



MBTA RFP #09-04

TECHNICAL SPECIFICATIONS AND BID REQUIREMENTS

CAL ACT STANDARD SHELTER PROJECT

**Morongo Basin Transit Authority
Lead Agency for the
California Association for Coordinated Transportation**

December 2009



PART 1

Background and Solicitation Details

The Morongo Basin Transit Authority (“MBTA”) a member of the California Association for Coordinated Transportation (“CalACT”) takes the lead agency role in the formation of the CalACT/MBTA Vehicle and Materials Purchasing Cooperative. For the purposes of this Cooperative Purchasing Schedule, the informal arrangement entered into by the MBTA and CalACT shall hereinafter be referred to as the “Cooperative.”

The Cooperative’s objective in this procurement is to make available to the CalACT membership, a standardized high quality bus stop shelter which is customizable according to the roof styles, color, bench and other options as described in Part 2 of this document. The Cooperative’s solicitation requests proposals from qualified, experienced firms able to manufacture these shelters to the standards specifies herein and will include multiple vendors into the Purchasing Schedule who meet RFP #09-04’s requirements.

The specific roles and obligations of the MBTA and CalACT are described in detail in the Cooperative Purchasing Agreement entered into by the parties. As a general matter, MBTA staff, consultants, and counsel shall be responsible for the development of bid requirements, product specifications and the awarding of contracts on behalf of the Cooperative. After the shelter contract/s is/are awarded, CalACT shall be responsible for assigning of options, collecting fees, and the general administration of the contract.

The Cooperative seeks sealed proposals for the shelters as described and detailed in this solicitation. These shelters may be purchased using Federal Transit Administration (“FTA”) funding by Cooperative members. Said proposals to be submitted without price information are to be received by MBTA at the office of the General Manager, Morongo Basin Transit Authority, 62405 Verbena Road, Joshua Tree, Ca 92252 up to and no later than **2:00 pm on January 8, 2010**. Proposals are to be delivered in person by a representative of the proposing firm. No proposals received after the above specified date and time will be accepted. After evaluation of non-cost factors is complete, the Cooperative will correspond with responsive firms requesting price information.

The form of procurement for this solicitation is the development of a **Local Government Purchasing Schedule** as defined in the FTA Circular 4220.1F Chapter V, Part 4. Wherein the FTA authorizes local governments to make arrangements with multiple vendors to provide options for goods or services in the future at established prices to the local government or others that the local government chooses to share these arrangements with. Unlike other forms of procurement, the FTA does not require the specification of a minimum or maximum quantity of purchase for such a schedule

The FTA’s Best Practice Procurement Manual (Ch 2, pp 68-69) also provides grantees with a justification for Multiple Award Contracting “in order to ensure the quality or timeliness of deliveries by not limiting the grantee to a single supplier who may not perform according to the grantee’s expectations or needs or who may not be able to meet

peak delivery requirements. In this event, another supplier is immediately available to assure that needs will be met.”

In accordance with 49 U.S.C. § 5325 (c), FTA recipients may award contracts to parties other than a low bidder in order to further objectives such as long term efficiency and lower costs. In addition, 49 U.S.C. § 5325 (f) (1b) authorizes recipients to base awards on factors such as performance, standardization, life cycle costs or other factors or on a competitive process for selection of award such as this solicitation’s. (49 U.S.C. 5325 (f) (2).)

Further, the California legislature in Public Contract Code § 20217 (a) finds and declares that it is in the public interest for *transit agencies* to “consider the broadest possible range of competing products and materials available, fitness of purpose, manufacturer’s warranty, vendor financing, performance reliability, standardization, life cycle costs, delivery timetables, support logistics, and other similar factors in addition to price in the award of these contracts.”

The above, as well as precedents set by practices in other states provide a preponderance of clear and compelling justifications for the Cooperative to create and maintain a bid schedule with multiple awards for products and for its assignees to purchase from the schedule considering factors other than lowest price.

The MBTA specifically reserves the unilateral right to exercise part or all of the options for items covered under this document for a period of twenty-four (24) months after the date of award of the contract(s). The MBTA further reserves the unilateral right to assign or withhold assignment of products under this procurement to any other public agency, government entity, or non-profit organizations performing governmental services under intergovernmental contracting procedures. The assignment of deliverable products under these options shall be accomplished in accordance with the terms of this Contract. The assignment shall be in writing, signed between The MBTA or its designated agent(s) and the assignee, and be approved by the contractor. Assignees shall acknowledge in writing their responsibility for inspection of product and enforcement of contract. Further, assignees and the contractor will hold the MBTA and its agent(s) harmless from any liabilities.

Each proposal shall conform to and be responsible to this Request for Proposal (“RFP”). The RFP for this contract opportunity, including information for proposing firms, product specifications, and all other documents are now on file and copies thereof may be obtained at the MBTA office.

The MBTA reserves the right to reject any or all proposals and to waive any irregularities and informalities in proposals received.

The Cooperative may assign any/all of the non-exercised units to other publicly funded transit agencies, city transit systems, other governmental agencies or non-profit organizations performing governmental services. Other political subdivisions authorized to purchase with public funds may be allowed to purchase from bid schedule with written consent from the Cooperative and Contractor. Contractor agrees to sell shelter(s),

including proposed optional equipment, at the same price, terms and conditions from the time of contract award to the expiration of the contract term.

Subsequently there shall be two (2) one-year renewal options at the end of each model year after the initial twenty-four (24) month period. A cost increase shall be considered at each renewal date, up to a maximum of 4%, due to materials cost increases and/or manufacturer's option cost increases. Vendor is responsible for requesting and providing justification for such cost increase in a timely manner for consideration by the MBTA. The MBTA, in its sole and absolute discretion, may choose to accept or reject each year's renewal cost increase.

During the proposal process, all correspondence and verbal contact shall be directed to the General Manager, Morongo Basin Transit Authority: 62405 Verbena Road, Joshua Tree, California, 92252. Telephone 760.366.2986, Fax 760.366.2445, email joe@mbtabus.com.

Proposers must submit one (1) original signature signed copies and three (3) hard copies per proposal. Bidder shall submit one (1) copy of financial statement as specified herein.

PART 2

Technical Specifications

13' Shelter

1. Roof dimensions: 12'7 7/8" x 4'8" Height: 7' to bottom of roof perimeter
2. The roof design features two circular shapes running horizontally. One is used as a rain gutter, the other allows for optional electrical wiring for lighting and/or conduit for 'real-time' transit information.
3. The one piece roof shall be welded from four lengths of aluminum extrusion, no snap together corners which can be vandalized.
4. Two roof beams shall be welded to the roof perimeter for placement of the supporting legs. These beams also house the lighting in those shelters, which feature optional electric lighting.
5. Roof beams are pre-drilled to facilitate field installation
6. Dome roof shelter with bronze or white Lexan roof panels secured with extruded aluminum flat bars and rubber gaskets, attached by Tek screws. No silicone sealer is required.
 1. Optional roofs include aluminum dome roof
 2. Aluminum low peak roof-gable style
 3. Aluminum high peak roof-gable style
 4. Aluminum high peak roof with earth stone coated Gerard simulated roof tile, terracotta in color

Proposer to offer above roof styles at buyer's choice, with no extra charge to the purchasing agency.

7. Powder coated perforated metal panels in steel frames at the rear and 1/2 end walls, are constructed from 16 ga galvanized steel sheets with 1/4" diameter holes on 3/8" centers and attached to square steel tube frames with drive rivets. Walls shall be supported with adjustable stainless steel assemblies, which anchor to the concrete pad or sidewalk.
 1. Optional full end wall panels should be available
 2. Optional front wind screen to be available
 3. Optional Victorian style perforated metal panels should be available
8. Two 3" steel pipe legs support the roof at each end of the structure. Four adjustable shoes allow for up to 12" grade variation.
 1. An aluminum post option should be available
9. All materials shall be top quality – only ASTM A-36 grade 3" schedule 40 pipe for structural steel members and 6063-T6 grade aluminum extrusion with a minimum thickness of 1/8 inch.
10. Steel welding shall conform to American welding society standard D1. 1-80. Electrodes conform to ASTM A233, class E70S-6. All aluminum components shall be welded in accordance with AWS/SFA 5.10 CLASS ER4043. All welding shall be performed by certified welders.
11. All of the structure's metal surfaces shall feature a durable baked polyester powder coat finish, 4-5 ml thick. The powder coating process produces no volatile organic compounds (VOCs). Powder coat finish was created for durability in outdoor use and to withstand graffiti removal solvents. Color is to be selected from a standard RAL color chart to be provided with proposal.
 1. Proposer shall provide an outline of their powder coat finish process including sandblast, cleaning, pretreat, top coat and quality check.
12. Shelter shall be constructed of modular, interchangeable components to allow for ease of installation and parts replacement. Shelters shall be shipped knock-down (k.d.) for ease of handling and installation. This also allows of easy site adaptation.
13. The shelter shall be supplied with all hardware and ground anchors necessary for site installation.
14. All detail shop drawings, details of materials, fabrication, assembly and framing details, erection drawings, parts list and field installation instructions shall be to be included.
15. Stamped and sealed engineering calculations from a CA engineer confirming with local building codes including wind and snow loads to be provided to each purchasing agency.
16. The shelter shall be fabricated by a manufacturer with a minimum of 10 years experience designing and fabricating transit shelters.
17. This shelter shall carry a minimum three-year warranty.

The solar lighting proposed should include:

- The ability to be installed on any of the proposed shelter models
- Provide dusk to dawn illumination
- NEC Article 690 compliant
- 40-80 watt solar collector depending on geographic area
- Sealed light bar under the shelter roof containing batteries, controller and two LD lamp fixtures that provide approximately 3 foot candle at the ground level and 7 ft candle at the bench height.
- All exposed metal parts to be powder coated to match the shelter

- All wiring concealed
- 5-day battery back-up
- Solar lighting should be centered in the shelter and have even light distribution
- A 110V hard wire solution shall be offered

The bench proposed should include:

- Perforated metal
- 8 feet x 1.5' feet. No back
- Legs and 3 anti-vagrant bars shall be constructed from 1.25" schedule 40 pipe
- Horizontal supports constructed from 3/4" schedule 40 pipe.
- Perforated metal is 12 gauge galvanized sheet with 1/4" holes on 3/8" centers, staggered.
- Finish is powder coated approximately 5 ml thick
- Secured to concrete with 4, 1/2" diameter zinc anchor bolts
- Powder coat finish approximately 5 ml thick.
- Proposer shall offer additional bench options and pricing

Trash receptacle proposed:

- 16 gallon capacity
- 20 gauge steel drum approximately 19 1/2" tall and 16 1/2" in diameter
- Trash receptacle capable of attaching to shelter end leg pole
- Mounting hardware
- 100% welded unit including the hinge latch mechanism.
- Dome lid cover capable of reducing the deposit of oversized items and reducing water buildup in the receptacle.
- Heavy duty welded hasp
- Powder coat finish approximately 5 ml thick.
- Proposer shall offer additional trash receptacle options

MAP CASES AND ADVERTISING KIOSKS

- Proposer shall outline additional advertising kiosk, map case ad schedule holder options.

9' Shelter

18. Roof dimensions: 8' 7 7/8" x 4'8" Height: 7' to bottom of roof perimeter
19. The roof design features two circular shapes running horizontally. One is used as a rain gutter, the other allows for optional electrical wiring for lighting and/or conduit for 'real-time' transit information.
20. The one piece roof shall be welded from four lengths of aluminum extrusion, no snap together corners which can be vandalized.
21. Two roof beams shall be welded to the roof perimeter for placement of the supporting legs. These beams also house the lighting in those shelters, which feature optional electric lighting.
22. Roof beams are pre-drilled to facilitate field installation
23. Dome roof shelter with bronze or white Lexan roof panels are secured with extruded aluminum flat bars and rubber gaskets, attached by Tek screws. No silicone sealer is require.

1. Optional roofs include aluminum dome roof
2. Aluminum low peak roof-gable style
3. Aluminum high peak roof-gable style
4. Aluminum high peak roof with earth stone coated Gerard simulated roof tile, terracotta in color
 Proposer to offer above roof styles at buyer's choice, with no extra charge to the purchasing agency.
24. Powder coated perforated metal panels in steel frames at the rear and 1/2 end walls, are constructed from 16 ga galvanized steel sheets with 1/4" diameter holes on 3/8" centers and attached to square steel tube frames with drive rivets. Walls shall be supported with adjustable stainless steel assemblies, which anchor to the concrete pad or sidewalk.
 1. Optional full end wall panels should be available
 2. Optional front wind screen to be available
 3. Optional Victorian style perforated metal panels should be available
25. Two 3" steel pipe legs support the roof at each end of the structure. Four adjustable shoes allow for up to 12" grade variation.
 1. An aluminum post options should be available
26. All materials shall be top quality – only ASTM A-36 grade 3" schedule 40 pipe for structural steel members and 6063-T6 grade aluminum extrusion with a minimum thickness of 1/8 inch.
27. Steel welding shall conform to American welding society standard D1. 1-80. Electrodes conform to ASTM A233, class E70S-6. All aluminum components shall be welded in accordance with AWS/SFA 5.10 CLASS ER4043. All welding shall be performed by certified welders.
28. All of the structure's metal surfaces shall feature a durable baked polyester powder coat finish, 4-5 ml thick. The powder coating process produces no volatile organic compounds (VOCs). Powder coat finish was created for durability in outdoor use and to withstand graffiti removal solvents. Color is to be selected from the standard RAL color chart
 1. Proposer shall provide an outline of their powder coat finish process including sandblast, cleaning, pretreat, top coat and quality check.
29. Shelter shall be constructed of modular, interchangeable components to allow for ease of installation and parts replacement. Shelters shall be shipped knock-down (k.d.) for ease of handling and installation. This also allows of easy site adaptation.
30. The shelter shall be supplied with all hardware and ground anchors necessary for site installation.
31. All detail shop drawings, details of materials, fabrication, assembly and framing details, erection drawings, parts list and field installation instructions shall be to be included.
32. Stamped and sealed engineering calculations from a CA engineer confirming with local building codes including wind and snow loads to be provided to each purchasing agency.
33. The shelter shall be fabricated by a manufacturer with a minimum of 10 years experience designing and fabricating transit shelters.
34. This shelter shall carry a minimum three-year warranty.

The solar lighting proposed should include:

- The ability to be installed on any of the proposed shelter models
- Provide dusk to dawn illumination

- NEC Article 690 compliant
- 40-80 watt solar collector depending on geographic area
- Sealed light bar under the shelter roof containing batteries, controller and two LD lamp fixtures that provide approximately 3 foot candle at the ground level and 7 ft candle at the bench height.
- All exposed metal parts to be powder coated to match the shelter
- All wiring concealed
- 5-day battery back-up
- Solar lighting to be centered in the shelter and have even light distribution
- A 110V hard wire solution shall be offered

The bench proposed should include:

- Perforated metal
- 8 feet x 1.5' feet. No back
- Legs and 3 anti-vagrant bars shall be constructed from 1.25" schedule 40 pipe
- Horizontal supports constructed from 3/4" schedule 40 pipe.
- Perforated metal is 12 gauge galvanized sheet with 1/4" holes on 3/8" centers, staggered.
- Finish is powder coated approximately 5 ml thick
- Secured to concrete with 4, 1/2" diameter zinc anchor bolts
- Powder coat finish approximately 5 ml thick.
- Proposer shall offer additional bench options and pricing

Trash receptacle proposed:

- 16 gallon capacity
- 20 gauge steel drum approximately 19 1/2" tall and 16 1/2" in diameter
- Trash receptacle capable of attaching to shelter end leg pole
- Mounting hardware
- 100% welded unit including the hinge latch mechanism.
- Dome lid cover capable of reducing the deposit of oversized items and reducing water buildup in the receptacle.
- Heavy duty welded hasp
- Powder coat finish approximately 5 ml thick.
- Proposer shall offer additional trash receptacle options

MAP CASES AND ADVERTISING KIOSKS

- Proposer shall outline additional advertising kiosk, map case and schedule holder options.

17' Shelter

35. Roof dimensions: 16'7 7/8" x 4'8" Height: 7' to bottom of roof perimeter
36. The roof design features two circular shapes running horizontally. One is used as a rain gutter, the other allows for optional electrical wiring for lighting and/or conduit for 'real-time' transit information.
37. The one piece roof shall be welded from four lengths of aluminum extrusion, no snap together corners which can be vandalized.

38. Two roof beams shall be welded to the roof perimeter for placement of the supporting legs. These beams also house the lighting in those shelters, which feature optional electric lighting.
39. Roof beams are pre-drilled to facilitate field installation
40. Dome roof shelter with bronze or white Lexan roof panels are secured with extruded aluminum flat bars and rubber gaskets, attached by Tek screws. No silicone sealer is required
 1. Optional roofs include aluminum dome roof
 2. Aluminum low peak roof-gable style
 3. Aluminum high peak roof-gable style
 4. Aluminum high peak roof with earth stone coated Gerard simulated roof tile, terracotta in color

Proposer to offer above roof styles at buyer's choice, with no extra charge to the purchasing agency.
41. Powder coated perforated metal panels in steel frames at the rear and 1/2 end walls, are constructed from 16 ga galvanized steel sheets with 1/4" diameter holes on 3/8" centers and attached to square steel tube frames with drive rivets. Walls shall be supported with adjustable stainless steel assemblies, which anchor to the concrete pad or sidewalk.
 1. Optional full end wall panels should be available
 2. Optional front wind screen to be available
 3. Optional Victorian style perforated metal panels should be available
42. Two 3" steel pipe legs support the roof at each end of the structure. An additional support pipe is in the center of the shelter with a gusset that secures to the roof. Five adjustable shoes allow for up to 12" grade variation.
 1. An aluminum post options should be available
43. All materials shall be top quality – only ASTM A-36 grade 3" schedule 40 pipe for structural steel members and 6063-T6 grade aluminum extrusion with a minimum thickness of 1/8 inch.
44. Steel welding shall conform to American welding society standard D1. 1-80. Electrodes conform to ASTM A233, class E70S-6. All aluminum components shall be welded in accordance with AWS/SFA 5.10 CLASS ER4043. All welding shall be performed by certified welders.
45. All of the structure's metal surfaces shall feature a durable baked polyester powder coat finish, 4-5 ml thick. The powder coating process produces no volatile organic compounds (VOCs). Powder coat finish was created for durability in outdoor use and to withstand graffiti removal solvents. Color is to be selected from the standard RAL color chart
 1. Proposer shall provide an outline of their powder coat finish process including sandblast, cleaning, pretreat, top coat and quality check.
46. Shelter shall be constructed of modular, interchangeable components to allow for ease of installation and parts replacement. Shelters shall be shipped knock-down (k.d.) for ease of handling and installation. This also allows of easy site adaptation.
47. The shelter shall be supplied with all hardware and ground anchors necessary for site installation.
48. All detail shop drawings, details of materials, fabrication, assembly and framing details, erection drawings, parts list and field installation instructions shall be to be included.
49. Stamped and sealed engineering calculations from a CA engineer confirming with local building codes including wind and snow loads to be provided to each purchasing agency.

50. The shelter shall be fabricated by a manufacturer with a minimum of 10 years experience designing and fabricating transit shelters.

51. This shelter shall carry a minimum three-year warranty.

The solar lighting proposed should include:

- The ability to be installed on any of the proposed shelter models
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- NEC Article 690 compliant
- 40-80 watt solar collector depending on geographic area
- Sealed light bar under the shelter roof containing batteries, controller and two LD lamp fixtures that provide approximately 3 foot candle at the ground level and 7 ft candle at the bench height.
- All exposed metal parts to be powder coated to match the shelter
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- Proposer shall offer additional bench options and pricing

Trash receptacle proposed:

- 16 gallon capacity
- 20 gauge steel drum approximately 19 1/2" tall and 16 1/2" in diameter
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- Mounting hardware
- 100% welded unit including the hinge latch mechanism.
- Dome lid cover capable of reducing the deposit of oversized items and reducing water buildup in the receptacle.
- Heavy duty welded hasp
- Powder coat finish approximately 5 ml thick.
- Proposer shall offer additional trash receptacle options

MAP CASES AND ADVERTISING KIOSKS

- Proposer shall outline additional advertising kiosk, map case ad schedule holder options.

Delivery Options:

Offeror shall propose base pricing and delivery on releases of 3,6,12 and 24 shelters. Proposer to charge delivery costs of shelters and price without markup for freight, documentation to be provided to purchasing agency.

Submittals upon delivery:

- Shop drawings and documentation that indicate wall and roof panels, details of materials, fabrication and assembly, framing profiles, fastener types and locations, flashing and seal details.
- Erection drawings providing instruction, erection drawings and method to allow field installation or repair of shelter.
- Data for wall and roof panels including literature from manufacture.

PART 3

GENERAL BID PROVISIONS

1. ACCEPTANCE AND BID VALIDITY – All bids shall be valid for 90 calendar days from the date bids are opened. MBTA may accept any bid within such period by written contract, purchase order or any other method it deems appropriate. No exceptions, deviations or modifications to the terms of this solicitation shall be deemed acceptable other than those explicitly stated in written contract, purchase order or other acceptable document. Should award in whole or part be delayed beyond the period of 90 days, such award shall be conditioned upon bidder’s acceptance.
2. CONFLICT OF INTEREST – No member of or delegate to the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising therefrom.

Bidder agrees that to his knowledge no board member, officer or employee of MBTA or the Cooperative has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the contracting party other than the MBTA, and that if any such interest comes to the knowledge of either party at any time, a full and complete disclosure of all such information will be made in writing to the other parties, even if such interest would not be considered a conflict of interest under Article 4 of chapter 1 of Division 4 of Title 1 (commencing with Section 1090) on Title 9, Chapter 7 (commencing with Section 87100) of the Government code of the State of California.

3. DELIVERY – ALL EQUIPMENT WILL BE DELIVERED, **F.O.B. DESTINATION TO ADDRESS IN THE STATE OF CALIFORNIA SPECIFIED BY PURCHASING AGENCY:**
4. TAXES – Public Agencies are exempt from the payment of Federal Excise and Transportation taxes, so such taxes must not be included in bid prices to these purchasers. Items delivered under this bid are subject to state and local sales taxes, which shall be shown separately on the quotes to purchasing agencies.

5. **BASIS OF AWARD** – The Cooperative’s objective in this procurement is to conduct a solicitation that provides members the ability to select the vendor and product of their choice while maintaining compliance with FTA standards regarding competitive acquisition of goods and services by recipients. Towards this end, the competitive method of selection by the Cooperative will be by *Negotiated Procurement*.

Successful inclusion into the Procurement schedule requires the following steps:

1. Demonstration of sufficient financial strength and resources to perform the work contracted for by providing financial statements supported by correspondence from an outside professional certified public accountant. MBTA at its sole and absolute discretion will determine the acceptability and sufficiency of the documents provided.
2. Evidence of adequate manufacturing facilities to produce and test equipment on schedule and the existence of a spare parts distribution system sufficient to support equipment without delays and a service organization with skills and equipment sufficient to perform all warranty and on-site work. Facility inspection to confirm compliance with Buy America at any time.
3. Evidence of satisfactory performance and integrity on contracts in making deliveries on time, meeting specifications and warranty provisions, parts availability and steps offeror took to resolve any judgments, liens, -- defects history and warranty Claims. Offeror shall submit five (5) client references with its proposal.
4. Proposed shelter(s) meeting Product Specifications and other bid requirements specified in this solicitation.
5. Offerors meeting the non-cost based criteria of the solicitation will be then asked to submit pricing information. The opening of the pricing information will not be public.
6. Proposals that offer a product compliant with the solicitation’s specifications and whose price meets a pre-determined but undisclosed competitive range will be included in the Notice of Intent to Award for the product schedule. Pricing offered must fall within a competitive range, pre-determined for the base price offered for one shelter. Pricing will not be disclosed to any party until after all the awards are made.
7. Proposals that offer a product compliant with the solicitation’s specifications but whose pricing is not the within pre-determined but undisclosed competitive ranges will be afforded one (1) opportunity to make one (1) Best and Final Offer (“BAFO”) to provide pricing within the competitive ranges.

Offerors of any proposals that have been determined as not compliant with the solicitation requirements and/or not in the competitive pricing range, and cannot be reasonably made to be within the competitive range or compliant, will be notified in writing, including the shortcomings of their proposals.

6. TERMINATION FOR FAILURE TO DELIVER PRODUCT WITHIN REQUIRED TIME SPECIFIED - Failure of a Contractor to deliver acceptable material within the time specified or within reasonable time as interpreted by the Purchasing Agent, will constitute authority for the agency to cancel contract. On all such purchases, the contractor agrees to promptly reimburse the purchasing authority for excess cost occasioned by such purchases. The MBTA reserves the right to remove from mailing lists for future bids for an in-determined period, the name of any bidder for failure to accept contract, or the name of any Contractor for unsatisfactory performance.
7. PROMPT PAYMENT DISCOUNTS - Bidder must state any cash discount offered. Purchasing Agency will attempt to make payment under a resulting contract within the discount period, however, terms will not be considered in computing the Bidder's price for award.
8. INVOICING AND PAYMENT – The successful bidder will invoice the Purchasing Agency for each delivery. Invoices shall have unique invoice numbers and shall show delivery dates, location(s), quantities and packing slip numbers. Invoices shall also prominently display the MBTA RFP number and CalACT's assignment letter number.

The purchasing agency shall make payment on all correct invoices within 30 days of receipt of correct invoice unless otherwise agreed in writing.

9. EXCEPTIONS – Bid must comply in all material respects with this Invitation for Bid. Any exception taken to the provisions of the RFP may result in the bid being rejected as non-responsive. No form provisions of any bidder will be considered as part of the bid. The MBTA bid specifications take precedence over the contractor's terms and conditions of sale.
10. NONRESTRICTIVE CLAUSES - Wherever brand, manufacturer or product names are indicated in these specifications, they are included for the purpose of establishing identification and a general description of the item. Wherever such names appear, the term "**OR APPROVED EQUAL**" is considered to follow. The decision of the approved equal will be rendered by the MBTA.

It should be understood that specifying a brand name, components and/or equipment in this specification shall not relieve the supplier from his responsibility to produce the product in accordance with the performance warranty and contractual requirements. The supplier is responsible for notifying the MBTA of any inappropriate brand name, component and/or equipment that may be called for in the specifications, and to propose a suitable substitute for consideration.

10. RESPONSIBILITY CRITERIA – Bidders must be able to demonstrate that it is responsible and qualified to perform pursuant to the specifications. The standard for evaluating responsibility will be based on the following criteria:

- A. Have adequate financial resources to perform the contract. Proposer to provide financial statements and correspondence from independent CPA verifying these.

- B. Be able to comply with the required or proposed delivery or performance schedule.
- C. Have a satisfactory performance record with prospective participants of the Cooperative.
- D. Have a satisfactory record of integrity and business ethics.
- E. Have the necessary organization, manufacturing and/or distribution facilities, experience, accounting/operational controls and technical skills necessary to perform the contract. At its election, the MBTA may require a satisfactory demonstration of these factors as a condition for contract award and/or continue contract performance.
- F. Proposers must have manufacturing capability that meets the requirements of the Buy America Act and be able to demonstrate this at inspection at any time during the term of contract.

A bidder, if requested, must present evidence of experience, ability, service facilities and financial standing necessary to meet satisfactorily the requirements set forth or implied in the bid.

11. CALIFORNIA DEBARRED CONTRACTORS AND SUBCONTRACTORS
(JUNE 2000)

Sections 1720 et. seq. of the Labor Code and Section 6109 of the Public Contract Code apply to the Contract, and each potential Contractor and Subcontractor is responsible to be in full compliance with those laws.

If a potential contractor or subcontractor has been found by the California Labor Commissioner to be in violation of Section 1720 et. seq. of the Labor Code, in accordance with Section 1777.1 of the Labor Code the potential contractor shall be ineligible to bid or be awarded a contract or to perform work on any public works project. In accordance with Section 6109 of Public Contract Code any subcontractor who is ineligible for perform work on a public works project pursuant to Section 1777.1 or 1777.7 of the labor Code is prohibited from performing work on any public works project.

Pursuant to Section 6109(b) of the Public Contract Code, any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any MBTA money for performing work as a subcontractor on an MBTA public works contract, and any MBTA money that may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the MBTA. The contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the MBTA project.

12. LIQUIDATED DAMAGES - TIME IS OF THE ESSENCE IN THIS CONTRACT

In case all the work called for under the Contract is not completed before or upon the time limit as set forth in the specifications, damage will be sustained by the purchasing agency. It is, and will be, impractical to determine the actual damage which the agency

will sustain in the event of and by the reason of such delays; and it is therefore agreed that pursuant to Government Code Section 53069.85 the Contractor will pay the purchasing agency the sum of \$100.00 for each and every working day that the project is delayed beyond the 120 working days stipulated, subject to extensions granted thereto in writing. The Contractor agrees to pay such liquidated damages herein provided and, in case the same are not paid, agrees that the agency may deduct the amount from any money due or to become due the Contractor under the Contract.

The Contractor will be granted an extension of time and will not be assessed with liquidated damages or the cost of engineering and inspection for any portion of the delay in completion of the work beyond the time names and these specifications caused by acts of God, or of the public enemy, fire, floods, epidemics quarantine, restrictions, strikes, labor disputes, shortage of materials and freight embargoes, or other causes beyond his reasonable control, provided that the Contractor shall notify the Engineer in writing of the causes of delay within 15 days from the beginning of any such delay. The Contract Administrator shall ascertain the facts and extend of the delay, and his findings thereon shall be final and conclusive. Contractor has the burden of proof that the delay was beyond his control.

13. **OWNERSHIP OF REPORTS AND DOCUMENTS** - Originals of all documents pertaining to the work performed under this agreement shall become the property of the MBTA. Copies may be made for the consultant's records but shall not be furnished to others without written authorization from the MBTA.

14. **INSURANCE** - Contractor shall at its own expense, procure, and maintain during the term of this agreement liability insurance coverage of the following types and with not less than the following limits of liability.

General Aggregate Liability-\$2,000,000.

Liability per Occurrence-\$1,000,000.

Excess/Umbrella Liability-\$5,000,000.

Automobile-\$1,000,000.

Prior to the commencement of work, Contractor may be required by the MBTA to furnish the MBTA with a Certificate of Insurance evidencing the above coverage requirements.

As required by Section 1860 of the California Labor Code, the Contractor shall secure the payment of Worker's Compensation to his employees in accordance with the provisions of Section 3700 of the California Labor Code.

15. **INDEMNITY** - Contractor shall indemnify, defend and hold MBTA, its agents, officers and employees free and harmless from and against all claims, damages, costs, fines, penalties, liabilities, or obligations of whatsoever kind, including but not limited to damage or destruction of property and injury or death of person(s), resulting from or connected with Contractor's performance hereunder or any default by Contractor or breach of its obligations hereunder.

16. WARRANTY – Refer to technical specifications

17. COVENANT AGAINST CONTINGENT FEES AND GRATUITIES - The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement of understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees for bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this warranty the MBTA shall have the right to annul this contract without liability, or at its discretion, to deduct from the contract price of consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

The Contractor warrants that no official or employee of the MBTA has been offered or been given gratuities (in the form of entertainment, gifts or otherwise) for the intent or purpose of securing favorable treatment in the award, amending, or evaluation performance of the contract.

18. NOTICE TO PROCEED - Following all required approvals, a “Notice-to-Proceed” shall be issued by the office of the Procurement. No work or expenses shall be incurred prior to receipt of “Notice-to-Proceed” and/or a signed Purchase Order.

19. PROCUREMENT FEE: A procurement fee of 2% of total pre-tax price per order shall be paid by the vendor(s) to the Cooperative each month based on activity on this contract, due within thirty (30) days of delivery to buyers. Contractors will supply monthly activity reports and payments to the Cooperative. This activity may be audited. Vendors not reporting sales by way of this Contract will be subject to the cost of auditing and reasonable charges for collections. Failure to report will also be seen as failure to perform the contract and may lead to corrective action up to and including termination. These fees will support the cost of contract development and maintenance. The MBTA may choose to assign shelters directly to itself or to agencies within the political subdivisions comprising the MBTA’s joint powers authority, waiving procurement fees in exchange for appropriate discounting by the contractor. MBTA may adjust the procurement fee by .25% increments during the course of the contract; vendors are to adjust pricing to reflect this increase or decrease.

PART 4

FEDERAL TRANSIT REQUIRED BID PROVISIONS

1. FLY AMERICA REQUIREMENTS

Applicability to Contracts

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation.

Contract Requirements

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

2. CARGO PREFERENCE REQUIREMENTS

Applicability to Contracts

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

Contract Requirements

1. To utilize privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping and equipment, materials or commodities pursuant to this section, to the extent such vessels are available at fair and reasonable rates for the United States-Flag commercial vessels.

2. To furnish within 30 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipment originated 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 Paragraph (1) above to the Recipient (through the prime contractor in the case of subcontractor bills-of-lading) and to the division of National Cargo, Office of Market Development , Maritime Administration, Washington, D.C. 20230, marked with appropriate identification of the Project.

3. SEISMIC SAFETY REQUIREMENTS

Applicability to Contracts

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

Construction Requirements

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.

4. ENERGY CONSERVATION REQUIREMENTS

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Contract Requirements

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.

5. CLEAN WATER REQUIREMENTS

Applicability to Contracts

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

Contract Requirements

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

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.

6. LOBBYING

Applicability to Contracts

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

Contract Requirements

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.

7. ACCESS TO RECORDS AND REPORTS

Applicability to Contracts

See Reference Chart "Requirements for Access to Records and Reports by Type of Contracts" in Appendix A.1 of Best Practices Procurement Manual.

Contract Requirements

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.

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

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

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

8. FEDERAL CHANGES

Applicability to Contracts

The Federal Changes requirement applies to all contracts.

Contract Requirements

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

9. CLEAN AIR

Applicability to Contracts

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

Contract Requirements

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

10. RECYCLED PRODUCTS

Applicability to Contracts

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

Contract Requirements

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.

11. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

Applicability to Contracts and Background

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, et seq. and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts,

includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (see 29 CFR 3.11) enumerated at 29 CFR 5.5(a)

Contract Requirements

(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 Purchasing Authority 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 MBTA 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 MBTA 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

12. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Applicability to Contracts and Background

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, et seq. The Act applies to grantee contracts and subcontracts “financed at least in part by loans or grants from ... the [Federal] Government.” 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6). Although the original Act required its application in any construction contract over \$2,000 or non-construction contract to which the Act applied over \$2,500 (and language to that effect is still found in 49 CFR 18.36(i)(6)), the Act no longer applies to any “contract in an amount

that is not greater than \$100,000.” 40 USC 3701(b)(3)(A)(iii).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ “laborers or mechanics on a public work.” These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed “commercial items.” 40 USC 3707, 41 USC 403 (12). A grantee that contemplates entering into a contract to procure a developmental or unique item should consult counsel to determine if the Act applies to that procurement.

Contract Requirements

1. Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. **Withholding for unpaid wages and liquidated damages** - The MBTA 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.

13. **RESERVED**

14. **NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

Applicability to Contracts

Applicable to all contracts.

Contract Requirements

1. The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

15. **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

Applicability to Contracts

These requirements are applicable to all contracts.

Contract Requirements

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.

16. **TERMINATION**

Applicability to Contracts

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement.

Contract Requirements

Termination for Convenience. The MBTA may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Cooperative's best interest.

Termination for Default (services). 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 MBTA 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 MBTA 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 MBTA, 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.

Opportunity to Cure. The MBTA in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 30 days 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 MBTA's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from MBTA setting forth the nature of said breach or default, MBTA 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 MBTA from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

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

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

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

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

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

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

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

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

Termination for Convenience of Default (Cost-Type Contracts) The MBTA may terminate this contract, or any portion of it, by serving a

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

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

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

17. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

Applicability to Contracts and Background

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

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

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.

Contract Requirements

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 the MBTA. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the MBTA, 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.

18. PRIVACY ACT

Applicability to Contracts

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

Contract Requirements

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

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

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

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

19. **CIVIL RIGHTS REQUIREMENTS**

Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

Contract Requirements

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.

20. **BREACHES AND DISPUTE RESOLUTION**

Applicability to Contracts

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms.

Contract Requirements

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of MBTA's General Manager. 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 General Manager. 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 General Manager

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

Performance During Dispute - Unless otherwise directed by MBTA, 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 MBTA 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 MBTA 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 MBTA, Architect, Project Manager, 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.

21. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

Applicability to Contracts

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

Contract Requirement

a. The Agency has not established a Disadvantaged Business Enterprise (DBE) Availability Advisory Percentage for this Agreement. This Agreement is subject to Title 49, Part 26 of the Code of Federal Regulations entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." Bidders who obtain DBE participation on this contract will assist the California Department of Transportation in meeting its federally mandated statewide overall DBE goal.

DBE and other small businesses, as defined in Title 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. 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 the applicable requirements of 49 CFR, Part 26 in the award and administration of U.S. Department of Transportation 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 recipient deems appropriate.

Any subcontract entered into as a result of this Agreement shall contain all of the provision of this section.

22. **RESERVED**

23. **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Contract Requirement

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 MBTA requests which would cause the MBTA to be in violation of the FTA terms and conditions.

24. Registration Requirements. The **CONTRACTOR** and all subcontractors must obtain a Dun and Bradstreet Data Universal Number (DUNS), (<http://www.dnb.com>), or update the existing DUNS record, and register with the Central Contractor Registration (CCR) (<http://www.ccr.gov>). The **CONTRACTOR** shall ensure that all third party contractors and subcontractors have a DUNS number and are registered in the Central Contractor Registration (CCR).

25. Audit and Records—Negotiation.

As prescribed in [15.209\(b\)](#):

AUDIT AND RECORDS—NEGOTIATION (MAR 2009)

(a) As used in this clause, “records” includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor’s plants, or parts of them, engaged in performing the contract.

(c) *Cost or pricing data.* If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor’s records, including computations and projections, related to—

- (1) The proposal for the contract, subcontract, or modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the contract, subcontract, or modification; or
- (4) Performance of the contract, subcontract or modification.

(d) Comptroller General.—

(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor’s directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any current employee regarding such transactions.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) *Reports*. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating—

- (1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and
- (2) The data reported.

(f) *Availability*. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in [Subpart 4.7](#), Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

- (1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and
- (2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and—

- (1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
- (2) For which cost or pricing data are required; or
- (3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

26. Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009.

As prescribed in [3.907-7](#), use the following clause:

WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (MAR 2009)

- (a) The Contractor shall post notice of employees rights and remedies for whistleblower protections provided under section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).
- (b) The Contractor shall include the substance of this clause including this paragraph (b) in all subcontracts.

27. American Recovery and Reinvestment Act—Reporting Requirements.

AMERICAN RECOVERY AND REINVESTMENT ACT—REPORTING REQUIREMENTS (MAR 2009)

- (a) *Definitions.* As used in this clause—
- “Contract”, as defined in FAR [2.101](#), means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by [31 U.S.C. 6301](#), *et seq.* For discussion of various types of contracts, see FAR [Part 16](#).
- “First-tier subcontract” means a subcontract awarded directly by a Federal Government prime contractor whose contract is funded by the Recovery Act.
- “Jobs created” means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the American Recovery and Reinvestment Act of 2009 (Recovery Act). This definition covers only prime contractor positions established in the United States and outlying areas (see definition in FAR [2.101](#)). The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.
- “Jobs retained” means an estimate of those previously existing filled positions that are retained as a result of funding by the American Recovery and Reinvestment Act of 2009 (Recovery Act). This definition covers only prime contractor positions established in the United States and outlying areas (see definition in FAR [2.101](#)). The number shall be expressed as “full-time equivalent”

(FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

“Total compensation” means the cash and noncash dollar value earned by the executive during the contractor’s past fiscal year of the following (for more information see 17 CFR 229.402(c)(2)):

- (1) *Salary and bonus.*
- (2) *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- (3) *Earnings for services under non-equity incentive plans.* Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- (4) *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.
- (5) *Above-market earnings on deferred compensation which is not tax-qualified.*
- (6) *Other compensation.* For example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.

(b) This contract requires the contractor to provide products and/or services that are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 1512(c) of the Recovery Act requires each contractor to report on its use of Recovery Act funds under this contract. These reports will be made available to the public.

(c) Reports from contractors for all work funded, in whole or in part, by the Recovery Act, and for which an invoice is submitted prior to June 30, 2009, are due no later than July 10, 2009. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter.

(d) The Contractor shall report the following information, using the online reporting tool available at www.FederalReporting.gov.

- (1) The Government contract and order number, as applicable.
- (2) The amount of Recovery Act funds invoiced by the contractor for the reporting period. A cumulative amount from all the reports submitted for this action will be maintained by the government’s on-line reporting tool.

- (3) A list of all significant services performed or supplies delivered, including construction, for which the contractor invoiced in this calendar quarter.
- (4) Program or project title, if any.
- (5) A description of the overall purpose and expected outcomes or results of the contract, including significant deliverables and, if appropriate, associated units of measure.
- (6) An assessment of the contractor's progress towards the completion of the overall purpose and expected outcomes or results of the contract (*i.e.*, not started, less than 50 percent completed, completed 50 percent or more, or fully completed). This covers the contract (or portion thereof) funded by the Recovery Act.
- (7) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and only address the impact on the contractor's workforce. At a minimum, the contractor shall provide—
 - (i) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR [2.101](#)). This description may rely on job titles, broader labor categories, or the contractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and
 - (ii) An estimate of the number of jobs created and jobs retained by the prime contractor, in the United States and outlying areas. A job cannot be reported as both created and retained.
- (8) Names and total compensation of each of the five most highly compensated officers of the Contractor for the calendar year in which the contract is awarded if—
 - (i) In the Contractor's preceding fiscal year, the Contractor received—
 - (A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
 - (B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
 - (ii) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act

of 1934 ([15 U.S.C. 78m\(a\), 78o\(d\)](#)) or section 6104 of the Internal Revenue Code of 1986.

(9) For subcontracts valued at less than \$25,000 or any subcontracts awarded to an individual, or subcontracts awarded to a subcontractor that in the previous tax year had gross income under \$300,000, the Contractor shall only report the aggregate number of such first tier subcontracts awarded in the quarter and their aggregate total dollar amount.

(10) For any first-tier subcontract funded in whole or in part under the Recovery Act, that is over \$25,000 and not subject to reporting under paragraph 9, the contractor shall require the subcontractor to provide the information described in (i), (ix), (x), and (xi) below to the contractor for the purposes of the quarterly report. The contractor shall advise the subcontractor that the information will be made available to the public as required by section 1512 of the Recovery Act. The contractor shall provide detailed information on these first-tier subcontracts as follows:

(i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.

(ii) Name of the subcontractor.

(iii) Amount of the subcontract award.

(iv) Date of the subcontract award.

(v) The applicable North American Industry Classification System (NAICS) code.

(vi) Funding agency.

(vii) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.

(viii) Subcontract number (the contract number assigned by the prime contractor).

(ix) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.

(x) Subcontract primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.

(xi) Names and total compensation of each of the subcontractor's five most highly compensated officers, for the calendar year in which the subcontract is awarded if—

(A) In the subcontractor's preceding fiscal year, the subcontractor received—

(1) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and

(2) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and

(B) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m\(a\), 78o\(d\)](#)) or section 6104 of the Internal Revenue Code of 1986.

52.225-23 Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements.

As prescribed in [25.1102](#)(e), insert the following clause:

REQUIRED USE OF AMERICAN IRON, STEEL, AND OTHER MANUFACTURED GOODS—BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (AUG 2009)

(a) *Definitions.* As used in this clause—

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Domestic construction material” means—

- (1) An unmanufactured construction material mined or produced in the United States; or
- (2) A construction material manufactured in the United States.

“Foreign construction material” means a construction material other than a domestic construction material.

“Free trade agreement (FTA) country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of an FTA country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different construction material distinct from the materials from which it was transformed.

“Least developed country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a least developed country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

“Manufactured construction material” means any construction material that is not unmanufactured construction material.

“Recovery Act designated country” means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or United Kingdom);

(2) A Free Trade Agreement country (FTA)(Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia).

“Recovery Act designated country construction material” means a construction material that is a WTO GPA country construction material, an FTA country construction material, or a least developed country construction material.

“Steel” means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“Unmanufactured construction material” means raw material brought to the construction site for incorporation into the building or work that has not been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

“WTO GPA country construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) Construction materials.

(1) The restrictions of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) and the Buy American Act ([41 U.S.C. 10a-10d](#)) do not apply to Recovery Act designated country construction material. Consistent with U.S. obligations under international agreements, this clause implements—

(i) Section 1605 of the Recovery Act by requiring, unless an exception applies, that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and

(ii) The Buy American Act by providing a preference for unmanufactured domestic construction material.

(2) The Contractor shall use only domestic or Recovery Act designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate "none".]

(4) The Contracting Officer may add other construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable.

(A) The cost of domestic iron, steel, or other manufactured goods used as construction material is unreasonable when the cumulative cost of such material will increase the overall cost of the contract by more than 25 percent;

(B) The cost of unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act or the Buy American Act to a particular construction material would be inconsistent with the public interest.

(c) Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.

(1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed

supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this clause.

(iii) The cost of construction material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to section 1605 of the Recovery Act or the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable cost of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the section 1605 of the Recovery Act or the Buy American Act applies, use of foreign construction material other than that covered by trade agreements is noncompliant with the applicable Act.

(d) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Construction Material Description	Unit of Measure	Quantity	Cost (Dollars)*
<i>Item 1:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
<i>Item 2:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]
 [Include other applicable supporting information.]
 [* Include all delivery costs to the construction site.]

Foreign and Domes

(End of clause)

Alternate I (Mar 2009). As prescribed in [25.1102\(e\)](#), add the following definition of “Bahrainian, Mexican, or Omani construction material” to paragraph (a) of the basic clause, and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

“Bahrainian, Mexican, or Omani construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of Bahrain, Mexico, or Oman; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain, Mexico, or Oman into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials.* (1) The restrictions of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) and the Buy American Act do not apply to Recovery Act designated country construction material. Consistent with U.S. obligations under international agreements, this clause implements—

- (i) Section 1605 of the Recovery Act, by requiring, unless an exception applies, that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and
- (ii) The Buy American Act providing a preference for unmanufactured domestic construction material.

(2) The Contractor shall use only domestic or Recovery Act designated country construction material other than Bahrainian, Mexican, or Omani construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

52.225-24 Notice of Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements.

As prescribed in [25.1102\(e\)](#), insert the following provision:

NOTICE OF REQUIRED USE OF AMERICAN IRON, STEEL, AND OTHER MANUFACTURED GOODS—BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAR 2009)

(a) *Definitions.* “Construction material,” “domestic construction material,” “foreign construction material,” “manufactured construction material,” “Recovery Act designated country construction material,” “steel,” and “unmanufactured construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Required Use of Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements” (Federal Acquisition Regulation (FAR) clause [52.225-23](#)).

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) or the Buy American Act should submit the request to the Contracting Officer in time to

allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause [52.225-23](#) in the request. If an offeror has not requested a determination regarding the inapplicability of section 1605 of the Recovery Act or the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) Evaluation of offers.

(1) If the Government determines that an exception based on unreasonable cost of domestic construction material applies, the Government will evaluate an offer requesting exception to the requirements of section 1605 of the Recovery Act or the Buy American Act by adding to the offered price of the contract—

(i) 25 percent of the offered price of the contract, if foreign iron, steel, or other manufactured goods are used as construction material based on unreasonable cost of comparable manufactured domestic construction material; and

(ii) 6 percent of the cost of foreign unmanufactured construction material included in the offer based on unreasonable cost of comparable domestic unmanufactured construction material.

(2) If two or more offers are equal in price, the Contracting Officer will give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.

(d) Alternate offers.

(1) When an offer includes foreign construction material, other than Recovery Act designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause [52.225-23](#), the offeror also may submit an alternate offer based on use of equivalent domestic or Recovery Act designated country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer and a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause [52.225-23](#) for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause [52.225-23](#) does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or Recovery Act designated country construction material, and the offeror shall be required to furnish such domestic or Recovery Act designated country construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

REQUIRED DOCUMENTS TO BE SUBMITTED

THE FOLLOWING FORMS ARE REQUIRED TO BE SIGNED AND SUBMITTED AT THE TIME OF BID SUBMITTAL. FAILURE TO DO SO WILL RESULT IN BID NOT BEING CONSIDERED.

- Bidder's Statement
- Pricing Form
- Buy America Certificate
- Certification of Compliance with Federal Lobbying Statute
- Contractor's Background Information

PART 5

BIDDER'S STATEMENT

OUR OFFER IS AFFIRMED HERETO. It is understood that your specifications and conditions set forth on bid sheets form part of our offer. We certify the prices offered are valid for the total contract or any portion thereof.

We specifically agree to keep this offer open for ninety days.

Bidder: _____ Signature of Authorized Representative: _____

Date: _____ Title: _____

PART 6
MBTA RFP #09-04
PRICING FORM

VENDOR NAME: _____

VENDOR TELEPHONE NUMBER: _____

PRICING

QUANTITY	DESCRIPTION	UNIT PRICE (Pre-tax)
One (1)	9” Bus Shelter in accordance w/ RFP#09-04 Technical Specs	\$ _____
One (1)	13” Bus Shelter in accordance w/ RFP#09-04 Technical Specs	\$ _____
One (1)	17” Bus Shelter in accordance w/ RFP#09-04 Technical Specs	\$ _____

OPTION PRICING

- a) Map Case _____
- b) Advertising kiosk _____
- c) Full end wall panels _____
- d) Wind Screen _____
- e) 3/8 “ clear tempered safety glass panel(in lieu of perf) _____
- f) 3/8 clear framed Lexan with UV (in lieu of perf) _____
- g) Trash Receptacle (describe) _____
- h) Solar Light Delete (show credit) _____
- i) Schedule holder (describe) _____
- j) Matching bike rack _____
- k) Kit Assembly on-site _____
- l) Perforated metal panels (delete/show credit) _____
- m) Stand-Alone solar bus stop light and pole (describe) _____
- n) Option price to increase 13’ shelter depth to 5’8” _____

o) Bench Options (describe and propose price or credit)

TERMS AND CONDITIONS

Discount Payment terms _____% _____ days. Payment terms of less than 10 days shall not be considered. If there is no discount payment then terms shall be Net 30.

Payment terms shall not be considered in evaluation of award.

PRICING IS NOT TO BE INCLUDED WITH ORIGINAL SUBMISSION, MBTA WILL CONTACT YOUR FIRM AND REQUEST PRICING WHEN APPROPRIATE

DELIVERY PERIOD

The Cooperative requires delivery to be made within 90 days after award date of each purchase order. Offers that propose delivery that will not clearly fall within the applicable required delivery period specified above, will be considered nonresponsive and rejected **RFP #09-04**

PART 7

BUY AMERICA CERTIFICATE (June 2000)

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(c) and the applicable regulations at 49 CFR Part 661.

Executed on _____, 20__ at _____, _____.
Date City State

Printed Name Signature of Authorized Officer Title

or:

The Bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C), but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Executed on _____, 20__ at _____, _____.
Date City State

Printed Name Signature of Authorized Officer Title

CERTIFICATION OF COMPLIANCE WITH FEDERAL LOBBYING STATUTE

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

PART 8

CONTRACTOR'S BACKGROUND INFORMATION

1. Contractor name, city, state, and prior name of contractor, if applicable.
2. How many years in business?
3. Description of major areas of business or expertise for this contractor.
4. Describe any prior contracts with the MBTA and whether performance was satisfactory.
5. List and describe several other major contracts with other transit/governmental or private companies that this contractor is doing or has completed that are related to this contract. Has proposing firm ever defaulted or had a contract cancelled for failure to perform per the terms and conditions of a contract? If yes, please outline and explain on a separate document.
6. Any other information regarding this contractor that may be relevant to the Cooperative.