

ATTACHMENT C

FTA CLAUSES AND CERTIFICATIONS¹

DISADVANTAGED BUSINESS ENTERPRISES

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 City's overall goal for DBE participation is 2.1%. A separate contract goal has not been established for this procurement. Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Contractor shall carry out applicable requirements of 49 C.F.R. 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 the City may deem appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 C.F.R. § 26.13(b)). The Contractor is 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 C.F.R. § 26.53. Award of this contract is conditioned on submission of the following concurrent with and accompanying an initial proposal:

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 Contractor'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. The Contractor must present the information required above to the City of Rochester (see 49 C.F.R. § 26.53(3)).

Contractor will be required to report its DBE participation obtained through race-neutral means throughout the period of performance. 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 City. In addition, Contractor may not hold a retainer from its subcontractors. Contractor must promptly notify the City 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. 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 the City.

¹ Revised as of August 18, 2016

CIVIL RIGHTS REQUIREMENTS

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

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 American with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

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

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

ACCESS REQUIREMENT TO PERSONS WITH DISABILITIES (ADA)

Contractor agrees to comply with the requirements of 49 U.S.C. § 5301 et seq. which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. Contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires the provision of accessible facilities and services, and with all Federal regulations, including any amendments thereto.

DRUG AND ALCOHOL TESTING

Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. Part 655 as amended, produce any documentation necessary to establish its compliance with Part 655 as amended and permit any authorized representative of the United States Department of Transportation or its operating administrations, the Minnesota Department of Transportation, and City of Rochester, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. Part 655 as amended and reviews the testing process. Contractor agrees further to certify annual its compliance with Part 655 as amended before February 15 of each year and to submit the Management Information System (MIS) reports before February 15 of each year to the City. To certify compliance, Contractor shall use the “Substance Abuse Certifications” in the “Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements,” which is published annually in the Federal Register.

MOTOR CARRIER SAFETY RULES

Contractor, in connection with and as part of the execution of this contract, agrees to comply with Minn. Stat. § 221.031, subd. 3a:

[P]roviders of passenger transportation service under contract to and with operating assistance from the Minnesota Department of Transportation must comply with rules of the Commissioner for driver qualifications, safe operation of vehicles, equipment, parts and accessories, maximum hours of service of drivers, inspection, repair and maintenance and accident reporting. This subdivision does not apply to: (1) a local transit commission, (2) a transit authority created by the legislature, or (3) special transportation service certified by the commissioner under Section 174.30, or (4) special transportation service defined in section 174.29, subdivision 1, when provided by a volunteer driver operating a private passenger vehicle defined in section 169.01, subdivision 3a.

COMMERCIAL DRIVER'S LICENSE

Contractor, in connection with and as part of the execution of this contract, agrees to comply with the Commercial Motor Vehicle Safety Act of 1986. This federal law requires each state to meet the same minimum standards for commercial driving licensing. The standards require commercial motor vehicle drivers to obtain a Commercial Driver's License.

CHARTER BUS REQUIREMENTS

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

SCHOOL BUS REQUIREMENTS

Pursuant to 69 U.S.C. § 5323 and 49 C.F.R. Part 605, recipients and sub recipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operation unless qualified under specified exemption. When operating exclusive school bus service under an allowable exemption, recipients and sub recipients may not use federally funded equipment, vehicles, or facilities.

CLEAN WATER REQUIREMENTS

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

(2) Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

ENERGY CONSERVATION REQUIREMENTS

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.

FEDERAL CHANGES

49 C.F.R. Part 18

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) 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.

RECYCLED PRODUCTS

42 U.S.C. § 6962

40 C.F.R. Part 247

Contractor agrees to comply with all requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962,) including but not limited to the regulatory provisions of 40 C.F.R. Part 247 and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

CLEAN AIR

42 U.S.C. § 7401 et seq.

40 C.F.R. § 15.61

49 C.F.R. Part 18

(1) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended 42 U.S.C. § 704 et seq. Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in part with Federal assistance provided by FTA.

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. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause City to be in violation of the FTA terms and conditions.

CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS

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

(1) Contractor agrees to comply with, and assures the compliance of its employees with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, Contractor agrees to obtain the express consent of the Federal Government before Contractor or its employees operate a system of records on behalf of the Federal Government. Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

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

PROGRAM FRAUD, FALSE OR FRAUDULENT STATEMENTS, AND RELATED ACTS

31 U.S.C. § 3801 et seq.

49 C.F.R. Part 31

18 U.S.C. § 1001

49 U.S.C. § 5307

(1) Contractor acknowledges that provisions of 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, 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, 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 Contractor to the extent the Federal Government deems appropriate.

(2) 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 Contractor, to the extent the Federal Government deems appropriate.

(3) 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.

ACCESS TO RECORDS

The following access to records requirements apply to this Contract:

(1) In accordance with 49 C.F.R. § 18.36(i), the Contractor agrees to provide the City, the FTA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers and records of Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. § 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309 or 5311.

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

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

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No obligation by the Federal Government

(1) City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a part to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

COPELAND ANTI-KICKBACK ACT

40 U.S.C. § 276C

29 C.F.R. Part 3
29 C.F.R. Part 5

Contractor shall comply with the requirements of 29 C.F.R. Part 3, which are incorporated by reference in this contract.

TRANSIT EMPLOYEES PROTECTIVE AGREEMENTS

49 U.S.C. §§ 5210, 5311 and 5333
29 C.F.R. Part 215

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from direct driving or operating transit vehicles, FTA determines which activities constitute transit “operations” for purposes of this clause.)

Flow Down. These provisions are applicable to all contracts and subcontracts at every tier.

Transit Employee Protection Provisions.

Contractor agrees to comply with applicable transit employee protective requirements as follow:

(a) General Transit Employee Protective Requirements: To the extent that FTA determines that transit operations are involved, Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. § 5333 (b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient’s project from which Federal assistance is provided to support work on the underlying contract. Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized area authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities. If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body sub recipient for which work is performed on the underlying contract, Contractor agrees

to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. Contractor agrees to perform transit operations in connections with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Non-urbanized Areas. If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5111, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) Contractor also agrees to include any applicable requirements in each subcontractor involving transit operations financed in whole or in part with Federal assistance provided by FTA.

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

49 C.F.R. Part 29 / Executive Order 12549

1. By signing this contract, the prospective lower tier participant is providing the signed certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the City may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the City if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 C.F.R. Part 29]. You may contact the City for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the City.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.

8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the City may pursue available remedies including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction

The prospective lower tier participant certifies, by signing this contract, that neither it nor its “principals” [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

*Note: When the prospective lower tier participant **is unable** to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.*