

**PURCHASE ORDER TERMS AND CONDITIONS  
(NON-CONSTRUCTION SERVICES LESS THAN \$25,000)  
(FTA without DBE Goal)**

**FEDERAL TRANSIT ADMINISTRATION (FTA) CLAUSES**

These clauses are required because this procurement is funded in whole or in part by the United States Department of Transportation (USDOT), Federal Transit Administration. The requirements in these clauses are in addition to and, unless inconsistent and irreconcilable, do not supplant requirements found elsewhere in this purchase order. If any requirements in these clauses are inconsistent with a provision found elsewhere in this purchase order and is irreconcilable with such provision, the requirement in these clauses shall prevail. For the purposes of these clauses, the term "Contractor" shall refer to the Vendor and the term "Council" shall refer to the Buyer.

**FTA-1 Fly America Requirements.** The CONTRACTOR agrees to comply with 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.

**FTA-2 Energy Conservation.** The CONTRACTOR agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the federal Energy Policy and Conservation Act.

**FTA-3 Access to Records and Reports.** The CONTRACTOR agrees to provide the COUNCIL, the FTA Administrator, the Comptroller General of the United States, and 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 the Administrator's authorized representatives, including any project management oversight (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 such documents by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. In addition to any requirements for maintenance of project records and documents in this purchase order, CONTRACTOR agrees to maintain such records and documents until the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all litigation, appeals, claims or exceptions arising from the performance of this Contract

**FTA-4 Federal Changes.** The CONTRACTOR shall comply with the required FTA clauses set forth in this contract and with all applicable FTA regulations, policies, procedures and directives including, without limitation, those listed directly or by reference in the agreement between the COUNCIL and FTA. The CONTRACTOR's failure to comply with applicable FTA regulations, policies, procedures, and directives, as they may be amended or promulgated from time to time during the term of this contract, shall constitute a material breach of this contract.

**FTA-5 Recovered Materials.** The CONTRACTOR agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR part 247.

**FTA-6 No Obligation by the Federal Government.** The COUNCIL and CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of this 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 COUNCIL, CONTRACTOR, or any other party (whether or not a party to the Contract) pertaining to any matter resulting from this Contract. The CONTRACTOR agrees to include the language in this section FTA-6 in each subcontract under this Contract, modified only to identify the subcontractor that will be subject to the provisions.

**FTA-7 Program Fraud and False or Fraudulent Statements or Related Acts.** The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Section 3801 *et seq.*, and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31, apply to its actions pertaining to this contract. Upon execution of this 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 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. 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 U.S.C. Section 5307, the Federal Government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and 49 U.S.C. Section 5307(n)(1) on the CONTRACTOR, to the extent the Federal Government deems appropriate. The CONTRACTOR agrees to include the language in this section FTA-7 in each subcontract under this contract, modified only to identify the subcontractor that will be subject to the provisions.

**FTA-8 Civil Rights.** The following requirements apply to this Contract:

1. **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and federal transit law at 49 U.S.C. § 5332, the CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the CONTRACTOR agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.
2. **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to this Contract:
  - a. **Race, Color, Creed, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 200e, 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," 42 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 this Contract. 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. § 532, 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. **Inclusion in Subcontracts.** The CONTRACTOR agrees to include the requirements of this Section FTA-8 in each subcontract under this contract, modified only to identify the subcontractor that will be subject to the provisions.

**FTA-9 Disadvantaged Business Enterprise (“DBE”).**

1. **Nondiscrimination.** In accordance with 49 CFR section 26.13, the CONTRACTOR, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONTRACTOR shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the CONTRACTOR to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the COUNCIL deems appropriate. The CONTRACTOR shall include this requirement in all subcontracts pursuant to this contract.
2. **Prompt Payment.** The CONTRACTOR agrees to pay subcontractors within ten (10) calendar days of the CONTRACTOR’s receipt of payment from the COUNCIL for undisputed services provided by the subcontractor. The CONTRACTOR agrees to pay subcontractors all undisputed retainage payments within ten (10) calendar days of the CONTRACTOR’s receipt of payment of retainage from the COUNCIL. The CONTRACTOR shall not postpone or delay any undisputed payments owed subcontractors without good cause and without prior written consent of the COUNCIL. The CONTRACTOR agrees to include in all subcontracts a provision requiring the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes. The CONTRACTOR will not be reimbursed for work performed by subcontractors unless and until the CONTRACTOR ensures that subcontractors are promptly paid for work they have performed. Failure to comply with the provisions of this section may result in the Council finding CONTRACTOR in noncompliance with the DBE provisions of this contract.

**FTA-10 Incorporation of FTA Terms.** Specific provisions in this contract include, in part, certain standard terms and conditions required by USDOT, whether or not expressly set forth in the contract provisions. All contractual provisions required by USDOT, as set forth in 2 CFR section 200.320 and the current revised version of FTA Circular 4220 are hereby incorporated by reference. Notwithstanding anything to the contrary in this contract, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this contract. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any COUNCIL requests which would cause the COUNCIL to be in violation of the FTA terms and conditions.

**FTA-11 Termination Clause Requirement.**– The CONTRACTOR agrees to include a termination for cause and for convenience clause in all contracts in excess of \$10,000. The termination clause extends to all third party contractors and their contracts at every tier. CONTRACTOR’s termination clause will include how it will be effected and the basis for settlement.

**FTA-12 Reserved.**

**FTA-13 Reserved.**

**FTA-14 Reserved.**

**FTA-15 Reserved.**

**FTA-16 Reserved.**

**FTA-17 Reserved.**

**FTA-18 Cargo Preference.** The CONTRACTOR agrees: (a) to use privately-owned United States-Flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within twenty (20) working days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill of lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the COUNCIL (through the CONTRACTOR in the case of a lower-tier participating subcontractors bill of lading); and (c) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.