

### Chapter 9 - Applicability of Third-Party Contract Clauses

Clause	Type of Procurement				
	Professional Services /A&E	Operations/ Management	Rollingstock Purchase	Construction	Materials & Supplies
1. <a href="#">Fly America</a>	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air
2. <a href="#">Buy America</a>			>\$100,000	>\$100,000	>\$100,000 (for steel, iron, manufactured products)
3. <a href="#">Charter Service Operations</a>		All			
3. <a href="#">School Bus Operations</a>		All			
4. <a href="#">Cargo Preference</a>			Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel
5. <a href="#">Seismic Safety</a>	A&E for New Buildings & Additions			New Buildings & Additions	
6. <a href="#">Energy Conservation</a>	All	All	All	All	All
7. <a href="#">Clean Water</a>	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
8. <a href="#">Bus Testing</a>		Turnkey	Buses		
9. <a href="#">Pre-award and Post Delivery Audit</a>			All		
10. <a href="#">Lobbying</a>	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
11. <a href="#">Access to Records</a>	All	All	All	All	All
12. <a href="#">Federal changes</a>	All	All	All	All	All
13. <a href="#">Bonding</a>				>\$100,000	
14. <a href="#">Clean Air</a>	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
15. <a href="#">Recycled Products</a>		Contracts for items designated by EPA, when procuring \$10,000 or		Contracts for items designated by EPA, when procuring \$10,000 or	Contracts for items designated by EPA, when procuring

		more per year		more per year	\$10,000 or more per year
16. <a href="#">Davis Bacon Act</a>				>\$2,000 (including ferry vessels)	
17. <a href="#">Contract Work Hours &amp; Safety Standards Act</a>		>\$2,500 (except transportation services)	>\$2,500	>\$2,000 (including ferry vessels)	
18 [Reserved]					
19. <a href="#">No federal government obligations to third-parties by use of a disclaimer</a>	All	All	All	All	All
20. <a href="#">Program fraud and false or fraudulent statements and related acts</a>	All	All	All	All	All
21. <a href="#">Termination Provisions</a>	All Contracts >\$10,000	All Contracts >\$10,000	All Contracts >\$10,000	All Contracts >\$10,000	All Contracts >\$10,000
22. <a href="#">Debarment and Suspension</a>	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
23. <a href="#">Privacy Act</a>		If maintain Drug and Alcohol Files			
24. <a href="#">Civil Rights (EEO, Title VI &amp; ADA)</a>	All	All	All	All	All
25. <a href="#">Provisions for resolution of disputes, breaches, or other litigation</a>	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
26. <a href="#">Patent Rights, Rights in Data and copyrights requirements</a>	Research & Development				
27. <a href="#">Transit Employee Protective</a>		Transit Operations			

<a href="#">Arrangements</a>					
28. <a href="#">Disadvantaged Business Enterprises (DBEs)</a>	All	All	All	All	All
29. [reserved]					
30. <a href="#">Incorporation of FTA Terms</a>	All	All	All	All	All
31. <a href="#">Drug Use and Testing</a>		Transit Operations			
32. <a href="#">Non-collusion Bidding Certification</a>					
33. <a href="#">Protest Procedure</a>	All	All	All	All	All
34. <a href="#">Conformance with ITS National Architecture</a>	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects
35. <a href="#">Notification of Federal Participation</a>	>\$500,000	>\$500,000	>\$500,000	>\$500,000	>\$500,000
36. <a href="#">ADA Access</a>	Architectural & Engineering	All	All	All	
37. <a href="#">Verbal Communication</a>	Guidance Only	Guidance Only	Guidance Only	Guidance Only	Guidance Only

Requirement	Comments
Contract Administration System	
Record of Procurement History	
Protest Procedures	
Selection Procedures	
Cost/Price Analysis	
Justification for Noncompetitive Awards	If applicable
No excessive bonding requirements	
No exclusionary specifications	
No geographic preferences	Except for A & E services
Evaluation of Options	If applicable

## Required and Suggested Clauses

Appendix 1 of FTA's *Best Practices Procurement Manual* includes details and legal references to all of the required and suggested clauses. Some of the suggested language is included in this appendix, but more information is available [here](#).

- 1. [Fly America Requirements](#)** - United States airlines must be used when flying outside the United States.

(Recommended Language) *The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation. If you are doing a construction project you will need to contact your district representative for special provisions that are required for a construction project.*
- 2. [Buy America Requirements](#)** - A bidder or offeror must submit an appropriate [Buy America Certification for Rolling Stock](#) or [Buy America Certification for Non-rollingstock](#) with all bids on FTA-funded contracts more than \$100,000, 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.

(Suggested language) *The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR 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 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rollingstock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.*
- 3. [Charter Bus Requirements](#)** – The charter bus requirements apply to operational service contracts. The charter bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

(Suggested language) *The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.*

School Bus Requirements – The school bus requirements apply to operational service contracts and flow down from FTA recipients and subrecipients to first tier service contractors.

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

4. [Cargo Preference Requirements](#) – The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities that may be transported by ocean vessels.  
(Suggested language) The contractor agrees:
  - a) *to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tanker involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;*
  - b) *to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) ;*
  - c) *to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.*
  
5. [Seismic Safety Requirements](#) – The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.  
(Suggested language) *The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.*
  
6. [Energy Conservation Requirements](#) – The Energy Conservation requirements are applicable to all contracts. The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their sub-agreements at every tier.  
(Suggested language) *The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.*
  
7. [Clean Water Requirements](#) – The clean water requirements apply to each contract and subcontract which exceeds \$100,000. The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.  
(Recommended, includes mandatory language for contracts greater than \$100,000)
  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.*
  2. *The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.*
  
8. [Bus Testing](#) – The bus testing requirements pertain only to the acquisition of Rolling Stock/Turnkey. The bus testing requirements should not flow down, except to the turnkey contractor as stated in Master Agreement. The transit system must certify that any new bus model or any model with major changes in configuration or components will be tested at a bus testing facility. A [testing certificate](#), if required, must be submitted prior to final acceptance. It is the responsibility of the transit system in dealing with the manufacturer to determine if testing is required. Bus Testing Reports can be obtained using FTA's web-based [Bus Testing Database](#). (Suggested Language) *The Contractor*

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

- a) *A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.*
- b) *A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.*
- c) *If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing. If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components. CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS*

9. [Pre-Award and Post Delivery Audits Requirements](#) – These requirements apply only to the acquisition of Rolling Stock/Turnkey. Certification required. [Pre-Award Audit Certification](#). [Post-Delivery Audit Certification](#).

*(Suggested language) The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:*

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

10. [Lobbying](#) – The lobbying requirements apply to construction, architectural and engineering, acquisition of rolling stock, professional service contract, operational service contract, and turnkey contracts. The lobbying requirements mandate the maximum flow down and apply to every tier, pursuant to Byrd Anti-Lobbying Amendment. [Certification of Restrictions on Lobbying](#) (Required Language) *Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.*

11. [Access to Records and Reports](#) – (Suggested Language) *The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.*

*Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.*

12. [Federal Changes](#) – The federal changes requirement applies to all contracts. The Federal Changes requirement flows down appropriately to each applicable changed requirement. (Suggested language) *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 Agreement (Form FTA MA (6) dated October, 1999) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to comply shall constitute a material breach of this contract.*
13. [Bonding Requirements](#) – For construction and facility projects or subcontracts exceeding \$100,000, FTA has proposed language for bid bonds, performance and payment bonds. See the BPPM for language and applicability.
14. [Clean Air](#) – The clean air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year. The clean air requirements flow down to all subcontracts that exceed \$100,000. (Suggested Language) *The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.*
15. [Recycled Products](#) – The recycled products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. These requirements flow down to all to all contractor and subcontractor tiers. (Suggested language) *The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.*
16. [Davis-Bacon Act](#) – The language in this clause is mandated under the Department of Labor regulations at 29 C.F.R. § 5.5. and pertains to construction projects more than \$2,000. Refer to the BPPM for language.

17. [Contract Work Hours and Safety Standards Act](#) – This pertains to construction contracts greater than \$2,000 and turnkey, rolling stock and operational contracts (excluding contracts for transportation services) in excess of \$2,500. Language in these clauses are specifically mandated under DOL regulation 29 C.F.R. § 5.5 and can be found in the *BPPM*
18. [Reserved]
19. [No Government Obligation to Third Parties](#) – Applies to all contracts.  
(Suggested language) *The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.*
20. [Program Fraud and False or Fraudulent Statements](#) – Applies to all contracts.  
(Suggested Language) *(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate. (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate. (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.*
21. [Termination](#) – Applies to contracts greater than \$10,000. FTA has developed several suggested clauses for various situations and types of contracts.
22. [Government-wide Debarment and Suspension \(Non-procurement\)](#) - FTA recipients and sub-recipients are prohibited from contracting for goods and services from organizations that have been suspended or debarred from receiving federally assisted contracts. As part of their applications each year, recipients are required to submit a certification to the effect that they will not enter into contracts over \$25,000 with suspended or debarred contractors and that they will require their contractors (and their subcontractors) to make the same certification to them. Each bidder must submit the appropriate, prepared, and signed "[Iowa Transit Vendor/Service Provider Certification Regarding Debarment, Suspension, and Other responsibility Matters](#)".
23. [Privacy Act](#) - When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the

Privacy Act requirements apply to all contracts.

(Required) *The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract: (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract. (2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.*

24. [Civil Rights Requirements](#) - The Civil Rights Requirements apply to all contracts.

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

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

a) *Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.*

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

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

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

25. [Breaches and Dispute Resolution](#) – All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures. FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. FTA has examples of various clauses in the *BPPM*.
26. [Patent and Rights in Data](#) – Patent and rights in data requirements for federally assisted projects only apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual. See the *BPPM* for more information.
27. [Transit Employee Protective Agreements](#) – The transit employee protective provisions apply to each contract for transit operations performed by employees of a contractor recognized by FTA to be a transit operator. The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.) Suggested language is available in the *BPPM*.
28. [Disadvantaged Business Enterprise \(DBE\)](#) - Each bidder shall comply with all rules and regulations promulgated by the Federal Transit Administration of the U.S. DOT regarding participation of Disadvantaged Business Enterprises in contracting opportunities created by any contract awarded under this solicitation. Each bidder must submit the appropriate, prepared, and signed DBE certification, which will be either the [DBE Certification for Non-Rollingstock or the DBE Certification for Rollingstock](#). Contract Assurance (§26.13) - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.  
(Required) Prompt Payment (§26.29) - *The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than [specify number] days from the receipt of each payment the prime contractor receives from [Name of recipient]. The prime contractor agrees further to return retainage payments to each subcontractor within [specify the same number as above] days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the [Name of Recipient]. This clause applies to both DBE and non-DBE subcontractors.*

*The Iowa DOT Office of Public Transit has established a goal of 0.37% for Disadvantaged Business Enterprise (DBE) participation for projects funded with federal highway funds obligated by the Iowa DOT for federal fiscal year 2011.*

Prospective contractors shall make a good faith effort to achieve 0.37% participation by DBE firms in this project. Care must be taken to document efforts made to assure that small minority-owned and/or woman owned business enterprises are notified, and preferably at least ten business days prior to the deadline for proposal submission, about opportunities to perform services or act as sources of supplies, equipment, or other items required by the prime contractor in the course of project implementation. Good faith efforts must be made to afford DBE firms an opportunity to quote items or perform services as a subcontractor to any prospective contractor.

Notification of such opportunities that is given to DBE firms that does not afford a reasonable time for preparing a carefully developed quote for goods or services shall not be regarded as being in "good faith". Documentation of these efforts and details regarding any work or items a DBE firm(s) shall perform/supply in the course of satisfying requirements detailed in the scope of work detailed in this RFP shall be submitted on the [Disadvantaged Business Enterprise Information Statement of DBE Commitments](#). Prospective contractors can access a list of firms that have been certified as [DBEs by the Iowa Dept of Transportation](#). Any firm that might qualify for Certification by the Iowa DOT as a DBE should prepare and submit the necessary [application](#) materials as soon as possible.

Prospective contractors shall submit a "[Disadvantaged Business Enterprise Information Statement of DBE Commitments](#)" as part of any proposal. This statement documents good faith efforts that each prospective contractor must make to notify DBE firms of contracting opportunities available under this project. Each prospective contractor shall prepare and submit this form with other required documentation as part of any proposal submitted in response to this solicitation.

Reporting of DBE participation in this project will be required of the firm awarded a contract to perform the work detailed in this RFP. This participation shall be reported using the "[Certification of DBE Accomplishment](#)" and submitted to the Office of Public Transit project administrator prior to final payment by the Iowa Dept of Transportation to the contractor.

*(Suggested) The vendor shall make a good faith effort to assure that small minority-owned and woman-owned business enterprises are used as sources of supplies, equipment, construction, and services as much as possible. The rehabilitation services vendor awarded a contract shall take all the following affirmative action steps. Each vendor's bid shall identify the anticipated level of participation by DBE's in the project.*

*If a Transit Vehicle Manufacturer (TVM) is represented by a bidder responding to this solicitation, the TVM must certify that it has updated its Annual DBE Participation Plan and report to FTA as required. If a bid is submitted by a vendor representing a TVM that is not listed on FTA's approved TVM current list, the TVM may become approved up to date of award. If that TVM's status is not listed by FTA as being approved within this time frame, the agency may reject the bid and make a contract award to a bidder representing a TVM evaluated as complying with this and other applicable laws and regulations.*

29. [Reserved]
30. [Incorporation of Federal Transit Administration \(FTA\) terms](#) – Applies to all contracts at all levels. *(Suggested) 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 4220.1D (also see Change 1), dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.*
31. [Drug and Alcohol Testing](#) – The Drug and Alcohol testing provisions apply to operational service contracts. FTA has developed three options that can be used 'as is' or modified for specific needs. Under Option 1, the recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 CFR 653 and 654. The disadvantage is that the recipient which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option only for those recipients that have a testing program for their employees, and can add the contractor's safety-sensitive employees to that program.

Under Option 2, the recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 CFR 653 and 654, but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that without adequate monitoring of the contractor's program, the recipient may find itself out of compliance with the rules.

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

32. Non-collusion Bidding Certification – Required under state law, each bidder is required to submit a properly prepared and signed [Non-Collusion Bidding Certification](#) as part of the bid submission.
33. Anyone wishing to file a protest concerning the specifications or the bid procedure must do so in writing using the [Model Transit Procurement Protest Procedure](#).
34. [Reserved]
35. Notification of Federal Participation - Contact OPT Staff for guidance.
36. ADA Standards for Accessibility - (Suggested language) Service RFQ Clause for Professional A & E Services only. *Contractor shall be responsible for assuring the accessibility of any designs, plans, equipment installations and construction work performed under each contract awarded pursuant to or implementing the designs and specifications provided under the scope of services detailed in this solicitation. Contractor shall assure that each facility alteration is compliant with standards for accessible design detailed in 28 CFR Part 37 and Appendix A thereof.*  
(Suggested language) Access Clause for Construction IFB. *Plans for facility construction and/or facility alterations that are described in the scope of work detailed under this solicitation for bids/proposals have been designed with the intent of ensuring, to the maximum extent feasible, that the facility, or alterations thereof, shall be accessible to persons with disabilities including individuals who use mobility aids. The bidder agrees to make each modification detailed in the project plans in a manner that assures that the area constructed or alterations to any area within the facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Full compliance with the provisions of 49 CFR Part 37 is the intent of the facility owner and every aspect of this project, as well any contract awarded pursuant to this procurement, shall be construed as being consistent with this intent and compliant with Subpart C – Transportation Facilities with particular reference to Subsection 37.43 of FTA's regulations pursuant to the Americans with Disabilities Act of 1990 (ADA). If any aspect of the plans or specifications for this project appear to be inconsistent with Subsection 37.9 Standards for accessible transportation facilities or any guidance issued by the Access Board, it is essential that a bidder or contractor notify the project manager designated by the owner about any such concern as soon as practicable.*

For other types of procurements contact OPT staff for appropriate language.

37. Verbal Communications – (Suggested) Communications pertaining to this solicitation shall not be binding unless conveyed in writing. And, any vendor requesting bid instructions and a

specification package shall be deemed a "vendor of record" and shall be sent a copy of any communication with other vendors regarding the solicitation. (Note: Telephone calls may be used to expedite decisions, but shall not be deemed as binding unless confirmed in writing.)