

**CITY OF SANTA FE
Public Works**

“REQUEST FOR PROPOSALS”

**Security Cameras to Retro-Fit Transit Buses
And
Transit Facility**

PROPOSAL # ‘10/26/P

PROPOSAL DUE:

**March 4, 2010
2:00 P.M.
PURCHASING OFFICE
CITY OF SANTA FE
2651 SIRINGO ROAD - BUILDING “H”
SANTA FE, NEW MEXICO 87505**

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**ADVERTISEMENT FOR PROPOSALS
PROPOSAL NO. '10/26/P**

Proposals will be received by the City of Santa Fe and will be delivered to City of Santa Fe, Purchasing Office, 2651 Siringo Road, Bldg. "H", Santa Fe, New Mexico 87505 **until 2:00 P.M. local prevailing time, March 4, 2010. Any Proposal received after this deadline will not be considered.** This Proposal is for the purpose of procuring:

**Security Cameras to Retro-Fit Transit Buses
And
Transit Facility**

The Proposer's attention is directed to the fact that all applicable Federal Laws, State Laws, Municipal Ordinances, and the rules and regulations of all authorities having jurisdiction over said item shall apply to the Proposal throughout, and they will be deemed to be included in the Proposal document the same as though herein written out in full.

The City of Santa Fe is an Equal Opportunity Employer and all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation or national origin. The successful Proposer will be required to conform to the Equal Opportunity Employment regulations.

Proposals may be held for sixty (60) days subject to action by the city. The city reserves the right to reject any or all Proposals in part or in whole. Proposal packets are available by contacting: Shirley Rodriguez, City of Santa Fe, Purchasing Office, 2651 Siringo Road, Bldg. "H" Santa Fe, New Mexico 87505, (505) 955-5711.

ATTEST:



Robert Rodarte, Purchasing Officer

Received by the Santa Fe New Mexican on 01/29/10

To be published on: 02/04/10

Received by the Albuquerque Journal on: 01/29/10

To be published on: 02/04/10

PROPOSAL SCHEDULE

PROPOSAL # '10/26/P

- | | | |
|----|-------------------------|---|
| 1. | ADVERTISEMENT | February 4, 2010 |
| 2. | ISSUANCE OF PROPOSAL'S | February 4, 2010 |
| 3. | RECEIPT OF PROPOSAL: | |
| | | March 4, 2010 at 2:00 P.M. local prevailing time. Purchasing Office
2651 Siringo Road Bldg., "H"
Santa Fe, New Mexico 87505
(505) 955-5711 |
| 4. | PUBLIC WORKS: | March 15, 2010 |
| 5. | RECOMMENDATION OF AWARD | |
| | TO FINANCE COMMITTEE: | March 22, 2010 |
| 6. | RECOMMENDATION OF AWARD | |
| | TO CITY COUNCIL: | march 31, 2010 |

DATES OF CONSIDERATION BY FINANCE COMMITTEE AND CITY COUNCIL ARE TENTATIVE AND SUBJECT TO CHANGE WITHOUT NOTICE.

INFORMATION TO PROPOSERS

1. **RECEIPT AND OPENING OF PROPOSALS**

The City of Santa Fe (herein called "City"), invites Proposals on the form attached hereto, all blanks of which must be appropriately filled in and one original and five copies. Proposals will be received by the City Purchasing Office until **2:00 P.M. local prevailing time, March 4, 2010**. At this time the City Purchasing Director will publicly open and read Proposal(s) aloud.

Two Proposals shall be submitted in a sealed envelope, addressed to the Purchasing Office, City of Santa Fe, 2651 Siringo Road, Bldg. "H" Santa Fe, New Mexico 87505. No late Proposals will be accepted whether hand delivered, mailed or special delivery. Do not rely on "overnight delivery" without including some lead-time. "Overnight delivery" will be determined to be non-responsive if delivered late, no matter whose fault it was. It is recommended that extra days be included in the anticipated delivery date to ensure delivery is timely. The Purchasing Office is closed 12:00 p.m. to 1:00 p.m. The outside of the envelope should clearly indicate the following information:

Proposal number: '10/26/P
Title of the Proposal: Security Cameras to Retro-Fit Transit Buses
And Transit Facility

Name and address of the Proposer:

The Owner may consider informal any Proposals not prepared and submitted in accordance with the provisions hereof and may waive any informalities or reject any and all Proposals. Any Proposal received after the time and date specified shall not be considered. No Proposer may withdraw a Proposal within 60 days after the actual date of the opening thereof.

2. **PREPARATION OF PROPOSAL**

All blank spaces for Proposal prices must be filled in, ink or type written. If the Proposal is forwarded by mail, the sealed envelope containing the Proposal must be enclosed in another envelope addressed as specified in the Proposal form. No alternate Proposals will be considered unless pre-approved (5) five days prior to the Proposal opening date by Robert Rodarte, Purchasing Officer.

3. **PROPOSAL SECURITY**

None required.

4. **LIQUIDATED DAMAGES FOR FAILURE TO ENTER INTO CONTRACT**

Liquidated damages are not applicable to this Proposal.

5. **ADDENDA AND INTERPRETATIONS**

No oral interpretations of the meaning of the specifications or other pre-Proposal documents will be binding. Oral communications are permitted in order to make an assessment of need for an addendum. **ANY QUESTIONS CONCERNING THE PROPOSAL SHOULD BE ADDRESSED PRIOR TO PROPOSAL OPENING DATE.**

Every request for such interpretations should be in writing addressed to Robert Rodarte, Purchasing Officer, 2651 Siringo Road, Bldg. H, Santa Fe, New Mexico 87505 and to be given consideration must be received at least (5) five days prior to the date fixed for the opening of Proposals.

Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, if issued, will be delivered to all prospective Proposers not later than three days prior to the date fixed for the opening of the Proposals. Failure of any Proposer to receive any such addendum or interpretations shall not relieve such Proposer from any obligation under his Proposal as submitted. All addenda so issued shall become part of the contract documents.

The City reserves the right to not comply with these time frames if a critical addendum is required or if the proposal deadline needs to be extended due to a critical reason in the best interest of the City of Santa Fe.

6. **POWER OF ATTORNEY**

Attorneys-in-fact who sign Proposal bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

7. **LAWS AND REGULATIONS**

The Proposers attention is directed to the fact that all applicable Federal Laws, State Laws, Municipal Ordinances, and the rules and regulations of all authorities having jurisdiction over said item shall apply to the Proposal throughout, and they will be deemed to be included in the Proposal document the same as though herein written out in full. In particular Proposer is notified that criminal laws shall apply prohibiting bribes, gratuity and kick-backs.

8. **METHOD OF AWARD**

The award of the purchase agreement will be made to that vendor who meets or exceeds all specifications and provides the lowest total Proposal amount. However, delivery date, availability of stock, and complete analysis and comparison of specification details along with past experience of the City of Santa Fe with similar or related units, will be weighed in making a final decision of award.

No important deviation from the terms of this specification is acceptable. It is understood and agreed that the City of Santa Fe reserves the right to reject any and all Proposals, as authorized by law, and to award to other than the lowest Proposer at its discretion, provided that it is in the best interest of the City of Santa Fe, if the CITY PURCHASING MANUAL and pertinent State Statutes are thereby served.

9. **PUBLIC INFORMATION**

All portions of the Proposal submittals will become public information. Proprietary information may be marked confidential; however, the City Purchasing Officer will make the final determination as to whether the portion of the Proposal is legitimately confidential information. Sections to be confidential should be clearly marked as such and readily separable from rest of the Proposal. In no case will a request for the entire Proposal to be confidential be considered.

10. **BRAND NAMES**

All brand names specified in this Proposal are to imply "or equal." Proposer should include enough information with the Proposal submitted so this determination can be made. The determination of the Purchasing Officer will make the final determination as to whether the portion of the Proposal is legitimately confidential information. Sections to be confidential should be clearly marked as such and readily separable from rest of the Proposal. In no case will a request for the entire Proposal to be confidential be considered.

11. **TAX EXEMPT**

The City of Santa Fe is tax exempt for state gross receipts taxes for the procurement of tangible personal property, but not for labor or services. A tax exempt certificate will be issued upon written request to the Purchasing Office.

12. **COMPLIANCE WITH CITY'S MINIMUM WAGE RATE ORDINANCE (LIVING WAGE ORDINANCE)**

A copy of the City of Santa Fe Ordinance No. 2003-8, passed by the Santa Fe City Council on February 26, 2003 is attached. The proponent or Proposer will be required to submit the proposal or Proposal such that it complies with the ordinance to the extent applicable. The recommended Contractor will be required to comply with the ordinance to the extent applicable, as well as any subsequent changes to the Ordinance throughout the term of this contract.

SPECIAL CONDITIONS

1. **GENERAL**

When the City's Purchasing Officer issues a purchase order document in response to the vendor's Proposal, a binding contract is created.

2. **ASSIGNMENT**

Neither the order, nor any interest therein, nor claim under, shall be assigned or transferred by the vendor, except as expressly authorized in writing by the City Purchasing Officer's Office. No such consent shall relieve the vendor from its obligations and liabilities under this order.

3. **VARIATION IN SCOPE OF WORK**

No increase in the scope of work of services or equipment after award will be accepted, unless means were provided for within the contract documents. Decreases in the scope of work of services or equipment can be made upon request by the city or if such variation has been caused by documented conditions beyond the vendor's control, and then only to the extent, as specified elsewhere in the contract documents.

4. **DISCOUNTS**

Any applicable discounts should be included in computing the Proposal submitted. Every effort will be made to process payments within 30 days of satisfactory receipt of goods or services. The City Purchasing Officer shall be the final determination of satisfactory receipt of goods or services.

5. **TAXES**

The price shall include all taxes applicable. The city is exempt from gross receipts tax on tangible personal property. A tax exempt certificate will be issued upon written request.

8. **INVOICING**

(A) The vendor's invoice shall be submitted in duplicate and shall contain the following information: invoice number and date, description of the supplies or services, quantities, unit prices and extended totals. Separate invoices shall be submitted for each and every complete order.

(B) Invoice must be submitted to ACCOUNTS PAYABLE and NOT THE CITY PURCHASING AGENT.

9. **METHOD OF PAYMENT**

Every effort will be made to process payments within 30 days of receipt of a detailed invoice and proof of delivery and acceptance of the products hereby contracted or as otherwise specified in the compensation portion of the contract documents.

10. **DEFAULT**

The city reserves the right to cancel all or any part of this order without cost to the city if the vendor fails to meet the provisions for this order, and except as otherwise provided herein, to hold the vendor liable for any excess cost occasioned by the city

due to the vendor's default. The vendor shall not be liable for any excess cost if failure to perform the order arises out of causes beyond the control and with the fault or negligence of the Vendor and these causes have been made known to the City of Santa Fe in written form within five working days of the vendor becoming aware of a cause which may create any delay; such causes include, but are not limited to, acts of God or the public enemy, acts of the State or of the Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above unless the city shall determine that the suppliers or services to be furnished by the sub-contractor are obtainable from other sources in sufficient time to permit the vendor to meet the required delivery schedule. The rights and remedies of the city are not limited to those provided for in this paragraph and are in addition to any other rights provided for by law.

11. **NON-DISCRIMINATION**

By signing this City of Santa Fe Proposal or proposal, the vendor agrees to comply with the Presidents Executive Order No. 11246 as amended.

12. **NON-COLLUSION**

In signing this Proposal or proposal, the vendor certifies he has not, either directly or indirectly, entered into action in restraint of full competition in connection with this Proposal or proposal submittal to the City of Santa Fe.

13. **OPTIONS**

Proposing company hereby grants the City of Santa Fe options to purchase additional related equipment in accordance with this contract. This equipment may be purchased at one time, each separately, or in groups by giving notice any time during the period extending from the date of the execution of this contract until 3 years following execution of this contract. The City of Santa Fe shall have the right, with proposing company's prior consent, to assign and transfer any or all of the option to any other Transit Authority or Agency.

NOTE: Please include separate price list(s) with your proposal if you are accepting this option for the purchase from other Agencies.

BACKGROUND AND OVERVIEW

The City of Santa Fe, Transit Division currently operates 30 fixed route vehicles, which range from 30' transit buses to 28' medium duty buses and 15 paratransit vehicles ranging from high top vans to small sedans. The Transit Division fixed route and paratransit services operate service 7 days per week, with 17 service hours Monday through Friday, 12 hours Saturdays and Holidays and 10 service hours on Sunday. In addition the transit facility has recently been expanded to support these functions.

1. In the interest of public and employee safety and security, **the Transit Division is seeking to obtain proposals from qualified Contractors for the provision of a digital video and audio recording system (DVRs) for Transit's fixed route, paratransit vehicles and the transit facility.** This system(s) shall monitor and record events that occur in the interior and exterior of these transit vehicles at all times the vehicles are powered-on and the transit facility 24 hours per day, 7 days per week.
2. The system shall be a turn-key system. That is, it shall include all equipment, wiring, cabling and software for the installation of digital recording units, digital video cameras and audio recording devices in the designated vehicles. The system shall further include all fixed-end information system components, including wiring, cabling, hardware and software, required for the system's installation and Transit's retrieval, viewing and permanent storage of recorded images and sound. The system shall also include training, maintenance, troubleshooting and end user support. It is therefore the intent of Transit to secure a total system that is configured for Transit's needs in accordance with the specifications, terms, and conditions set forth in this Request for Proposal (RFP). **NOTE: While Transit has written this RFP to be as complete as possible in its statement of what the total system shall consist of, the proposer shall include and specifically explain and separately price in its proposal any equipment, software, training, maintenance or support that is not mentioned in the RFP and that the proposer believes is necessary to include. Omission of essential items or functions by the successful proposer will result in the Contractor providing the omitted item(s) at no cost to Transit as part of the total system installed.**
3. Transit anticipates continued growth in the amount and complexity of services it provides. Transit desires to purchase a system with full featured capabilities that allows for planned additions and future technology.
4. Digital video recording system (DVRs) shall refer to the system in its entirety. Digital video recording unit (DVR) shall refer to the individual digital recording unit installed in each transit vehicle.
5. The work for this project will be executed under a single contract. Unless otherwise indicated in the RFP, all work shall be completed within six (6) months of contract signing.

6. The work for this project shall occur at Transit's contracted operations and maintenance facility, at 2931 Rufina Street, Santa Fe, New Mexico 87507. The proposer shall delineate its delivery, storage and security needs for any equipment to be stored at the work site per requirements stated in this RFP.
7. The 30 fixed route buses currently have security recording systems on board. These will be replaced (removed from the units) by the successful proposer. The proposers will include a separate item of the estimated time and costs to remove the existing systems from those buses.
8. The 30 fixed route buses will require 6 cameras each:
9. The 15 paratransit vehicles will require:
 - 6-Ford high-top vans with lifts; 5 cameras each
 - 5, Chevrolet Uplander vans; 4 cameras each
 - 4, Honda sedans, 2 cameras each
10. The transit facility will require a minimum of 13, with up to 16 cameras capacity.
11. The proposer shall include with its Technical Proposal a sample video presentation that addresses how the proposed system meets Transit's major and/or significant requirements. Importantly, Transit requests that the video presentation include ten-minute segments of daytime and nighttime proposed equipment operation at frame rates and quality of audio/video that conforms to the requirements in this RFP. NOTE: Transit does not want a generic product promotional video.

SCOPE OF WORK

'10/26/P

Removal of existing equipment:

Remove on site of all existing camera recording devices and associated equipment on 30 fixed route vehicles.

Installation of new equipment:

Install new camera systems on 30 fixed routes vehicles, 15 paratransit vehicles and the transit facility.

Systems start up and training:

Provide start up of newly installed systems. Assure all systems installed are operating correctly. Provide specific training to designated transit staff as to the proper operation of camera systems including but not limited to: proper use of hardware and software as it relates to monitor, retrieve, search and save of recorded information. Provide special training to Director of Operations and Maintenance, Fleet Manager and designee on the installation, adjustments and removal of equipment and hardware for use, repairs and warranty.

Additional Information to meet requirements:

All installations of (DVCRs) are to include, on site installation, shipping charges, necessary mounting brackets, cables and any other hardware or wiring deemed necessary to complete the installation to the agency's satisfaction. Programming software (windows XP compatible) and necessary electronic storage and transfer media with cables as required to be provided at the completion of the installation. (DVCRs) are to be programmed with the agency's current route and destination information. (DVCRs) are to be tested for accuracy and visibility to meet the agency's current operating conditions by a test drive of the initial unit during daylight and evening hours. Standard manufacturer's warranty for installed equipment.

Special Provisions

1. The selected vendor will work directly with the Transit Division's Fleet Manager for delivery of goods, scheduling units to be retro fitted, and the designated work area on Transit's yard.
2. Upon completion of each unit, Vendor's installer's will verify with the Transit Division's Fleet Manager, the proper installation and operation before the unit is put back into transit operation.
3. Transit Division's Fleet Manager will verify when vendor's work is completed and sign off for vendor's payment.

SPECIFICATIONS

'10/26/P

Specifications: On-Board Digital Video Recording System

Specify using an 'X' whether the system is fully compliant or not fully compliant with each of the following specifications. Each proposal **must** include written responses to each of the following specifications stating how they comply or do not comply with each specification.

Specification:	Fully Compliant	Not Fully Compliant
A. Digital Video Recorder (DVR) System:		
1. The system shall be provided in compatible and interchangeable formats that support simultaneous minimum recording of up to eight (8) cameras.		
2. Compatible software shall be provided to support systems capable of sixteen (16) cameras.		
3. The hardware shall support simultaneous recording of a minimum of two (2) independent audio channels.		
4. Audio channels shall be capable of synchronizing to user-selectable cameras.		
5. The DVR shall be ruggedized and secure with lockable recording media without the need for an additional enclosure.		
6. The system shall include a driver event switch that features a system status "Heartbeat" health indicator to provide visual confirmation that the system is operating properly.		
7. The digital video recording system shall be capable of simultaneous recording, playback and remote access allowing multiple users to review video without interruption of recording.		
8. The system shall utilize a removable and lockable solid-state or standard hard disk drive.		
9. The system capable of recording up to eight (8) cameras shall have a minimum recording and playback rate of 240 images per second system-wide and shall be capable of recording and playback each individual camera up to 30 images per second without the use of a quad process or multiplexer. The system capable of recording up to twelve (8) and sixteen (16) cameras shall have a minimum recording and playback rate of 480 images per second system-wide.		
10. The system shall be capable of recording and playback each individual camera up to 30 images per second without the use of a quad process or multiplexer.		
11. The system shall be made entirely of new materials and shall be engineered and constructed with rugged materials to protect the system from environmental elements including shock, dust and humidity.		
12. The Digital Video Recorder and casing material shall be Mil-Spec Rated: STD-810F and SAE Rated: J1455 for vibration and shock and include a shock absorbing mounting kit (specifically rated for heavy duty diesel powered vehicles driven on normal highway conditions).		

13. The DVR shall record 30 images per second system-wide of high quality video for a minimum of 2, 016 hours on a single on-board drive.		
14. The system shall record onto a removable hard disk drive equipped with a key lock to prevent tampering.		
15. The system shall be capable of configuring video quality, resolution and recording speed individually for each camera.		
16. The DVR shall record in user adjustable resolution setting of 1CIF, 2CIF or 4CIF.		
17. The system shall include an optional built-in heater for operating in temperatures as low as -20°F. Systems that include an enclosure, lock-box or additional to comply with this requirement are not acceptable.		
18. The system shall not utilize forced ventilation for system to cooling to eliminate build-up of dust and debris in the DVR unit.		
19. The system shall have an optional hard disk player and software to allow for transferring of files directly from the HDD to a PC, where the images can be printed, emailed or saved onto another storage media.		
20. The system shall feature an optional 3-axis accelerometer capable of tagging video or sending alarm notification when the vehicle exceeds a pre-determined G-force setting.		
21. The system shall have power back up, un-interruptible start up capability once ignition is turned on.		
22. No videotapes or videotape recorders shall be used.		
23. The system shall be FCC approved and shall be powered by 12 or 24 VDC vehicle power supply connected by 12 gauge wire and protected from spikes, surges and reverse polarity.		
24. The DVR shall operate between 9 and 36 VDC and be powered by either 12 or 24 VDC (not model-specific) vehicle power.		
25. The system shall feature an option for full integration with J1939 CAN-bus or Multiplex system. The DVR integration with the CAN-bus shall include support for diagnostic message reporting (including: video loss per camera, video obstruction per camera, DVR alarm events and 3-axis accelerometer events, hard drive status, system temperature status, bus alarm acknowledgement and roll-call acknowledgement.)		
26. When equipped, the DVR shall also interface with the CAN-bus, or Multiplex system to record bus status information such as GPS, turn signals, bus speed, brake application, door position, bus unit number, route number, etc. to the DVR.		
27. The DVR shall meet the requirements of ISO 7637-2 "Electrical disturbances from conduction and coupling" i.e. the DVR will not cause any interference with the operation of the bus's electronics or radios systems.		
28. The DVR shall provide regulated 12-volt power for all peripherals (up to 40 watts).		
29. The DVR shall have the option to remain operating for a pre-determined length of time after the vehicle power is terminated, up to		

twenty-four hours.		
30. The system shall feature pre-event recording that allows the system to record up to five (5) minutes of video prior to system activation (manually, motion activation, etc.).		
31. The system shall be capable of streaming live video to first responders through cellular or wireless LAN options.		
32. The system shall feature an optional GPS receiver.		
33. The system shall be equipped with a USB port to allow for exporting video clips using CDRW, HDD or USB flash memory.		
34. The DVR shall include a functional Ethernet port and be capable of configuration and transmission of video using software over 802.11, LAN/WAN or cellular networks.		
35. The DVR shall feature H.264 "Main Profile" video compression for superior video quality and recording duration.		
36. The DVR shall be programmable utilizing a mouse and LCD display.		
37. The system shall be capable of on-board viewing, downloading and control via laptop using the included software.		
38. The DVR dimensions with protective encasement shall not exceed: 12" x 6" x 14" (WxHxD).		
39. The DVR shall be compatible with a facility-based DVR system and allow for software interoperability between vehicle and facility recording systems.		
40. Onboard system components shall be removable / replaceable as an entire component to minimize vehicle down times and simplify maintenance.		
41. Video clips samples shall be provided to display video quality recorded at the maximum recording quality and rate while maintaining on-board video on a single hard disk drive for 8 days, utilizing the hard disk drive specified in the base bid of this proposal.		
B. Software / Firmware:		
1. License-free software that is capable of live viewing, playback, calendar and event searches, and administration shall be provided at no extra cost, and shall be compatible with Windows® XP, Vista and Windows® 7.		
2. All future software updates for license-free software shall be included free of charge.		
3. The software shall provide various levels of user access rights that allow and restrict access to various functions. The software features 256 user passwords and 64 user groups.		
4. When equipped with GPS, the system shall provide historical and live software mapping display routes of the vehicle location and speed charts.		
5. When equipped with GPS, the system software shall be capable of connecting to pre-recorded video by selecting a point on the map or selecting a point on the speed chart to view from that speed or location.		
6. To retrieve recorded video, the software shall provide searches by: event, time lapse, time & date, vehicle location and vehicle speed.		

Specifications: Transit Facility Digital Video Recording System

Specify using an 'X' whether the system is fully compliant or not fully compliant with each of the following specifications. Each proposal **must** include written responses to each of the following specifications stating how they comply or do not comply with each specification.

Specification:	Fully Compliant	Not Fully Compliant
C. Transit Facility Digital Video Recorder (DVR) System:		
42. The system shall be provided in compatible and interchangeable formats that support simultaneous recording of up to sixteen (16) cameras.		
43. Compatible software shall be provided to support systems capable of up to sixteen (16) cameras.		
44. The system will use cameras which are compatible and will use the thernet-city network to transmit video from the camera to the recording server to be located in the control room of the Transit communications center.		
45. Cameras will be stationary mountable with Day-Night (IR), zoom capable and weather proof.		
46. The digital video recording system shall be capable of simultaneous recording, playback and remote access allowing multiple users to review video without interruption of recording.		
47. Installation of the transit facility system will be listed and priced separately.		
48. Any specifications in the onboard system listed above that are included, duplicated, compatible or a part of the facility system, proposers will signify by noting with (**) beside that item.		

Any additional items and/or specifications, provided as included in proposer's system(s) that are essential but may have been overlooked by the City of Santa Fe or not listed in the RFP specifications above, please list accordingly:

1. _____
2. _____
3. _____

Price Listing:

Include here your price list of:

- Main components, cost of old equipment removal, installation and warranties. Please give a full itemized description and costs of standard warranties, and options.
- Price as a separate line item eight (8) additional back up drives to be included as part of the total proposed price.
- List separately any optional items, spare parts to be inventoried and warranties that are available but not included in total proposal price.

Evaluation Criteria:

The following criteria will be used to evaluate each proposal received:

Responsiveness.....	Pass/Fail
Ease of use and quality of video..... (As demonstrated from the included video clips)	25%
Pricing and warranty.....	25%
Compliance with specifications, state and federal law and debarments....	50%

Members of the evaluation/interview committee are:

Robert Rodarte, Purchasing or Representative
Jon Bulthuis, Transit or Representative
Jim Dillingham, Transit or Representative
Mike Kelly, Transit or Representative
Karyn Romero, Transit or Representative

Unless noted elsewhere in this RFP, the same evaluation form will be used to separate the interview scores.

At its discretion, the City reserves the right to alter the membership and size of the committee.

Scores of the evaluation committee members will be totaled to determine the top rated firms.

If interviews are conducted for the top three rated firms, those scores totaled from the evaluation committee members from the interview evaluations will determine the final top rated firm, unless other tangible extenuating circumstances are documented.

Unless noted elsewhere in this RFP, the same evaluation form will be used to separate the interview scores.

EVALUATION CRITERIA AND WEIGHTED VALUES

'10/26/P

Company Name: _____

Interviewer Name: _____

Interview Date: _____

Signature and Title of Evaluation Committee Member

Evaluation Points: 1 = Lowest through 5 = Highest

1 = Not adequate

2 = Insufficiently addressed

3 = Adequate

4 = Good

5 = Exceeds requirements

CRITERIA	WEIGHTED VALUE		EVALUATION POINTS	TOTAL
Responsiveness	Pass/Fail			
1. Ease of use and quality of video (As demonstrated from the included video clips)	25%	x	_____	_____
2. Pricing and warranty	25%	x	_____	_____
3. Compliance with specifications, state and federal law and debarments	50%	x	_____	_____
			TOTAL	_____

**CITY OF SANTA FE
PROPOSAL FORM
PROPOSAL # '10/26/P**

EXCEPTIONS TO SPECIFICATIONS

Proposer is required to return **two (2) complete copies** of these specifications, completely furnishing all information requested. All requested information, data, literature, drawings, etc. must be included with the Proposal submitted.

Proposer must check one of the following:

- a. ☐ All specifications, terms and conditions are met.
b. ☐ Exceptions have been taken and noted on attached sheet (s).

All variations and/or exceptions to the specifications must be documented, referencing applicable paragraph (s) and explained in detail. Attach as many pages as necessary. If no exceptions are taken, it will be assumed that the Proposal meets all specifications and terms and conditions as stated in this complete Proposal package. Failure to list exceptions may disqualify Proposal. Delivery of non-conforming goods is at the expense of the Proposer and/or other penalties.

All other specifications not detailed herein shall be as listed in the manufacturer's printed literature for the current standard model. Manufacturer's printed literature and specifications sheets shall be submitted with the Proposal.

Exceptions will not necessarily eliminate the Proposal. City staff shall determine acceptance or non-acceptance of exceptions. Unless otherwise noted and approved, it is assumed that delivery of the unit shall be as stated.

Signed submission of this Proposal represents that the Proposer has accepted all terms, conditions and requirements of the Proposal unless a written exception is made and, if awarded, the Proposal will represent the agreement between the parties. Additionally, by signing this Proposal, the Proposer warrants that there was no collusion of any kind in submission of this Proposal.

WARRANTIES

Warranty required for material and workmanship for minimum of one year unless otherwise stated in the Proposal. Warranties shall begin when the City accepts satisfactory delivery of equipment from the Proposer. The warranty contract shall be solely with the Proposer and the Proposer shall be responsible for ensuring all warranty work is satisfactorily completed on any component of the unit. All details of warranties shall be included with the Proposal.

State name, address and phone number of nearest authorized maintenance representative:

DELIVERY

Proposals shall include all costs of delivery to the City of Santa Fe, the specific location to be as designated by City staff. Unit shall be completely operational and ready for use.

Date of delivery after notice to proceed:

Thirty (30) calendar days.

Proposer SHALL INCLUDE descriptive material such as plans, drawings, photographs, diagrams, illustrations, written descriptions and manufacturer's literature with specifications with the Proposal. Additional information or details may be required after the Proposal opening. Proposals may be disqualified if such information is not adequate to make a reasonably informed decision as to qualify, design, capabilities, etc.

TOTAL PROPOSAL AMOUNT: _____

The City reserves the right to alter quantities based on availability of budget. If this will alter the Proposal amount, the Proposer must note the percent increase for lesser quantities.

PROPOSER'S:

Firm

Address

Authorized Signature

Print Name

Position

Phone Number

Fax Number

DATE

N.M. RESIDENT PREFERENCE NUMBER (if applicable): _____
TWO COMPLETE COPIES OF THE PROPOSAL SUBMITTAL IS REQUIRED

661.6 Certification requirements for procurement of steel or manufactured products.

 [top](#)

If steel, iron, or manufactured products (as defined in §§661.3 and 661.5 of this part) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each Proposer or offeror in accordance with the requirement contained in §661.13(b) of this part.

Certificate of Compliance with Buy America Requirements

The Proposer or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR part 661.

Date _____
Signature _____
Company _____
Name _____
Title _____

Certificate of Non-Compliance with Buy America Requirements

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

Date _____
Signature _____
Company _____
Name _____
Title _____

[71 FR 14117, Mar. 21, 2006, as amended at 72 FR 53696, Sept. 20, 2007]

DISCLOSURE OF RESPONSIBILITY STATEMENT

1. List any convictions of any person, subsidiary, or affiliate of the company, arising out of obtaining, or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

2. List any convictions of any person, subsidiary, or affiliate of this company for offenses such as embezzlement, theft, fraudulent schemes, etc. or any other offenses indicating a lack of business integrity or business honesty which affects the responsibility of the contractor. (See procurement policy section 7.2 for types of offenses.)

3. List any convictions or civil judgments under state or federal antitrust statutes.

4. List any violations of contract provisions such as knowingly (without good cause) to perform, or unsatisfactory performance, in accordance with the specifications of a contract.

5. List any prior suspensions or debarments by any governmental agency.

6. List any contracts not completed on time.

7. List any penalties imposed for time delays and/or quality of materials and workmanship.

8. List any documented violations of federal or state labor laws, regulations, or standards, occupational safety and health rules.

I, _____, as _____
Name of individual Title & Authority

of _____, declare under oath that
Company Name

the above statements, including any supplemental responses
attached hereto, are true.

Signature

State of _____

County of _____

Subscribed and sworn to before me on this _____ day of _____

2004 by _____ representing him/herself to be

_____ of the company named herein.

Notary public

My Commission expires:

Residing at: _____

CITY OF SANTA FE
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe (the "City") and (the "Contractor"). The date of this Agreement shall be the date when it is executed by the City.

1. SCOPE OF SERVICES

The Contractor shall provide the following services for the City:

A. Removal of Existing Equipment

Remove on site of all existing camera recording devices and associated equipment on 30 fixed route vehicles attached hereto as Exhibit A.

B. Installation of New Equipment

Install new camera systems on 30 fixed routes vehicles, 15 paratransit vehicles and the transit facility attached hereto as Exhibit A.

C. Systems Start Up and Training

- (1) Provide start up of newly installed systems.
- (2) Assure all systems installed are operating correctly.
- (3) Provide specific training to designated transit staff as to the proper operation of camera systems including but not limited to: proper use of hardware and software

as it relates to monitor, retrieve, search and save of recorded information.

(4) Provide special training to director of Operations and Maintenance, Fleet Manager and designee on the installation, adjustments and removal of equipment and hardware for use, repairs and warranty.

D. Additional Information to Meet Requirements

(1) Ensure that all installations of digital video and audio recording system (DVCR) are to include, on site installation, shipping charges, necessary mounting brackets, cables and any other hardware or wiring deemed necessary to complete the installation to the City's satisfaction.

(2) Ensure that the programming software is windows XP compatible and that all necessary electronic storage and transfer media with cables, as required, are provided at the completion of the installation.

(3) DVCRs are to be programmed with the City's current route and destination information.

(4) DVCRs are to be tested for accuracy and visibility to meet the City's current operating conditions by a test drive of the initial unit during daylight and evening hours.

(5) Provide the manufacturer's warranty as outlined and agreed upon in the Contractors proposal.

E. Special Provisions

(1) Contractor will work directly with the Transit Division's Fleet Manager for delivery of goods, scheduling units to be retro fitted, and the designated work area on Transit's yard.

(2) Upon completion of each unit, Contractor's installer's will verify with the Transit Division's Fleet Manger, the proper installation and operation before the unit is put back into transit operation.

(3) Transit Division's Fleet Manager will verify when Contractor's work is completed and sign off for Contractor's payment.

2. STANDARD OF PERFORMANCE; LICENSES

A. The Contractor represents that it possesses the experience and knowledge necessary to perform the services described under this Agreement.

B. The Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

3. COMPENSATION

A. The City shall pay to the Contractor in full payment for services rendered, a sum not to exceed _____ dollars (\$_____), inclusive of applicable gross receipts taxes.

B. The Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums paid under this Agreement.

C. Payment shall be made upon receipt and approval by the City of detailed statements containing a report of services completed. Compensation shall be paid only for services actually performed.

4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City, this Agreement shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the City and terminate on _____, 2010, unless sooner pursuant to Article 6 below.

6. TERMINATION

A. This Agreement may be terminated by the City upon 30 days written notice to the Contractor.

(1) The Contractor shall render a final report of the services performed up to the date of termination and shall

turn over to the City original copies of all work product, research or papers prepared under this Agreement.

(2) If compensation is not based upon hourly rates for services rendered, the City shall pay the Contractor for the reasonable value of services satisfactorily performed through the date Contractor receives notice of such termination, and for which compensation has not already been paid.

(3) If compensation is based upon hourly rates and expenses, then Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such termination.

7. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

A. The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement.

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

C. The Contractor shall comply with City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this contract.

8. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

9. CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

10. ASSIGNMENT; SUBCONTRACTING

The Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the City. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City.

11. RELEASE

The Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. INSURANCE

A. The Contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the City, with limits of coverage in the maximum amount which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the City is named as an additional insured and that the City is notified no less than 30 days in advance of cancellation for any reason. The Contractor shall furnish the City with a copy of a Certificate of Insurance or other evidence of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

B. Contractor shall also obtain and maintain Workers' Compensation insurance, required by law, to provide coverage for Contractor's employees throughout the term of this Agreement. Contractor shall provide the City with evidence of its compliance with such requirement.

C. Contractor shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. The Contractor shall furnish the City with proof of insurance of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

13. INDEMNIFICATION

The Contractor shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's performance under this Agreement as well as the performance of Contractor's employees, agents, representatives and subcontractors.

14. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as

defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

15. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

16. RECORDS AND AUDIT

The Contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the City, the Department of Finance and Administration, and the State Auditor. The City shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

17. APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and

regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

18. AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

19. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses the entire Agreement and understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

20. NON-DISCRIMINATION

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment

position to be used in the performance of services by Contractor hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

21. SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

22. NOTICES

Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

City of Santa Fe:
Santa Fe Trails
Attn: Jon Bulthuis
2931 Rufina St.
Santa Fe, NM 87507

Contractor:

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

CITY OF SANTA FE:

David Coss, Mayor

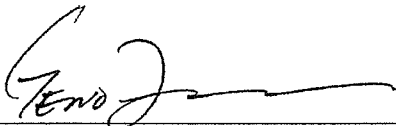
DATE: _____

ATTEST:

YOLANDA Y. VIGIL
CITY CLERK

CONTRACTOR:

APPROVED AS TO FORM:



GENO ZAMORA, CITY ATTORNEY 

By: _____
(Name & Title)

CRS # _____
City of Santa Fe Business
Registration # _____

APPROVED:

DAVID N. MILLICAN
FINANCE DEPARTMENT

BUSINESS UNIT/LINE ITEM

Required Forms:

- Offeror Unable to Respond Form
- Price Proposal Form
- Request For Deviation or Approved Equal Form
- New Equipment Service Questionnaire
- Offeror Service and Parts Support Data
- Fly America Requirement
- Buy America Certifications
- Energy Conservation Requirements
- Lobbying
- Federal Changes
- Program Fraud and False or Fraudulent statements and related acts
- Termination
- Civil Rights Requirements
- Debarment and Suspension Certification (Lower Tier Covered Transaction)
- Breaches and Dispute Resolution
- DBE Approval Certification

Sealed written replies to this invitation must be received by the City of Santa Fe no later than the date and time indicated, at the designated location. Submittal by fax or email is not acceptable.

Note: This Invitation does not constitute an order for the goods or services specified.

This form must be returned with proposal

1. FLY AMERICA REQUIREMENTS

49 U.S.C. § 40118

41 CFR Part 301-10

Applicability to Contracts

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

Flow Down Requirements

The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Model Clause/Language

The relevant statutes and regulations do not mandate any specified clause or language. FTA proposes the following language.

Fly America Requirements

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

2. BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j)

49 CFR Part 661

Applicability to Contracts

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

Flow Down

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The \$100,000 threshold applies only to the grantee contract, subcontracts under that amount are subject to Buy America.

Mandatory Clause/Language

The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA-funded contracts, but does not specify the language to be used. The following language has been developed by FTA.

Buy America - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

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

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date _____

This form must be returned with proposal

Signature _____

Company Name _____

Title _____

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

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

Date _____

Signature _____

Company Name _____

Title _____

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

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

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

Date _____

Signature _____

Company Name _____

Title _____

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

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

Date _____

This form must be returned with proposal

Signature _____

Company Name _____

Title _____

This form must be returned with proposal

6. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.

49 CFR Part 18

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Flow Down

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

Model Clause/Language

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

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

10. LOBBYING

31 U.S.C. 1352

49 CFR Part 19

49 CFR Part 20

Applicability to Contracts

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

Flow Down

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

Mandatory Clause/Language

Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying

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contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to

This form must be returned with proposal

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

This form must be returned with proposal

12. FEDERAL CHANGES
49 CFR Part 18

Applicability to Contracts

The Federal Changes requirement applies to all contracts.

Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Model Clause/Language

No specific language is mandated. The following language has been developed by FTA.

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

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

**31 U.S.C. 3801 et seq.
49 CFR Part 31 18 U.S.C. 1001
49 U.S.C. 5307**

Applicability to Contracts

These requirements are applicable to all contracts.

Flow Down

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Model Clause/Language

These requirements have no specified language, so FTA proffers the following language.

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

24. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.

Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Model Clause/Language

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shortened the lengthy text.

Civil Rights - The following requirements apply to the underlying contract:

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

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

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

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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.

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

Applicability to Contracts

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

Flow Down

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

Model Clause/Language

FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

a. Termination for Convenience (General Provision) The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

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c. Opportunity to Cure (General Provision) The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

e. Termination for Convenience (Professional or Transit Service Contracts) The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

g. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

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If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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

h. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and 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 (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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

i. Termination for Convenience or Default (Architect and Engineering) The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by

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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.

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

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

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

22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Background and Applicability

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

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as "covered transactions."

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Clause Language

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

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The certification in this clause is a material representation of fact relied upon by {insert agency name}. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to {insert agency name}, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

25. BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18

FTA Circular 4220.1E

Applicability to Contracts

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down

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

Model Clauses/Language

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

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

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

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

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the

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rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)
49 CFR Part 26

Background and Applicability

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

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

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (*see* section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

Clause Language

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

Disadvantaged Business Enterprises

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is __ %. A separate contract goal [of __ % DBE participation has] [has not] been established for this procurement.
- b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as {insert agency name} deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

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c. *{If a separate contract goal has been established, use the following}* Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid]** **[concurrent with and accompanying an initial proposal]** **[prior to award]**:

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

[Bidders][Offerors] must present the information required above **[as a matter of responsiveness]** **[with initial proposals]** **[prior to contract award]** (*see* 49 CFR 26.53(3)).

{If no separate contract goal has been established, use the following} The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the {insert agency name}. In addition, **[the contractor may not hold retainage from its subcontractors.]** **[is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.]** **[is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the {insert agency name} and contractor's receipt of the partial retainage payment related to the subcontractor's work.]**

e. The contractor must promptly notify {insert agency name}, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of {insert agency name}.

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29. [RESERVED]

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

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Flow Down

The incorporation of FTA terms has unlimited flow down.

Model Clause/Language

FTA has developed the following incorporation of terms language:

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

Living Wage Ordinance

Ordinance Number §28-1 28-1.12 SFCC 1987

Purpose:

The City of Santa Fe Living Wage Ordinance was adopted to establish minimum hourly wage rates.

Who it affects:

- All businesses and non-profit organization required to have a business license or business registration issued by the City of Santa Fe.

Compliance:

- Affected businesses are required to pay employees an hourly wage of \$9.85 effective January 1, 2009.
- Beginning January 1, 2009, and each year thereafter, the minimum wage shall be adjusted upward by an amount corresponding to the previous year's increase, if any, in the consumer price index for the western region for urban wage earners and clerical workers.
- For workers who customarily receive more than \$100 per month in tips or commissions, any tips or commissions received and retained by a worker shall be counted as wages and credited towards satisfaction of the minimum wage provided that, for tipped workers, all tips received by such workers are retained by the workers, except that the pooling of tips among workers shall be permitted.
- The value of health care benefits and child care shall be considered as an element of wages.
- Non-profit organizations whose primary source of funds is from (Medicaid) waivers are exempt.

Prohibitions against retaliation and circumvention:

- It shall be unlawful for any business, employer or employer's agent or representative to take any action against an individual in retaliation for exercising or communicating rights under this ordinance. This includes retaliation against individuals who mistakenly but in good faith allege noncompliance with the ordinance.
- Taking adverse action against an individual within sixty days of the individual's assertion of or communication of information regarding rights raises a reputable presumption of retaliation for assertion of rights.
- It shall be unlawful for any business or employer to intentionally circumvent the requirements of this ordinance by contracting portions of its operations or leasing portions of its property.

Enforcement; Remedies:

- **Administrative Enforcement** - The city manager, or his/her designee, is authorized, as appropriate and as resources permit, to enforce this ordinance.
- **Criminal Penalty** - A person violating this ordinance shall be guilty of a misdemeanor and, upon conviction, for Each offense may be subject to fines and imprisonment as set forth in Section 1-3 SFCC 1987. A person violating any of the requirements of this ordinance shall be guilty of a separate offense for each day or portion thereof and for each worker or person to which any such violation occurred.
- **Other remedies** - The city, any individual aggrieved by a violation of this ordinance, or any entity the members of which have been aggrieved by a violation of this ordinance, may bring a civil action in a court of competent jurisdiction to restrain, correct, abate or remedy any violation of this ordinance and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, reinstatement, the Payment of any wages due and an additional amount as liquidated damages equal to twice the amount of any wages due, injunctive relief, and reasonable attorney's fees and costs.

Nonexclusive Remedies and Penalties - The remedies provided in this section are not exclusive, and nothing in this ordinance shall preclude any person from seeking any other remedies, penalties, or relief provided by law.

Posting and Publication:

- Any business subject to the provisions of this ordinance shall as a condition to obtaining and holding a city of Santa Fe business license or registration, post and display in a prominent location next to its business license or registration on the business premises a notice, in English and Spanish, that the business is in compliance with the provisions of this ordinance and post the text of this notice. Failure to comply with this section shall be construed a violation of this ordinance and, in addition, shall be considered grounds for suspensions, revocation, or termination of the business license or registration.

For further information, please contact the office of: Constituent Services at (505) 955-6949 or by Email at:constituentservices@santafenm.gov