clauses are required, other model clauses can be modified locally. Reference: <u>FTA C 4220.1F</u> , Appendix D, Federally Required and other Model Clauses, <u>Best Practices Procurement Manual</u> , Appendix A, Governing Documents. (Available at fta.dot.gov)			
Contractor Signed Clauses Required for:			
Acceptance of Federal Terms	With Proposal/Bid	Contractor to Recipient	
Intent to Perform as DBE	Only if Applicable	Contractor to Recipient	
Buy America	With Proposal/Bid	Contractor to Recipient	
Certification Regarding Lobbying	With Proposal/Bid	Contractor to Recipient	

FEDERAL TRANSIT ADMINISTRATION
SPECIAL TERMS AND CONDITIONS

This facility project is funded by Federal Transit Administration and the Arizona Department of Transportation – Multimodal Planning Division grants and is subject to FTA Third Party Contract requirements.

1. **No Obligation by the Federal Government** – The *(insert name of local government/agency)* 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 *(insert name of agency)*, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. **Program Fraud and False or Fraudulent Statements or Related Acts** - 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.
3. **Access to Third Party Contract Records** - Where the *(insert name of local government/agency)* is a State and is the FTA *(insert name of local government/agency)* or a subgrantee of the FTA *(insert name of local government/agency)* in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the *(insert name of local government/agency)*, 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. FTA does not require the inclusion of these requirements in subcontracts.
4. **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 *(insert name of local government/agency)* 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.
5. **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.

- 6 **Disadvantaged Business Enterprises (DBE)** - 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% and the Arizona Department of Transportation's FFY 2008 Transit Goal is (insert)%. A separate contract goal has not been established for this procurement. If you are a DBE certified contractor, please fill out the certification attached stating your letter of intent to perform services as a DBE if applicable.
- 6 **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.
8. **Termination** - (May be modified to reflect local requirements.)
a. Termination for Convenience (General Provision) The (*insert name of local government/agency*) 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 (*insert name of local government/agency*) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (*insert name of local government/agency*), the Contractor will account for the same, and dispose of it in the manner the (*insert name of local government/agency*) 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 *(insert name of local government/agency)* 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 *(insert name of local government/agency)* 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 *(insert name of local government/agency)*, 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 *(insert name of local government/agency)* 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 *(insert name of local government/agency)* 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 *(insert name of local government/agency)* directs setting forth the nature of said breach or default, *(insert name of local government/agency)* 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 *(insert name of local government/agency)* 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 *(insert name of local government/agency)* elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by *(insert name of local government/agency)* shall not limit *(insert name of local government/agency)* remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. 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 *(insert name of local government/agency)* may terminate this contract for default. The *(insert name of local government/agency)* 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 *(insert name of local government/agency)*.

- 9 **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 name of local government/agency)*. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to *(insert name of local government/agency)*, 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.

- 10 **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.

A bidder or offeror must submit to the FTA (*insert name of local government/agency*) the appropriate Buy America certification (attached) 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.

- 11 **Resolution of Disputes, Breaches, or Other Litigation** (May be modified for contract)
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 *((insert name of local government/agency) [title of employee]*). This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by *(insert name of local government/agency)*, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

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

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the *(insert name of local government/agency)* 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 *(insert name of local government/agency)* 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 (*insert name of local government/agency*) 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.
- 12 **Lobbying** Contractors who apply or bid for an award of \$100,000 or more shall file the attached 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 (*insert name of local government/agency*).
- 13 **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 (*insert name of local government/agency*) and understands and agrees that the (*insert name of local government/agency*) 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.
- 14 **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 (*insert name of local government/agency*) and understands and agrees that the (*insert name of local government/agency*) will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.
- 15 **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 (*insert name of local government/agency*)s 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.
- 16 **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 local government/agency)* 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 local government/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 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 local government/agency)* 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

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

(3) **Withholding for unpaid wages and liquidated damages** - The *(insert name of local government/agency)* 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.

19 **Performance and Payment Bonding Requirements (Construction)** For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the *(insert name of local government/agency)*. Minimum amounts include:

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 *((insert name of local government/agency))* determines that a lesser amount would be adequate for the protection of the *((insert name of local government/agency))*.

2. The ((insert name of local government/agency)) 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 ((insert name of local government/agency)) 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.

3. If the original contract price is \$5 million or less, the *(insert name of local government/agency)* may require additional protection as required by subparagraph 1 if the contract price is increased.

4.

- 20 **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.
- 21 **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.
- 22 **ADA Access** The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities.

ACCEPTANCE OF FEDERAL TERMS
(Must be submitted)

PLEASE PROVIDE THE FOLLOWING INFORMATION AS ACCEPTANCE OF THESE TERMS.

VENDOR BUSINESS:

NAME: _____

TITLE: _____

SIGNATURE: _____

DATE: _____

LETTER OF INTENT TO PERFORM AS A DBE
(Submit only if applicable)

Project Title or Description:

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

_____ a prime contractor _____ a subcontractor
_____ a joint venture _____ other (please specify)

If applicable, name of prime contractor or joint venture partner:

The disadvantaged status of the undersigned is confirmed on by the attached
documentation:

1. Submit copy of certification papers, etc.

Date: -

Name of DBE Contractor: _____

By: _____
(Signature & Title)

BUY AMERICAN

(Must submit. Does not apply to 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 REGARDING LOBBYING
(Must be submitted)

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

Sample Information/Format For Requesting Categorical Exclusion

Not an FTA mandated format/provided as an example for your convenience

Date _____

Grant Applicant _____

Name of Project _____

INFORMATION REQUIRED FOR DOCUMENTED CATEGORICAL EXCLUSION

(23 CFR 771.117(d))

Provide a response for each lettered paragraph. If you feel an item does not apply to your project, explain why. Provide letters and any other information to substantiate responses (such as zoning, traffic impacts, SHPO letter).

A. DETAILED PROJECT DESCRIPTION:

B. LOCATION (INCLUDING ADDRESS):

Attach a site map or diagram, which identifies the land uses and resources on the site and the adjacent or nearby land uses and resources. This is used to determine the probability of impact on sensitive receptors (such as schools, hospitals, residences) and on protected resources.

C. METROPOLITAN PLANNING AND AIR QUALITY CONFORMITY:

Is the proposed project "included" in the current adopted MPO plan, either explicitly or in a grouping of projects or activities? What is the conformity status of that plan? Is the proposed project, or are appropriate phases of the project included in the TIP? What is the conformity status of the TIP?

D. ZONING:

Description of zoning, if applicable, and consistency with proposed use.

E. TRAFFIC IMPACTS:

Describe potential traffic impacts; including whether the existing roadways have adequate capacity to handle increased bus and other vehicular traffic.

F. CO HOT SPOTS:

If there are serious traffic impacts at any affected intersection, and if the area is nonattainment for CO, demonstrate that CO hot spots will not result.

G. HISTORIC RESOURCES:

Describe any cultural, historic, or archaeological resource that is located in the immediate vicinity of the proposed project and the impact of the project on the resource.

H. NOISE:

Compare the distance between the center of the proposed project and the nearest noise receptor to the screening distance for this type of project in FTA's guidelines. If the screening distance is not achieved, attach a "General Noise Assessment" with conclusions.

I. VIBRATION:

If the proposed project involves new or relocated steel tracks, compare the distance between the center of the proposed project and the nearest vibration receptor to the screening distance for this type of project in FTA's guidelines. If the screening distance is not achieved, attach a "General Vibration Assessment" with conclusions.

J. ACQUISITIONS & RELOCATIONS REQUIRED: Describe land acquisitions and displacements of residences and businesses.**K. HAZARDOUS MATERIALS:**

If real property is to be acquired, has a Phase I site assessment for contaminated soil and groundwater been performed? If a Phase II site assessment is recommended, has it been performed? What steps will be taken to ensure that the community in which the project is located is protected from contamination during construction and operation of the project? State the results of consultation with the cognizant State agency regarding the proposed remediation?

L. COMMUNITY DISRUPTION AND ENVIRONMENTAL JUSTICE:

Provide a socio-economic profile of the affected community. Describe the impacts of the proposed project on the community. Identify any community resources that would be affected and the nature of the effect.

M. USE OF PUBLIC PARKLAND AND RECREATION AREAS:

Indicate parks and recreational areas on the site map. If the activities and purposes of these resources will be affected by the proposed project, state how.

N. IMPACTS ON WETLANDS:

Show potential wetlands on the site map. Describe the project's impact on on-site and adjacent wetlands.

O. FLOODPLAIN IMPACTS:

Is the proposed project located within the 100-year floodplain? If so, address possible flooding of the proposed project site and flooding induced by proposed project due to its taking of floodplain capacity.

P. IMPACTS ON WATER QUALITY, NAVIGABLE WATERWAYS, & COASTAL ZONES:

If any of these are implicated, provide detailed analysis.

Q. IMPACTS ON ECOLOGICALLY-SENSITIVE AREAS AND ENDANGERED SPECIES:

Describe any natural areas (woodlands, prairies, wetlands, rivers, lakes, streams, designated wildlife or waterfowl refuges, and geological formations) on or near the proposed project area. If present, state the results of consultation with the state department of natural resources on the impacts to these natural areas and on threatened and endangered fauna and flora that may be affected.

R. IMPACTS ON SAFETY AND SECURITY:

Describe the measures that would need to be taken to provide for the safe and secure operation of the project after its construction.

S. IMPACTS CAUSED BY CONSTRUCTION:

Describe the construction plan and identify impacts due to construction noise, utility disruption, debris and soil disposal, air and water quality, safety and security, and disruptions of traffic and access to property.

The action described above meets the criteria for a NEPA categorical exclusion (CE) in accordance with 23 CFR Part 771.117(d)

Applicant's Environmental Reviewer

Date _____

FTA/ADOT Grant Representative

Date _____

Guide To Preparing An Appraisal

Prepared by FTA Office of Program Review/Real Estate

This document would be provided to a professional appraiser to ensure that correct procedures are followed and required information is reported.

Scope of Work

The Scope of Work is a written set of expectations that form an agreement or understanding between the appraiser and the agency as to the specific requirements of the appraisal, resulting in a report to be delivered to the agency by the appraiser. It includes identification of the intended use and intended user; definition of market value; statement of assumptions and limiting conditions; and certifications. It should specify performance requirements, or it should reference them from another source, such as the agency's approved Right-Of-Way Manual. The Scope of Work must address the unique, unusual and variable appraisal performance requirements of the appraisal. Either the appraiser of the agency may recommend modification to the initial Scope of Work, but both parties must approve changes.

The appraiser must, at a minimum:

1. Provide an appraisal meeting the agency's definition of an appraisal. For Federal-aid projects the definition must be compatible with the definition found at 49 CFR 24.2(a)(3).
2. Afford the property owner or the owner's designated representative the opportunity to accompany the appraiser on the inspection of the property.
3. Perform an inspection of the subject property. The inspection should be appropriate for the appraisal problem and the Scope of Work should address:
 - a. The extent of the inspection and description of the neighborhood and proposed project area.
 - b. The extent of the subject property inspection, including interior and exterior areas.
 - c. The level of detail of the description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, the remaining property).

Appraisal Report

The Appraisal Report should as a minimum:

1. Include a sketch of the property and provide the location and dimensions of any improvements.
2. Include adequate photographs of the subject property and comparable sales and provide location maps of the property and comparable sales.
3. Include items required by the acquiring agency, usually including the following list:
 - a. The value being appraised (usually fair market value) and its definition.

- b. The property right(s) to be acquired, e.g. fee simple, easement, etc.
 - c. Appraised as if free and clear of contamination (or as specified)
 - d. The date of the appraisal report and the date of valuation
 - e. A realty/personalty report is required per 49 CFR 24.103(a)(2)(i).
 - f. The known and observed encumbrances, if any.
 - g. Title information
 - h. Location
 - i. Zoning
 - j. Present use, and
 - k. At least a 5 year sales history of the property.
4. Identify the highest and best use. If highest and best use is in question or different for the existing use, provide an appropriate analysis identifying the market-based highest and best use. (Some FTA transit projects may use the highest and best use for transit. This should be explained.)

Additional Requirements

1. Present and analyze relevant market information. Specific requirements for market information should include research, analysis, and verification of comparable sales. Inspection of comparable sales should also be specified.
2. In developing and reporting the appraisal, disregard and decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired of by the likelihood that the property would be acquired for the project. (If necessary, the appraiser may cite the Jurisdictional Exception or Supplemental Standards Rules under USPAP to ensure compliance with USPAP while following this Uniform Act requirement)
3. Report his or her analysis, opinion, and conclusions in the appraisal report.
4. Explain the Intended Use: An example might be “this appraisal is to estimate the fair market value of the property, as of the specified date of the valuation, for the proposed acquisition of the property rights.”
5. Explain the Intended User: Such as “the intended user of this appraisal report is primarily the acquiring agency. However, its funding partners may review the appraisal as part of their program oversight activities.”

Definition of Market Value

Market Value is determined by State law, but includes the following:

1. Buyer and seller are typically motivated.
2. Both parties are well informed or well advised, each acting in what he or she considers his or her own best interest.
3. A reasonable time is allowed for exposure in the open market.
4. Payment is made in terms of cash in US dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Assumptions and Limiting Conditions

The appraiser shall state all relevant assumptions and limiting conditions. In addition, the acquiring agency may provide other assumptions and conditions that may be required for the particular appraisal assignment such as:

1. The data search requirements and parameter that may be required for the project t.
2. Identification of the technology requirements, including approaches to value to be used to analyze the data.
3. Need for machinery and equipment appraisals, soil studies, potential zoning changes, etc.
4. Instruction to the appraiser to appraise the property “As Is” or subject to repairs or corrective action.
5. As applicable, include any information on property contamination to be provided and considered by the appraiser in making the appraisal.

Any question on this guide may be directed to FTA Staff:

Ron Fannin	202-366-1647	Ronald.Fannin@fta.dot.gov
Mamie Smith-Fisher	202-366-8663	Mamie.Smith-fisher@fta.dot.gov

DAVIS-BACON ACT WAGE RATE

Example of David Bacon Construction Wage Determination

Grantee Is Responsible For Verifying Current Wage Level For Applicable County

GO TO: www.gpo.gov/davisbacon/az.html

The Davis-Bacon Wage Determinations contained on this web site are wage determinations issued by the U.S. Department of Labor under the *Davis-Bacon and related Acts*. The Wage and Hour Division of the U.S. Department of Labor determines prevailing wage rates to be paid on federally funded or assisted construction projects. It is the responsibility of the federal agency that funds or financially assists Davis-Bacon covered construction projects to ensure that the proper Davis-Bacon wage determination(s) is/are applied to such construction contracts(s). (See [29 CFR 1.5](#) and [1.6\(b\)](#))

PARTIAL LISTING PROVIDED AS EXAMPLE ONLY. MUST CONFIRM CURRENT INFORMATION FOR EXACT LOCATION AT WEBSITE.

GENERAL DECISION: AZ20080005 12/25/2009 AZ5

Date: December 25, 2009

General Decision Number: AZ20080005 12/25/2009

Superseded General Decision Number: AZ20070005

State: Arizona

Construction Type: Building

Counties: Apache, Cochise, Gila, Graham, Greenlee, La Paz, Navajo, Santa Cruz and Yavapai Counties in Arizona.

BUILDING CONSTRUCTION PROJECTS (does not include residential construction consisting of single family homes and apartments up to and including 4 stories)

Modification Number	Publication Date
0	02/08/2008
1	04/04/2008
2	04/18/2008
3	06/20/2008
4	07/11/2008
5	08/08/2008
6	08/15/2008
7	02/13/2009
8	02/27/2009
9	05/29/2009
10	07/03/2009
11	08/07/2009

12	11/13/2009
13	12/04/2009
14	12/25/2009

ELEC0518-004 07/01/2008

APACHE (Area South of Highway 66), GILA, and NAVAJO (South and East of boundary beginning at a point where Clear Creek crosses the Coconino-Navajo County Line, extending North-easterly along Clear Creek and North-easterly to Cottonwood Wash, along Cottonwood Wash North-easterly to intersection with Navajo Reservation, East along Navajo Reservation Boundary line to intersection with Navajo/Apache County lines) COUNTIES

	Rates	Fringes
Electrician/Wireman.....	\$ 24.05	12%+6.50

* ELEC0570-006 12/01/2009

COCHISE, GRAHAM, GREENLEE, LA PAZ, SANTA CRUZ

	Rates	Fringes
Electrician/Wireman.....	\$ 22.20	18%+4.70

ZONE DEFINITIONS: ZONE PAY - Workmen employed in Zones B and C shall be paid Zone Pay as follows:
 Zone B.....an additional \$ 1.25 per hour
 Zone C.....an additional \$ 3.75 per hour

Zones shall be created in Tucson, Arizona, the headquarters of the Union. Zones may be established in other localities by mutual consent of the parties hereto (Section 1.03). Zones and the applicable rates of pay shall be the same for all Employers coming under the terms of this Agreement.

In Tucson, Zone A shall be the area within a twenty-nine (29) mile radius from a basing point at the City Hall.

Zone B shall be the area from the outer limits of the twenty-nine (29) mile radius, extending out another seventeen (17) miles (a 46 mile radius total).

Zone C shall be the area from the forty-six (46) mile radius, extending to the outside limits of the Local Union's jurisdiction.

If any owner's contiguous property falls within more than one Zone, it shall all be considered to be within the closer Zone.