



Request for Proposals

RFP # 19-10

Automatic Passenger Counter System

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Section 1.0

Solicitation Instructions and Requirements

NOTICE OF REQUEST FOR PROPOSALS

Notice is hereby given, that proposals will be received by the Monterey-Salinas Transit District, until 2:00 PM, December 10, 2018. The submittals will be due as follows:

RFP # 19-10

Automatic Passenger Counter System

Date Issued: November 14, 2018 Submittal Due Date: December 10, 2018 -- Time: 2:00 PM

Monterey-Salinas Transit District (MST) seeks written submittals from qualified firms to provide Stand-Alone Automatic Passenger Counting Systems.

Proposals must be sealed to be accepted, with the principal submitter's name and phone number in the lower left corner of the envelope. All submissions shall contain one (1) complete original and two (2) complete copies delivered to the following address:

Sandra Amorim
Purchasing Manager
Monterey-Salinas Transit
19 Upper Ragsdale, Suite 200
Monterey, CA 93940

Dated this November 14, 2018

Published: San Jose Mercury News

1.0 TERM OF CONTRACT

MST seeks to issue a contract for Stand-alone Automatic Passenger Counting (APC) Systems servicing its fleet of public transit vehicles. The successful Vendor shall provide all labor, equipment, materials and installation required for Stand-alone APCs in all vehicles. Proposals will be evaluated based upon criteria formulated around the most important features of the product and service – of which quality, testing, references, availability or capability may be overriding factors -- and price alone may not be determinative in the issuance of a contract award. MST's desired contract term is 36 months.

1.02 DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

The Disadvantaged Business Enterprise (DBE) requirements of 49 CFR, Part 26, applies to this contract. The requirements of this contract are to encourage DBE participation and to report race-neutral accomplishments semi-annually. No preference will be included in the submission evaluation, no minimum level of DBE participation shall be required as condition for receiving an award, and submissions will not be rejected or considered non-responsive on that basis.

Please go to Section 3 for additional information pertaining to DBE requirements.

1.03 PUBLIC DISCLOSURE OF INFORMATION

All the information contained in any submittal is subject to public disclosure laws of the State of California. Information which is not subject to public disclosure shall be submitted under separate cover marked "Exempt from Public Disclosure." MST assumes no responsibility or liability for any losses or damages which may result from the information contained in the submittal. Furthermore, it will be the responsibility of the Vendor to protect the confidentiality of any information submitted in the submittal, and the Vendor will assume all liability and responsibility for any information declared confidential and shall defend and hold MST harmless for any cost, penalties, and/or fees (including attorney fees) incurred in any action regarding the disclosure of said information.

1.04 PUBLIC DISCLOSURE AND PROPRIETARY INFORMATION

Unless otherwise required by law, information contained in the submittal, including price, will not be released by MST prior to contract award in order to protect the integrity of the procurement process. Vendors are further advised that MST may be required to release submittal information after contract award.

If a Vendor feels that any information is confidential or proprietary in nature, the Vendor must submit all such information in a separate, sealed envelope prominently marked with the Vendor's name and "Exempt from Public Disclosure." MST shall not release or divulge such information to third parties without the consent of the Vendor unless required to do so by applicable law or order of a court of competent jurisdiction.

1.05 COMMUNICATIONS WITH MST

Upon release of this solicitation document, all Vendor communications concerning this acquisition must be directed to:

Monterey-Salinas Transit District
Sandra Amorim
Purchasing Manager
19 Upper Ragsdale, Suite 200
Monterey, CA 93940
samorim@mst.org

Unless authorized by the Purchasing Manager in writing, no other MST official or employee, is empowered to speak for MST with respect to this Request for Proposals.

1.06 PREPARATION OF SUBMITTALS

- A. Vendors shall examine this Request for Proposals Scope of Work, Solicitation Instructions and Conditions, the General Provisions and all Exhibits and Attachments. Failure to do so will be at the Vendor's risk.
- B. Each Vendor shall furnish the information required by solicitation. Erasures or other changes shall be initialed by the person signing the proposal. Submittals signed by an agent (other than an officer or a partner) are to be accompanied by evidence of that person's authority unless such evidence has been previously furnished to MST.
- C. Submittals for services other than those specified will not be considered unless authorized by the solicitation.
- D. The Vendor shall state a definite time for performance of services and shall indicate that the equipment will be fully operational and certified by NTD/FTA by June 30, 2019 unless otherwise specified in the solicitation. MST anticipates that the selected Vendor will develop the number of MST's fleet necessary to achieve certification. This number (once identified by Vendor) will be implemented as Phase 1 of MST's APC installation.

The remaining of 135 estimated vehicles will be considered Phase 2 and installed at a mutually negotiated schedule. If the successful Vendor is unable to supply materials, install, and establish a fully operational Stand-alone Automatic Passenger Counting System in the MST fleet by June 30, 2019, the Vendor agrees to pay Liquidated Damages as described in Section 2, until the system has been established and is fully operational and certified, including functionality of data analytics.

- E. Time, if stated as number of days, will include Saturdays, Sundays and holidays.

1.07 SUBMISSION OF PROPOSALS

Submissions shall be delivered in sealed envelopes with the principal submitter's name and phone number in the lower left corner of the envelope. All submissions shall contain one (1) complete original and two (2) complete copies forwarded to the attention of Sandra Amorim, Purchasing Manager, Monterey-Salinas Transit District, 19 Upper Ragsdale Drive, Suite 200, Monterey, CA 93940.

Submissions by e-mail or fax will not be accepted.

1.08 LATE SUBMITTALS, MODIFICATIONS OF SUBMITTALS, AND WITHDRAWALS OF SUBMITTALS

- A. Any submittal or modification received at the office designated in the solicitation after the exact time specified for receipt will not be considered and will be returned to the Vendor not opened.
- B. The time of receipt at MST is the time-date noted on the submittal wrapper or other documentary evidence of receipt maintained by MST.
- C. Submittals may be officially withdrawn from consideration only by a written request to MST's point of contact as identified in Section 1.00 prior to response deadline.

1.09 CONDITIONAL/ NONRESPONSIVE SUBMITTALS

MST reserves the right to reject as non-responsive any submittal accompanied by insufficient or irregular required security; any submittal from vendors who have previously failed to perform properly or to complete on time contracts of any nature; and any submittal which is incomplete, obscure or irregular.

MST reserves the right to reject any or all submittals.

It will be assumed by MST that the Vendor has accepted without reservation or amendment the whole of the general requirements, legal requirements and contract provisions contained in this solicitation document.

A Vendor may note any exceptions or additional provisions that it wishes MST to consider. Exceptions must be submitted on a separate sheet paper and be cross-referenced in the RFP.

MST reserves the right to reject any or all Vendor-proposed exceptions or additional provisions to terms and conditions, and other requirements without comment. An excessive number of exceptions may cause the submission to be viewed as non-responsive.

1.10 SINGLE SUBMITTAL

In the event that only one submittal is received, MST will conduct a price or cost analysis of the proposal (if pricing is one of the criteria), or both, and the Vendor hereby agrees to such analysis. A price analysis is the process of examining the submittal and evaluating the separate cost elements. A price analysis through comparison to other similar awards must be based on an established or competitive price of the elements used in the comparison. The comparison is to be made to the procurement of similar services and involving a similar scope of work. Where a difference exists, a detailed analysis must be made of this difference and costs attached hereto.

Where it is impossible to obtain a valid price analysis, it may be necessary for MST to conduct a cost analysis of the proposed price. The price or cost analysis shall be made by competent and experienced auditors or price analysts or engineer's estimate.

If MST does not have the capacity to perform the needed analysis, the FTA will lend support.

Any such analysis and the results therefrom shall not obligate MST to accept such a single submittal, and MST may reject such submittal at its sole discretion. In the event of such price or cost analysis, MST shall have the right to extend the effective date of the submittal for more than 90 days.

1.11 INELIGIBLE VENDORS

In the event that a Vendor is on the Comptroller General's list of ineligible for Federal financed or assisted work, its submittal may be rejected and any contract resulting from its submittal may be canceled, terminated or suspended by MST. The US Comptroller General's list of ineligible contractors is available from the GAO Publications Branch, Room 6427, 441 G Street, Washington DC, 20548.

MST reserves the right to reject any or all submittals and to waive informalities and irregularities.

No Vendor may withdraw its submittal after the deadline announced for submitting or before the award and execution of the contract, unless the award is delayed for a period exceeding ninety (90) days.

1.12 ADDENDA

Oral explanations or instructions given before the award of the contract shall not be binding. In order for information to reach Vendors before submission of their offers, any explanation desired by a Vendor regarding the meaning or interpretation of the solicitation document must be requested in writing no later than the date listed in Section 1.18. Such information requests received via e-mail to the procurement representative listed above will be considered as a written request.

All proposed modifications found acceptable to MST will be issued as an Addendum and mailed or e-mailed to all potential Vendors. Only the Addendum issued by MST modifies the solicitation document. No other oral or written communication modifies the solicitation document.

1.13 ACKNOWLEDGEMENT OF ADDENDA

While the MST will make efforts to provide addenda to all interested parties, it is the Vendor's responsibility to ensure that they have received and understand any and all addenda issued.

1.14 MODIFICATION OF SUBMITTALS

A modification of a submittal already received will be considered only if the proposed modification is received prior to the deadline announced for submission of the submittal intended to be modified. All modifications shall be made in writing, executed and submitted in the same form and manner as the original submittal.

1.15 AWARD OF CONTRACT

Within 90 days after the deadline for submittals, MST will either decide to award a contract or reject all submittals, unless extension is made as stated in Section 1.17 below. The formal acceptance by MST of the Vendor's submittal shall be a Notice to Proceed issue by MST.

Prior issuance of a Notice to Proceed, MST will issue a notice of intent to issue and award a contract in writing, delivered in person or by mail. Such notice of intent to issue an award and contract shall obligate the Vendor to furnish all documents required by the Request for Proposals. Upon execution and submission of all required documentation, MST will issue a Notice to Proceed evidencing its formal acceptance and award of the contract. Nothing in this section shall be construed to permit Vendor to alter its submittal after it has been submitted pursuant to the terms of the Request for Proposals.

- A. The contract will be awarded to that responsible Vendor whose offer confirming to the solicitation will be most advantageous to MST, as determined by the evaluation factors listed in the solicitation.
- B. MST reserves the right to reject any or all submittals and to waive informalities and minor irregularities in submittals received.
- C. MST may accept within the time specified therein, any offer provided, whether or not there are negotiations subsequent to its receipt. If subsequent negotiations are conducted, they shall not constitute a rejection or counter offer on terms favorable to MST specified in the proposal.
- D. The right is reserved to accept other than the lowest price proposal.
- E. Each offer shall be submitted on the most favorable terms, from a price and technical standpoint that the Vendor can submit to MST.
- F. Any financial data submitted with any offer hereunder or any representation concerning facilities or financing will not form a part of any resulting contract; provided, however, that if the resulting contract contains a clause providing for price reduction for defective cost or pricing data, the contract price will be subject to reduction if cost or pricing data furnished hereunder is incomplete, inaccurate or not current.

1.16 JOINT VENTURE

Joint venture submittals will not be accepted by MST. Vendors shall structure their submittals so the Vendor is the Primary Submitter.

Firms associated with the Primary Submitter, providing goods and/or service to MST under this contract, shall be as a subcontractor to the primary contract awardee, not MST.

1.17 REQUESTS FOR EXTENSION

The Vendor agrees to supply, as soon as such data is available, any reasonable proofs that are required by MST to make a decision on any request for extension. MST shall examine the request and any documents supplied by the Vendor and shall determine if the Vendor is entitled to an extension and the duration of such extension. MST shall notify the Vendor of its decision in writing.

It is expressly understood and agreed that the Vendor shall not be entitled to damages or compensation and shall not be reimbursed for losses on account of delays resulting from any clause under this provision.

1.18 TIME LINE

<u>Event</u>	<u>Date</u>
Request for Proposals Published	November 14, 2018
Deadline for Questions	November 29, 2018
Deadline for Response to Questions	December 3, 2018 Submittal
Due Date	December 10, 2018, at 2:00PM
Award (estimated date—subject to change)	January 7, 2019
Completed Installation, Certification, and Functionality for Phase1, based on number of vehicles identified by Vendor required for	June 30, 2019 (no later)

Each submittal shall remain open for a period of ninety (90) days. MST reserves the right to request extension of submittal effective period.

1.19 PRE-SUBMITTAL CONFERENCE

There will be no pre-submittal conference.

1.20 LIST OF MANDATORY FORMS AND DOCUMENTS

By submitting a response to this solicitation, Submitters agree to be bound by all legal requirements and contract terms and conditions contained in this solicitation document.

The following information, forms, and documents contained in this solicitation shall be completed and submitted. Submit one (1) original and two (2) copies of the proposal document. Failure to include any of requested information and properly completed forms and documents (Section 4) may be cause for immediate rejection of the submittal.

1. Technical Proposal
2. Firm Information Form, Section 4.0
3. Certification Regarding Lobbying, Section 4.0
4. Certification of Non-debarment/Suspension, Section 4.0
5. Addendum Acknowledgement, Section 4.0

1.21 SUBMITTAL CONTENTS

The following section describes mandatory descriptions and documents that shall be addressed in or included with each submittal. Failure to address or include all of the items discussed in this section may subject the submittal to immediate rejection.

MST will be the final authority in determining the responsiveness of submittals. All materials submitted become the property of MST.

1.22 TECHNICAL PROPOSAL

1. Information about the Firm
Provide a description and listing of your firm and its current size. Describe the key personnel involved in the completion of the project requirements, including resumes. If your submittal represents a joint effort on a prime/subcontracted submittal, provide the above for all members of the submittal team and the specific responsibilities of each project team firm.
2. Understanding of Work Areas, Experience, and Proposal for MST
Vendors shall provide documentation outlining their understanding of each area as listed in the Scope of Work (Section 3.0).

Documentation shall include detailed description of previous experience, sample work, and names, titles, and contact information of those associated with project for reference purposes.

3. Cost Submittal

Vendor shall provide a detailed cost summary showing line items for Stand-alone APC System materials, installation, APC software package, APC training and documentation, shipping and any other related charges.

A separate line item may be included by Vendor that supplies a fully integrated wireless access point and wireless local area network (WLAN) functionality. MST reserves the right to sever any WLAN bid from the remainder of the submission, with no change to the original submitted offer.

A separate line item may be included by Vendor for real time reporting for passenger load functionality.

1.23 EVALUATION AND SELECTION PROCESS

Each submittal will be evaluated in accordance with the evaluation criteria stated herein. The MST Board of Directors will award to the Vendor whose offer conforming to the solicitation will be most advantageous to MST, as determined by the evaluation factors listed below.

Selection Criteria and Consideration.

Submittals will be evaluated on the basis of the following factors, with pricing information being factored into the scoring only after all other criteria has been scored and recorded. Each factor has been assigned a pre-established weight to reflect its relative importance.

1. Qualifications and Experience of Firm. This will be evaluated on the firm's experience as a whole in the depth of understanding of the work, completion of similar work, innovative applications, and knowledge of best practices. (20 points)
2. Features and benefits of proposed product. Focus on reporting, data capture, and customization capacity along with product support (40 points)
3. Service and Warranty. (10 points)
4. Price. (30 points)

Based on the evaluation criteria, finalists will be selected.

There may be further evaluation by interviews; however, MST reserves the right to award without holding discussions.

MST reserves the right, if it determined by MST to be in its best interest, to conduct subsequent discussion, either oral or written, with all finalists after the interview process.

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SECTION 2.0

SCOPE OF WORK

Section 2.0 Scope of Work

2.0 BACKGROUND

2.01 INTRODUCTION

MST's Board directs that a stand-alone APC system will deliver the most reliable and verifiable data, which is critical to the success of MST's ridership data as well as federal reporting requirements.

Vendor submissions may, if desired, include quotes for a wireless local area network (WLAN) system to receive downloads from the stand-alone APC system. This line item **exists separately** to the Vendor's quote for a stand-alone APC system and its data analytical software. Any quote proposed for a WLAN does not affect the decision for the rest of the APC system, and may be severed from the rest of the proposal by MST's selection committee.

2.02 PROJECT DESCRIPTION

MST operates in a 295-square mile service area covering 1/5 of the California coast line. A total of 62 distinct routes service both the rural and urbanized areas on Monterey County and stretching south to San Luis Obispo County and north to Santa Cruz and Santa Clara Counties. MST routes are both long distance and short distance in length. Many routes are interlined for a more efficient operation.

MST operates these 62 routes with an active fleet of 6 MCI over-the-road coaches, 78 Gillig 35 and 40-foot buses, 1 Ford Aerolite, 6 trolley buses, and 35 mini buses.

2.03 SYSTEM OPERATIONAL NEEDS

- A. Only proposals for a Stand-alone APC systems are sought;
- B. The APC system will accurately count passengers as they board and alight recording the data as a function of individual stops, routes and runs;
- C. Overall system performance will enable the exact determination of alighting and boarding passengers at each stop with an accuracy greater than 97%;
- D. The APC system will be designed and tested to produce highly accurate passenger counts, to demonstrate an ability to discriminate valid passengers from non-passenger objects, and to detect double-backs and re-crossings;
- E. The APC system will not interfere electronically with the operation of the transit vehicle or its onboard electronic equipment such as security equipment, engine controls, transmission or other electronic equipment;
- F. The APC system will be installed according to industry standards and recommended practices;
- G. All cables, wiring, interconnections, switches, and circuit breakers/fuses will be

- heavy duty and specifically designed for their purposes;
- H. The selected wire sizes and insulation will be based on current carrying capability, voltage drop, and flexibility requirements;
 - I. All installation will be done with tamper proof fasteners whenever possible;
 - J. A protective filtering device will be installed to protect the APC system, its memory and raw data from electrical fluctuation typically found in a transit bus, including but not limited to -- over voltage, under voltage, transient power surge/dip during engine or other transit bus equipment startup, alternator noises, etc.;
 - K. The APC system equipment provided will be transferable to other transit buses as the need arises.

2.04 PASSENGER COUNT SENSORS

The passenger counting sensor features will include but not be limited to the following:

- A. Acquisition of passenger counts by means of infrared sensing devices at all vehicle doors with recording of route and geolocation information, including real time clock / clock synchronization features for accurate time/date stamp mark of data;
- B. Detection zones will be fully adjustable for the requirements of different bus designs;
- C. Counting accuracy will not be affected by normal variables including, but not limited to:
 - The reasonable speed at which a person passes under the sensor.
 - By a passenger remaining immobile at the sensor location.
 - By any other obstruction of the sensor.
 - By variations in light and temperature within the operational specifications of the APC system.
- D. Obstruction of the counter (passengers remaining immobile in the counter sensor field) that could affect the count accuracy will be noted in the data;
- E. Counting accuracy will also include features to reduce or eliminate counting inaccuracies caused by passengers carrying items such as packages, boxes or briefcases onto the vehicle;
- F. The sensors will differentiate between boarding and alighting passengers from either door of the vehicle;
- G. Bicycle rack and wheelchair lift deployment data for each unique use are to be accurately recorded by the APC system.

2.05 GPS/ ONBOARD DATA LOGGING SYSTEM

The Global Positioning System (GPS)/onboard data logging system should include features that include, but not limited to:

- A. Accurate location of the bus through GPS data as passengers board and alight, in order to identify the bus stop and the route being traveled.
- B. All gathered information will be stored by, and be accessible from, onboard digital data storage, with data transmittable to a wireless local area network.

2.06 DATA ACQUISITION SYSTEM AND REPORTING

Specific requirements for the data acquisition system should be as follows:

- A. Onboard system will allow data from APC/GPS to be collected and stored with generous capacity – measured in days of operation - for storing registered data, and based on time intervals, numbers of stored records, etc. (subject to factors including the number of routes, etc.);
- B. APC system has provision for wireless data transfer between each transit vehicle and a server through a wireless local area network at the MST garage or real time cellular modem connection;
- C. Data stored in the onboard APC system can be downloaded manually when needed;
- D. The receiving equipment will confirm transmission/ receipt of the raw data to MST servers;
- E. MST will have internet access to raw data;
- F. Data output will be available in ASCII, or similar format, with compatibility to Microsoft Office Suite;
- G. Standard reports will include the ability to track and report all operational data needed for the Federal Transit Administration (FTA) National Transit Data (NTD) reports (most current requirements), including tracking of passenger miles;
- H. Standard reports shall be cleaned and scrubbed of errant and inaccurate data;
- I. The APC system will include an error /failure log feature;
- J. The system shall conform to all applicable Society of Automotive Engineers (SAE) standards.
- K. Advise MST during acceptance on checking system performance with respect to PMT measurement.
- L. Advise MST on methods to remedy measurement weaknesses.
- M. Guide MST on baseline sampling.
- N. Develop remedies in case the baseline sample fails.
- O. Write up benchmarking plan.
- P. Write up maintenance plan.
- Q. Write and certify a sampling and estimation plan for annual reporting.

2.07 TRAINING

The Vendor will provide training for authorized personnel to ensure satisfactory competence in using the APC system, including the software applications, data processing, report generation, and system administration. To wit:

- A. Adequate training will be provided on the use and maintenance of the APC hardware leading to a satisfactory level of competence by the appropriate MST administrative, operational, maintenance, technical, and transit service operators;
- B. Training will take place at either 1 Ryan Ranch Road or 19 Upper Ragsdale Drive, Monterey, California 93940 or other designated MST facility within Monterey County.

2.08 SOFTWARE UPDATES AND UPGRADES

The APC system software will be field upgradeable.

The Vendor will provide software updates for a minimum period of five (5) years from the date of MST's acceptance of the installation of the initial procurement, without additional cost to MST.

Any and all hardware or software licensing or maintenance fees will be noted in Vendor's submission.

2.09 INSTALLATION

The Vendor will be responsible for installation of the APC system described herein on buses and cutaways located at MST facilities, Monterey, California, pursuant to the following:

- A. The Vendor will commence equipment and software installation at its earliest availability following award of proposed bid, on or about January 25, 2019;
- B. The Vendor will complete installation of APC systems in MST's fleet no later than June 30, 2019 for Phase 1;
- C. If Vendor has not supplied the WLAN, its functionality is not included in Vendor responsibility;
- D. MST staff training will take place concurrently or immediately following installation in order to have administrative, operational, technical, and mechanical staff fully trained in advance of the time the APC system is deployed on July 1, 2019.
- E. The Vendor will provide additional training as necessary during the succeeding twenty four (24) months.

2.10 LIQUIDATED DAMAGES

Failure of successful vendor to reach fully operational installation of APC systems, including back-end software functionality, in MST's fleet by June 30, 2019 for Phase 1, will result in Liquidated Damages of \$500 per day. This Liquidated Damage applies for each day the APC system is not operational across the entire fleet, including accurate recording and processing of data on APC system software stored on MST servers.

Liquidated Damages will be deducted from Vendor's invoiced charges to MST.

MST retains the right to waive any or all Liquidated Damages based solely on what MST, alone, defines as reasonable and extenuating circumstances to release Vendor from payment of said Damage.

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SECTION 3.0

**FEDERAL PROVISIONS AND CLAUSES
REQUIRED AS APPLICABLE**

Contract Subject to Federal Financial Assistance/Application of Provisions and Clauses

Operation of Monterey-Salinas Transit District is funded in part by grants from the Federal Transit Administration (FTA) of the United States Department of Transportation. The award of any contract is subject to the requirements of financial assistance contracts between the Monterey-Salinas Transit District (hereinafter referred to as MST) and the U.S. Department of Transportation.

The Contractor is required to comply with all terms and conditions prescribed for third-party contracts by the U.S. Department of Transportation, Federal Transit Administration (FTA). If FTA requires any change to this Contract to comply with its requirements, both parties agree to amend the Contract as required by FTA. If such changes cause an increase or decrease in the work to be performed by the Contractor or the time for such performance, then the compensation to be paid the Contractor and time of performance shall be equitably adjusted.

The required contract clauses which are identified below as applicable to this solicitation will be incorporated by reference in any contract resulting from this solicitation issued by MST. These solicitation provisions and required contract clauses are in addition to other General Specifications, Special and Technical Specifications, Bidding or Proposal Procedures, and Bid or Proposal Forms set forth in other sections of this solicitation which may also be incorporated by reference in any resulting contract. Some provisions and clauses require the bidder/proposer to execute and submit certain required certifications with the bid or proposal, which are included herein. Failure to execute and submit required certifications with the bid or proposal documents may render a bid or proposal non-responsive.

No Government Obligation to Third Parties

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

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

Program Fraud and False or Fraudulent Statements and 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 and affirms the truthfulness and accuracy of any claim, statement, submittal, certification, assurance or representation it has made, it makes, it may make, or causes to be made to the Federal Government pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to the 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, certification, assurance or representation, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 and other applicable penalties 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, certification assurance or representation 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 Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 53 23(l)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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.

Audit and Inspection of Records

- (a) In accordance with 49 CFR 18.36(i), the Contractor agrees to provide the MST, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR 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 USC 5302(a)1, which is receiving federal financial assistance.

Where the MST enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

Where the MST, in accordance with 49 USC 5325(a), enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)(1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

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

- (b) The Contractor further agrees to include in all subcontracts hereunder a provision to the effect that the subcontractor agrees that MST, the U.S. Department of Transportation and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any books, documents, papers, and records of the subcontractor directly pertinent to this contract. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding \$10,000 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.
- (c) The periods of access and examination described above, for records which relate to (1) appeals under the disputes clause of this contract, (2) litigation or the settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this contract to which an exception has been taken by the U.S. Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims or exceptions have been disposed of. Reference 49 CFR 18.39(i)(11).

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 MST 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.

Civil Rights Requirements

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

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

- (b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - (c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- (3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Termination Provisions

Applicable to all contracts (with the exception of contracts with nonprofit organizations and institutions of higher education) in excess of \$10,000. For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.

Termination for Convenience - Fixed Price Contract (Short Form)

MST, by written notice, may terminate this contract, in whole or in part, when it is in MST's interest. If this contract is terminated, the rights, duties, and obligations of the parties, including compensation to the Contractor, shall be in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date of this contract. If a fixed-price services contract, MST shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

Termination for Convenience - Fixed Price Contract

MST may terminate performance of work under this contract in whole or, from time to time, in part if MST determines that a termination is in MST's best interest. MST shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

After receipt of a Notice of Termination, and except as directed by MST, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (a) Stop work as specified in the Notice.
- (b) Place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
- (c) Terminate all subcontracts to the extent they relate to the work terminated.
- (d) Assign to MST, as directed by it, all right, title, and interest of the Contractor under the subcontracts terminated, in which case MST shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (e) With approval or ratification to the extent required by MST, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification shall be final for purposes of this clause.
- (f) As directed by MST, transfer title and deliver to MST (a) the fabricated or unfabricated parts, work in progress, completed work, supplies, and other material produced or acquired for the work terminated, and (b) the completed or partially completed plans, drawing, information, and other property that, if the contract had been completed, would be required to be furnished to MST.
- (g) Complete performance of the work not terminated.
- (h) Take any action that may be necessary, or that MST may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which MST has or may acquire an interest.
- (i) Use its best efforts to sell, as directed or authorized by MST, any property of the types referred to in subparagraph (6) above; PROVIDED, however, that the Contractor (a) is not required to extend credit to any purchaser and (b) may acquire the property under the conditions prescribed by, and at prices approved

by, MST. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by MST under this contract, credited to the price or cost of the work, or paid in any other manner directed by MST.

Settlement of claims under this Termination for Convenience clause shall be in accordance with paragraphs (c) through (m) of the clause contained in the Federal Acquisition Regulation (FAR), Part 52, subpart 52.249-2, except that wherever the word "Government" or "Contracting Officer" appears it shall be deleted and the word "MST" shall be substituted in lieu thereof.

Default - Fixed Price Material and Service Contracts

(a) MST may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to:

- (1) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
- (2) Make progress, so as to endanger performance of this contract; or
- (3) Perform any of the other provisions of this contract.

MST's right to terminate this contract under (2) and (3) above may be exercised if the Contractor does not cure such failure within ten (10) days, or more if authorized in writing by MST, after receipt of the notice from MST specifying the failure.

(b) If MST terminates the contract in whole or in part, it may acquire, under the terms and in the manner MST considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to MST for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

- (d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.
- (e) If this contract is terminated for default, MST may require the Contractor to transfer title and deliver to MST, as directed by MST, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" herein) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of MST, the Contractor shall also protect and preserve property in its possession in which MST has an interest.
- (f) MST shall pay contract price for the completed supplies delivered and accepted. The Contractor and MST shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. MST may withhold from these amounts any sum MST determines to be necessary to protect MST against loss, because of outstanding liens or claims of former lien holders.
- (g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of MST.
- (h) The rights and remedies under this clause are in addition to any other rights and remedies provided by law or under this contract.

Termination - Cost Reimbursement Contracts

MST may terminate performance of work under this contract in whole or, from time to time, in part, if:

- (a) MST determines that a termination is in MST's interest; or
- (b) The Contractor defaults in performing the contract and fails to cure the default within ten (10) days (unless extended by MST) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

MST shall terminate by delivering to the Contractor a Notice of Termination specifying whether the termination is for default of the Contractor or for convenience of MST, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Force Majeure clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of MST.

After receipt of a Notice of Termination, and except as directed by MST, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (a) Stop work as specified in the Notice.
- (b) Place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
- (c) Terminate all subcontracts to the extent they relate to the work terminated.
- (d) Assign to MST, as directed by it, all right, title, and interest of the Contractor under the subcontracts terminated, in which case MST shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (e) With approval or ratification to the extent required by MST, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification shall be final for purposes of this clause.
- (f) As directed by MST, transfer title and deliver to MST (a) the fabricated or unfabricated parts, work in progress, completed work, supplies, and other material produced or acquired for the work terminated, and (b) the completed or partially completed plans, drawing, information, and other property that, if the contract had been completed, would be required to be furnished to MST.
- (g) Complete performance of the work not terminated.
- (h) Take any action that may be necessary, or that MST may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which MST has or may acquire an interest.
- (i) Use its best efforts to sell, as directed or authorized by MST, any property of the types referred to in subparagraph (6) above; PROVIDED, however, that the Contractor (a) is not required to extend credit to any purchaser and (b) may acquire the property under the conditions prescribed by, and at prices approved by MST.

The proceeds of any transfer or disposition will be applied to reduce any payments to be made by MST under this contract, credited to the price or cost of the work, or paid in any other manner directed by MST.

Settlement of claims under this Termination - Cost Reimbursement Contract clause shall be in accordance with paragraphs (c) through (m) of the clause contained in the Federal Acquisition Regulation (FAR), Part 52, subpart 52.249-6, except that wherever the word "Government" or "Contracting Officer" appears it shall be deleted and the word "MST" shall be substituted in lieu thereof.

Disadvantaged Business Enterprise, 49 CFR Part 26

The following provisions of MST's financial assistance contract with the U.S. Department Of Transportation apply to this contract:

a. Policy

It is the policy of the Department of Transportation that disadvantaged business enterprises, as defined in 49 C.F.R. Part 26, and as amended in Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the DBE requirements of 49 C.F.R., Part 26 and Section 106(c) of the STURAA of 1987, apply to this agreement.

The contractor agrees to ensure that DBEs as defined in 49 C.F.R. Part 26 and Section 106(c) of STURAA of 1987, have the maximum opportunity to participate in the whole or in part with federal funds provided under this Agreement. In this regard, the contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts.

It is further policy of MST to promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of MST procurement activities are encouraged.

b. DBE Obligation

The contractor and its subcontractors agree to ensure that disadvantaged business enterprises have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In that regard, all contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 C.F.R. Part 26 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

- a. Where the contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBEs in the work provided, MST may declare the contractor

noncompliant and in breach of contract.

- b. The contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with MST's DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of MST and will be submitted to MST upon request.
- c. MST will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:
 - Identification of qualified DBE
 - Available listing of Minority Assistance Agencies
 - Holding bid conferences to emphasize requirements

The contractor must promptly notify MST 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 MST.

Prompt Payment Contractor agrees to pay each subcontractor and supplier under this contract for satisfactory performance of its contract no later than thirty (30) calendar days from the date the contractor receives payment from MST. Contractor further agrees to return retainage payments to each subcontractor within thirty (30) calendar days from the date of the satisfactory completion of the subcontractor's work. Any delay or postponement of payment may occur only for good cause following MST's written approval. This clause applies to both DBE and non-DBE subcontractors.

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 4220.1F, Revision 4, dated March 18, 2013, 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 other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Monterey-Salinas Transit District requests which would cause Monterey-Salinas Transit District to be in violation of the FTA terms and conditions.

Government-Wide Debarment and Suspension

Applicable to all contracts and subcontracts at any level equal to or exceeding \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services.

This contract is a covered transaction for purposes of 2 CFR Part 1200 and 2 CFR Part 180. As such, the contractor is required to verify that none of the contractors, its principals, or affiliates, are excluded or disqualified.

The contractor is required to comply with 2 CFR Part 1200 and 2 CFR Part 180, and must include the requirement to comply with 2 CFR Part 1200 and 2 CFR Part 180 to any lower tier covered transaction it enters into.

The Contractor, including any of its officers or holders of a controlling interest, and its subcontractors are obligated to inform MST whether or not they are or have been debarred from or determined ineligible for Government contracts and federally-assisted construction contracts pursuant to 2 CFR Part 1200 and 2 CFR Part 180 and Executive Order 12549.

The Contractor shall review the "Excluded Parties Listing System" at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200,

The bidder 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 MST.

Buy America Requirements

Applicable to Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

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 project is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7. 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 with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Breaches and Dispute Resolution

Applicable to all contracts exceeding \$100,000.

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

Performance During Dispute - Unless otherwise directed by MST the MST, 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 MST 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 MST is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the MST, (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.

Restrictions on Lobbying; Certification

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

Section 1352 of Title 31, United States Code, provides in part that no Federal funds may be expended by the recipient of a federal contract, grant, loan, or cooperative agreement to pay any person to influence or attempt to influence 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 any of the following covered Federal actions:

the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, or the entering into of any cooperative agreement.

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) —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 any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

Clean Air

Applicable to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year:

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

Clean Water

Applicable to each contract and subcontract which exceeds \$100,000:

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

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

Cargo Preference: Use of United States Flag Vessels, 46 CFR, Part 381

Applicable to all contracts involving equipment, materials or commodities which may be transported by ocean vessels.

Contractor agrees to utilize privately-owned United States flag commercial vessels to ship at

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

Contractor agrees to furnish within 20 working days following the date of loading for shipments originating within the United States, or within 30 working days following the loading of shipments originating outside the United States, a legible copy of a rate, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph above to MST (through the prime Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C., 20230, marked with appropriate identification of the project.

Contractor agrees to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

Fly America

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.

Charter Bus Requirements

Applicable to Operational Service Contracts.

The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at

49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

School Bus Requirements

Applicable to Operational Service Contracts.

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

Transit Employee Protective Agreements

Applicable to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.) These provisions are applicable to all contracts and subcontracts at every tier.

(1) The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the 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. A 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. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas 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 subrecipient for which work is performed on the underlying contract, the 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. The Contractor agrees to perform transit operations in connection 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. § 5311, 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) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

Seismic Safety Requirements (construction of new buildings or additions to existing buildings)

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

Davis-Bacon / Copeland Anti-Kickback Acts

Applicable to any construction contract over \$2,000: Reference 40 USC 3142(a), 29 CFR 5.5(a). "Construction", for the purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating." 29 CFR 5.5(a).

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or

cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and

wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iii) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt, and so supply advice the contracting officer -- or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The Monterey-Salinas Transit District shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Monterey-Salinas Transit District may, after written notice to the contractor,

sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Monterey-Salinas Transit District for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor,

and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In

addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(5) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program,

the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

(iii) In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and

Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iv) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(6) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(7) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts.

(8) The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(9) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(10) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(11) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (and any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(12) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18

U.S.C. 1001.

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.

Recycled Products (contracts for items designated by EPA, when procuring \$10,000 or more per year)

Recovered Materials - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247,

and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

Privacy Act

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

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

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

Protests

Bid/Proposal Protests (Short Form)

Protests may be made by prospective bidders or proposers whose direct economic interest would be affected by any of the following actions:

- (a) A written notice by MST denying a bidder/proposer request for a change in a specification requirement;

- (b) A written recommendation to disqualify a bidder, subcontractor, or proposer;
- (c) A written recommendation to award a contract to a particular bidder/proposer or not to award a contract to any bidder/proposer; or
- (d) The award of a contract to a bidder/proposer by MST.

MST has written protest procedures covering pre-award, award, and post-award phases of procurement which specify information required for a protest, how and where to file a protest, and deadlines for both the protester and MST towards a final decision regarding the protest by MST. These procedures are in conformity with requirements and procedures of the Federal Transit Administration (FTA),

which are outlined in FTA Circular 4220.1F. The bidder/proposer is advised that appeal of a protest decision by MST may be made to the FTA, however, the bidder/proposer must first exhaust all administrative remedies available through MST's dispute resolution process. FTA's review of any such protest shall be limited to alleged failure by MST to have written protest procedures or its alleged failure to follow such procedures. Such procedures do not limit a bidder/proposer in the right of appeal to a court of competent jurisdiction if such forums exist.

MST's protest procedures will be made immediately available to any bidder/proposer in person, by mail or facsimile transmission at any time during the solicitation and award of a contract. Copies may be obtained by telephoning the Project Manager at 406.543.8386.

Bid Proposal Protests (Long Form)

Protests may be made by prospective bidders or proposers whose direct economic interest would be affected by any of the following actions:

- (a) A written notice by MST denying a bidder/proposer request for a change in a specification requirement;
- (b) A written recommendation to disqualify a bidder, subcontractor, or proposer;
- (c) A written recommendation to award a contract to a particular bidder/proposer or not to award a contract to any bidder/proposer; or
- (d) The award of a contract to a bidder/proposer by MST.

MST will consider all protests requested in a timely manner regarding the award of a contract, whether submitted before or after an award. All protests are to be submitted in writing to MST as follows: General Manager, Carl Sedoryk, 19 Upper Ragsdale Drive, Suite 200, Monterey, CA 93940. Protest submissions should be concise, logically arranged, and clearly state the grounds for protest. A protest must include at least the following information:

- (a) Name, address, and telephone number of protestor,
- (b) Identification of contract solicitation number,
- (c) A detailed statement of the legal and factual grounds of the protest, including copies of relevant documents, and
- (d) A statement as to what relief is requested.

Protests must be submitted to MST in accordance with these procedures and time requirements, must be complete and contain all issues that the protestor believes relevant.

Protests Before Bid Opening

Bid protests alleging restrictive specifications or improprieties which are apparent prior to bid opening or receipt of proposals must be submitted in writing to the General Manager at the address above and must be received at least seven (7) days prior to bid opening or closing date for receipt of bids or proposals. If the written protest is not received by the time specified, bids or proposals may be received and award made in the normal manner unless the General Manager determines that remedial action is required. Oral protests not followed up by a written protest will be disregarded. The General Manager may request additional information from the appealing party and information or response from other bidders, which shall be submitted to the General Manager not less than ten (10) days after the date of MST's request. So far as practicable, appeals will be decided based on the written appeal, information and written response submitted by the appealing party and other bidders. In failure of any party to timely respond to a request for information, it may be deemed by MST that such party does not desire to participate in the proceeding, does not contest the matter, or does not desire to submit a response, and in such a case, the protest will proceed and will not be delayed due to the lack of a response. Upon receipt and review of written submissions and any independent evaluation deemed appropriate by MST, the General Manager shall either (a) render a decision, or (b) at the sole election of the General Manager, conduct an informal hearing at which the interested parties will be afforded opportunity to present their respective positions and facts, documents, justification, and technical information in support thereof. Parties may, but are not required to, be represented by counsel at the informal hearing, which will not be subject to formal rules of evidence or procedures. Following the informal hearing, if one is held, the General Manager will render a decision, which shall be final, and notify all interested parties thereof in writing but no later than ten (10) days from the date of informal hearing.

Protests After Bid Opening/Prior to Award

Bid protests against the making of an award by the MST must be submitted in writing to the General Manager and received within seven (7) days of the award by the MST. Notice of the

protest and the basis therefore will be given to all bidders or proposers. In addition, when a protest against the making of an award by the MST is received and it is determined to withhold the award pending disposition of the protest, the bidders or proposers whose bids or proposals might become eligible for award shall be requested, before expiration of the time for acceptance, to extend or to withdraw the bid.

Where a written protest against the making of an award is received in the time period specified, award will not be made prior to seven (7) days after resolution of the protest unless MST determines that:

- (a) The items to be purchased are urgently required
- (b) Delivery or performance will be unduly delayed by failure to make award promptly, or
- (c) Failure to make award will otherwise cause undue harm to MST or the federal government.

Protests After Award

In instances where the award has been made, the Contractor shall be furnished with the notice of protest and the basis therefore. If the contractor has not executed the contract as of the date the protest is received by MST, the execution of the contract will not be made prior to seven (7) days after resolution of the protest unless MST determines that:

- (a) The items to be purchased are urgently required
- (b) Delivery or performance will be unduly delayed by failure to make award promptly, or
- (c) Failure to make award will otherwise cause undue harm to MST or the federal government.

Protests to Federal Transit Administration (FTA)

Under certain limited circumstances, an interested party may protest to the FTA the award of a contract pursuant to an FTA grant. FTA's review of any such protest will be limited to:

- (a) Alleged failure by MST to have written protest procedures or alleged failure to follow such procedures, or
- (b) Alleged violations of specific federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with that federal regulation.

Protestors shall file a protest with FTA not later than five (5) working days after a final decision of MST's General Manager is rendered under the MST protest procedure. In

instances where the protestor alleges that MST failed to make a final determination on the protest, the protestor shall file a complaint with FTA no later than five (5) federal working days after the protestor knew or should have known of MST's failure to render a final determination in the protest.

Submission of Protest to FTA

Protests submitted to FTA should be submitted to the FTA Region VIII office in Denver, CO, with a concurrent copy to MST. The protest filed with FTA shall:

- (a) Include the name and address of the protestor
- (b) Identify the MST project number and the number of the contract solicitation
- (c) Contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to follow MST's protest procedures, or the alleged failure to have procedures, and be fully supported to the extent possible
- (d) Include a copy of the local protest filed with MST and a copy of the MST decision, if any.

FTA may dismiss the protest without further process if the protest, as originally filed, fails to establish grounds for FTA review.

FTA's remedy for failure to have protest procedures or to follow such procedure is limited to requiring a grantee to develop such procedures, if necessary, and to follow such procedures in reviewing the protest at issue. In instances where a grantee has awarded to another bidder or offeror prior to FTA's decision on the protest, FTA may refuse to participate in funding the contract.

CONTRACT CLAUSES

Prohibited Interests

Interest of Members of, or Delegates to, Congress

No member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising therefrom (41 U.S.C. 22).

Prohibited Interest

No member, officer, or employee of MST or local public official during his tenure or one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

Covenant Against Gratuities

The Contractor shall not offer or provide gifts, favors, entertainment or any other gratuities of monetary value to any official, employee, or agent of MST during the period of this contract or for a period of one year thereafter.

Labor Provisions: Non-Construction Contracts

Labor Provisions: Work Hours and Safety Standards Act, 40 U.S.C. Sections 327-33, 29 CFR 5.5.(b).

a. Overtime Requirements

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week unless such laborer or mechanic receives compensation no less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week.

b. Violation; Liability for Unpaid Wages; Liquidated Damages :

In the event of any violation of the clause set forth in subparagraph (b) (1) of 29 CFR Section 5.5, the Contractor and any subcontractor responsible thereof shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such district or such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (b) (1) of 29 CFR Section 5.5 in the sum of \$500 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (b) (1) of 29 CFR Section 5.5.

c. Withholding for Unpaid Wages and Liquidated Damages :

DOT, FTA, or MST shall upon their own action or upon written request of an authorized representative of the Department of Labor withhold, or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (b) (2) of 29 CFR Section 5.5.

d. Subcontractors:

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in above paragraphs under the heading of Labor Provisions and shall also require

subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in the paragraphs of this section.

The requirements of the clauses contained in 29 CFR Part 5.5. (b) or (a) through (d) above are applicable to any contract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR Part 5.1. The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or the subcontractor for inspection, copying, or transcription by authorized representatives of DOT, the Department of Labor, FTA, or MST.

The Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The (recipient) shall determine the amount of the advance payment bond necessary to protect the (Recipient).

Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The (recipient) shall determine the amount of the patent indemnity to protect the (Recipient).

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by MST, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects.

The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

Patent Rights

Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

MST's financial assistance contract with the U.S. Department of Transportation, Federal Transit Administration, requires that if any invention, improvement or discovery of MST or any of its third party contractors is conceived or first actually reduced to practice in the course of or under this contract, which invention, improvement or discovery may be patentable under the laws of the United States of America or any foreign country, MST shall immediately notify the FTA and provide a detailed report. The rights and responsibilities of MST, Third Party contractors and the Government with respect to such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies, and any waiver thereof.

Rights in Data and Copyrights

- (a) The term "subject data" as used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Contract. The term includes graphic or pictorial delineation in media such as drawings or photographs, text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information.

The term does not include financial reports, cost analyses, and similar information incidental to Contract administration.

- (b) The following restrictions apply to all subject data first produced in the performance of this Contract:
- (1) Except for its own internal use, Contractor may not publish or reproduce subject data in whole or in part, in any manner or form, nor may it authorize others to do so, without the written consent of the Government, until such time as the Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to Contracts with academic institutions.
 - (2) As authorized by 49 CFR Section 18.34, the Government reserves a royalty-free non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes:
 - (i) any subject data developed under a grant, cooperative agreement, subgrant, sub-agreement, or third-party contract, irrespective of whether a copyright has been obtained; and
 - (ii) any rights of copyright to which a grant recipient, subrecipient, or a third-party contractor purchases ownership with federal assistance.
- (c) It is understood that, in addition to the rights set forth in section b)(2) above, in any project involving planning, research, development, or demonstration funded under the Federal Transit Act, as amended, FTA may make available to any FTA recipient, subrecipient, third party contractor, or third party subcontractor, either FTA's license in the copyright to the subject data derived under this Contract or a copy of the subject data first produced under this Contract. In the event that the project which is the subject of this Contract is not completed for any reason whatsoever, all data developed under the project shall become subject data as defined herein and shall be delivered as the Government may direct. This subsection, however, does not apply to adaptations of automatic data processing equipment or programs for the MST's use which costs are financed with capital funds under Sections 3, 9, 16, 18, or 25 of the Federal Transit Act, as amended, or Title 23 capital funds.
- (d) Unless prohibited by State law, the Contractor agrees to indemnify, save, and hold harmless the MST and the Government, their officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful and intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Contract. The Contractor shall not be required to indemnify the MST and the Government for any such liability arising out of the wrongful acts of employees or agents or the MST or the Government.
- (e) Nothing contained in this section on rights in data shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

- (f) The requirements of subsections b), c), and d) above do not apply to material furnished to the MST by the Government and incorporated in the work carried out under the Contract, provided that such incorporated material is identified by the MST at the time of delivery of such work.

Contract Administration

Indemnity

The Contractor agrees to indemnify, defend, and hold MST harmless from any and all claims and lawsuits by third parties (including, but not limited to, employees and agents of MST and the Contractor), including the payment of all damages, expenses, penalties, fines, costs, royalties, charges and attorney's fees incurred by MST, whether these claims or lawsuits are based upon breach of warranty, strict liability in tort, any failure by the Contractor to comply with any laws pertaining to the contract documents, the use of patent appliances, products or processes or any breach by the Contractor of any of its other duties, representations, covenants, or other agreements in the contract documents.

The Contractor will defend all suits brought upon all such claims and lawsuits and shall pay all reasonable costs and expenses incidental thereto, but MST shall have the right, at its option, to participate at its own expense in the defense of any suit, without relieving the contractor of any of its obligations hereunder.

Patent Infringement

MST will advise the Contractor of any impending patent suit and provide all information available. The Contractor shall defend any suit or proceeding brought against the Transit System based on a claim that any equipment, or any part thereof, furnished under this contract constitutes an infringement of any patent, and the Contractor shall pay all damages and costs awarded therein, excluding incidental and consequential damages, against MST. In case said equipment, or any part thereof, is in such suit held to constitute infringement and use of said equipment or parts is enjoined, the Contractor shall, at its own expense and at its option, either procure for MST the right to continue using said equipment or part, or replace same with non-infringing equipment, or modify it so it becomes non-infringing.

Compliance with Laws/Permits and Licenses

Contractor will give all notices and comply with all federal, State, County, and local laws, ordinances, rules, regulations, standards, and order of any public authority bearing on the performance of the contract, or concerning the production of goods thereunder, including, but not limited to, the laws referred to in these provisions of the contract and the other contract

documents. If the contract documents are at variance therewith in any respect, any necessary changes shall be adjusted by appropriate modification. Omission of any applicable laws, ordinances, rules, regulations, standards, or orders by MST in the contract documents shall be construed as an oversight and shall not relieve the Contractor from his obligations to meet such fully and completely. Upon request, the Contractor shall furnish to MST certificates of compliance with all such laws, orders and regulations. The Contractor shall be responsible for obtaining all necessary permits and licenses required for performance under the contract.

Applicable provisions of all federal, State, County, and local laws, and of all ordinances, rules, and regulations shall govern any and all claims and disputes which may arise between person(s) submitting a bid response hereto and MST by and through its officers, employees, and authorized representatives, or any other persons, natural and otherwise, and lack of knowledge by any Contractor shall not constitute a cognizable defense against the legal effect thereof.

Records Retention

Contractor shall retain all books, documents, papers, data and records relating to its performance under this contract until the expiration of three years after final payment of the contract and all other contractual matters are closed.

Contract Changes

Any proposed change in this contract shall be submitted to MST for its prior approval and MST will make changes only by written contract modification.

MST may, at any time, by a written order, and without notice to sureties, make changes, within the general scope of this contract, in any one or more of the following: (1) drawings, designs or specifications; (2) method of shipment or packing; and (3) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for the performance of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified accordingly. Any claim for adjustment under this clause shall be asserted within 30 days from the date of receipt by the Contractor of the notification of change:

Provided, however, that MST, if it decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact; however, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

Inspection of Supplies

- (a) The Contractor shall provide and maintain an inspection system acceptable to MST covering supplies under this contract and shall tender to MST for acceptance only those supplies that have been inspected in accordance with the inspection system and have been found by the contractor to be in conformity with contract requirements. Complete records of all inspection work performed by the contractor shall be maintained and made available to MST during contract performance and for as long afterwards as the contract shall require.
- (b) MST has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. MST shall perform inspections and tests in a manner that will not unduly delay the work. MST assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor.
- (c) The Contractor shall remove supplies rejected or required to be corrected. However, MST may require or permit correction in place, promptly after notice, by and at the expense of the Contractor.
- (d) If the Contractor fails to promptly remove, replace, or correct rejected supplies as required, MST may either (1) by contract or otherwise, remove, replace, or correct the supplies and charge the cost to the Contractor or (2) terminate the contract for default. Unless the Contractor corrects or replaces supplies within the delivery schedule, MST may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

Inspection of Services

- (a) The Contractor shall provide and maintain an inspection system acceptable to MST covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to MST during contract performance and for as long afterwards as the contract shall require.
- (b) MST has the right to inspect and test all services called for by the contract, to the extent practicable, at all places and times during the term of the contract. MST shall perform inspections and tests in a manner that will not unduly delay the work.
- (c) If any of the services do not conform to contract requirements, MST may require the Contractor to perform the services again or to make corrections in conformity with contract requirements at no increase in contract amount. When defects in services cannot be corrected by performance, MST may reduce the contract price to reflect the

reduced value of services performed.

- (d) If the Contractor fails to promptly perform the services again or to make such corrections as required by MST in conformity with contract requirements, MST may, by contract or otherwise, perform the services and charge to the Contractor any cost incurred by MST that is directly related to the performance of such service or,
(2) terminate the contract for default.

Timely Performance/Force Majeure

- (a) The timely receipt of MST's requirements is essential. If the requirements are not received on time in accordance with the contracted delivery schedule, MST may cancel the unfilled portion of the contract for cause, purchase substitute requirements elsewhere, and recover from contractor any increased costs thereby incurred together with all resulting incidental and consequential damages. MST may also terminate for cause, purchase substitute requirements elsewhere and recover costs and damages for breach of Contractor's obligations.
- (b) The Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor or its subcontractors. Examples of these causes are: (1) acts of God or the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance. If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the failure is beyond the control of both the Contractor and subcontractor and without the fault or negligence of either, the Contractor shall not be in default unless (1) the subcontracted supplies or services were obtainable from other sources,

(2) MST ordered the Contractor to purchase these supplies or services from the other source, and (3) the Contractor failed to comply reasonably with this order.

RFP # 19-10
Automatic Passenger Counter System

SECTION 4.0

**MANDATORY FORMS AND DOCUMENTS
TO BE SUBMITTED WITH PROPOSAL**

The person signing the certification shall state his address and official capacity.

BUY AMERICA PROVISION
(Only for Contracts above \$100,000)

This procurement is subject to the Federal Transportation Administration (FTA) Buy America Requirements in 49 CFR part 661.

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.

A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this procurement be investigated, the successful bidder/proposer has the burden of proof to establish that it is in compliance.

A waiver from the Buy America Provision may be sought by MST if grounds for the waiver exist.

Section 165(a) of the Surface Transportation Act of 1982 permits FTA participation on this contract only if steel and manufactured products used in the contract are produced in the United States.

BUY AMERICA CERTIFICATE

SELECT AND COMPLETE **ONLY ONE** CERTIFICATE FOR BUY AMERICA

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 CFR Part 661.5.

Date _____

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_____

DEBARMENT AND SUSPENSION CERTIFICATE

CERTIFICATION OF POTENTIAL CONTRACTOR REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

If unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.

The primary participant, _____ certifies or
(firm name/principal)
affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. sections 3801 et seq. are applicable thereto.

Signature and Title of Authorized Official

Date

CERTIFICATION REGARDING LOBBYING

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)].

(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.

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 _____

AFFIDAVIT AND INFORMATION REQUIRED OF BIDDERS

AFFIDAVIT OF NON-COLLUSION

I hereby swear (or affirm) under penalty for perjury:

1. That I am the bidder or an officer or employee of the bidding corporation having authority to sign on its behalf (if the bidder is a corporation);
2. That the attached bid or bids has been arrived at by the bidder independently and have been submitted without collusion and without any agreement, understanding, or planned course of action with any other vendor of materials, supplies, equipment, or service described in the invitation to bid, designed to limit independent bids or competition;
3. That the contents of the bid or bids has not been communicated by the bidder or its employees or agents to any person not an employee or agent of the bidder or its surety on any bond furnished with the bid or bids, and will not be communicated to any such person prior to the official opening of the bid or bids; and,
4. That I have fully informed myself regarding the accuracy of the statement made in this affidavit.

SIGNED _____

FIRM NAME _____

Subscribed and sworn to before me this _____ day of _____, 2018

Notary Public

My commission expires _____, _____

Bidder's E.I. Number _____
(Number used on employer's Quarterly Federal Tax Return)

DISADVANTAGED BUSINESS ENTERPRISE

If you desire to qualify for Disadvantage Business Enterprise (DBE) status the web address for California Unified Certification Program (UCP) is:

<http://www.dot.ca.gov/hq/bep/ucp.htm>

If you are a DBE, please provide a copy of your UCP certificate.

AFFIDAVIT FOR DISADVANTAGED BUSINESS ENTERPRISE

STATE OF _____:

COUNTY OF _____ (CITY) OF _____

I HEREBY DECLARE AND AFFIRM THAT I AM THE _____ (Title)
and duly authorized representative of _____ (name of corporation/firm) whose
address is _____.

I hereby declare and affirm that my firm is a certified Disadvantaged Business Enterprise or
Women-Owned Business Enterprise as defined by California Unified Certification Program. The above,
named firm will provide MST with a copy of the document from the California Unified Certification
Program so affirming their DBE status.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE
CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND THAT I AM
AUTHORIZED, ON BEHALF OF THE ABOVE FIRM, TO MAKE THIS AFFIDAVIT.

_____ (Name) _____ (DATE)

STATE OF _____:

COUNTY (CITY) OF _____:

On this _____ day of _____, 2018

MONTEREY-SALINAS TRANSIT DISTRICT

ADDENDUM ACKNOWLEDGEMENT

Proposer/Bidder acknowledges receipt of the following addenda which are attached to the proposal/bid:

Addendum No. _____ Date _____

Failure to acknowledge receipt of all addenda may cause the proposal to be considered non-responsive.