

City of Ocala

EXHIBIT J

ITB# ENG/260740: Construct and Install Bus Stop Shelters

ADDENDUM TO CONTRACTUAL TERMS AND CONDITIONS FEDERALLY ASSISTED CONSTRUCTION/REPAIR CONTRACT

The Contractor clauses and provisions of this Exhibit apply to all Federally assisted construction/repair contracts. These provisions supersede and take precedence over any other clause or provision contained within this Contract that may be in conflict therewith.

1. NO OBLIGATION BY THE FEDERAL GOVERNMENT

- (a) Notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the 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 Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying contract.
- (b) The Contractor agrees to include the above clause in each Subcontract associated with this Contract. The clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

2. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

- (a) 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 Contract. The Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- (b) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under CITY OF OCALA of 49 C.F.R. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- (c) The Contractor agrees to include the above two clauses in each Subcontract associated with this Contract. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

3. ACCESS TO RECORDS AND REPORTS.

Authority - 49 U.S.C. § 5325(g), 2 C.F.R. § 200.333 and 49 C.F.R. part 633, 49 CFR part 625, 49 CFR part 630, FTA Master Agreement FY2020 at Sections 8(c)(1) and 20. Applicability – all contracts

- a. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

- b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required. Contractor is notified that the Authority may be subject to the Single Audit Act, set forth in 2 CFR Part 200, Sub part F – Audit Requirements, as amended.
- d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.
- e. Contractor agrees to comply with FTA regulations, "Transit Asset Management; National Transit Database," 49 C.F.R. parts 625 and 630, as applicable, and follow applicable federal guidance.

[Flow Down Requirements](#) - This requirement flows down to all subcontracts at every tier.

4. CHANGES TO FEDERAL REQUIREMENTS

- (a) The Contractor shall at all times comply with all applicable Federal Transit Administration (FTA) regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in CITY OF OCALA's Master Agreement with the FTA, as they may be amended or promulgated from time to time during the term of this Contract. The Contractor's failure to so comply shall constitute a material breach of this Contract.
- (b) The Contractor is advised that Federal requirements applicable to this Contract as set forth in federal law, regulations, policies, and related administrative practices may change during the performance of this Contract. Any such changes shall also apply to this contract.

5. TITLE VI CIVIL RIGHTS ACT OF 1964

During the performance of this Contract, the Contractor for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

- (a) Compliance with Regulations. The Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter referred to as "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations)), which are herein incorporated by reference and made a part of this Contract.
- (b) Nondiscrimination. The Contractor, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
- (c) Solicitations for Subcontracts, Including Procurement of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, or national origin.
- (d) Information and Reports. The Contractor shall provide all information and reports required by the Regulations or directive issued pursuant thereto, and shall permit access to its books, records, accounts, other sources

of information, and its facilities as may be determined by CITY OF OCALA or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information is required or a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to CITY OF OCALA, or FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

- (e) Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, CITY OF OCALA shall impose such Contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:
 - (i) withholding of payments to the Contractor under the Contract until the Contractor complies; and/or
 - (ii) cancellation, termination or suspension of the Contract, in whole or in part.
- (f) Incorporation of Provisions. The Contractor shall include the provisions of paragraph (1) through (f) above in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any Subcontract or procurement as CITY OF OCALA or FTA may direct as a means of enforcing such revisions including sanctions for noncompliance: provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request CITY OF OCALA, and, in addition, the United States to enter into such litigation to protect the interests of CITY OF OCALA and the United States.

6. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS – FTA CIRCULAR 4220.G

The preceding provisions include, in part, certain Standard Terms and Conditions required by the Department of Transportation (DOT), whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1G, dated January 17, 2025, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any CITY OF OCALA requests, which would cause CITY OF OCALA to be in violation of the FTA terms and conditions.

7. ENERGY POLICY AND CONSERVATION ACT

The Contractor shall recognize mandatory standards and policies relating to energy efficiency contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6321 et seq.).

[Flow Down Requirements](#) - This requirement flows down to all subcontracts at every tier.

8. TERMINATION 2 C.F.R. § 200.339; 2 C.F.R. part 200, Appendix II (B)

FLOW DOWN. For all contracts in excess of \$10,000, the Termination clause extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

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

Termination for Convenience or Default (Cost-Type Contracts) The AGENCY may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of AGENCY or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The

Contractor shall account for any property in its possession paid for from funds received from the AGENCY, or property supplied to the Contractor by the AGENCY. If the termination is for default, the AGENCY may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the AGENCY and the parties shall negotiate the termination settlement to be paid the Contractor.

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

If, after serving a Notice of Termination for Default, the AGENCY determines that the Contractor has an excusable reason for not performing, the AGENCY, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the AGENCY may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the AGENCY that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the AGENCY, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

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

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

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

Opportunity to Cure (General Provision) The AGENCY, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to AGENCY's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from AGENCY setting forth the nature of said breach or default, AGENCY shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude AGENCY from also pursuing all available remedies against Contractor and its sureties for said breach or default.

9. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION 2 C.F.R. part 180; 2 C.F.R part 1200; 2 C.F.R. § 200.213; 2 C.F.R. part 200 Appendix II (I); Executive Order 12549; Executive Order 12689

FLOW DOWN. Recipients, contractors, and subcontractors who enter into covered transactions with a participant at the next lower level, must require that participant to: (a) comply with subpart C of 2 C.F.R. part 180, as supplemented by 2 C.F.R. part 1200; and (b) pass the requirement to comply with subpart C of 2 C.F.R. part 180 to each person with whom the participant enters into a covered transaction at the next lower tier.

Debarment, Suspension, Ineligibility and Voluntary Exclusion. The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official

irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- A. Debarred from participation in any federally assisted Award;
- B. Suspended from participation in any federally assisted Award;
- C. Proposed for debarment from participation in any federally assisted Award;
- D. Declared ineligible to participate in any federally assisted Award;
- E. Voluntarily excluded from participation in any federally assisted Award; or
- F. Disqualified from participation in any federally assisted Award.

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

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

10. BUY AMERICA BUILD AMERICA PROVISION

This Contract is subject to the Buy America Build America provisions of the Surface Transportation Assistance Act of 1982, as amended, and the Federal Transit Administration's implementing regulations found at 49 C.F.R. Part 661. The provisions of that Act and its implementing regulations are hereby incorporated by reference into this Contract.

Authority - 49 U.S.C. 5323(j) and 49 C.F.R. part 661 (49 C.F.R. § 661.13(b) and 49 C.F.R. § 661.6), FTA Master Agreement FY2020 at Sections 3(h) and 16(d)(1), FTA Best Procurement Practices Manual

Applicability – Construction Contracts and Acquisition of Goods or Rolling Stock valued at more than \$150,000. Work orders and small purchases of less than one hundred fifty thousand dollars (\$150,000.00) made with capital, operating, or planning funds are waived from Buy America requirements.

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 all 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. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

The Bidder must submit to the City of Ocala the appropriate Buy America certification below with its Bid. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

The City of Ocala presumes that any Contractor who submitted such certificate is complying with the Buy America provisions. A false certification is a criminal act in violation of 18 U.S.C. § 1001. A Contractor who certifies that it will comply with the applicable Buy America requirement is bound by its original certification (in the case of a sealed bidding procurement) or the certification it submitted with its final offer (in the case of a negotiated procurement) and is not permitted to change its certification after bid opening or submission of its final offer. Where a Contractor certifies that it will comply with Buy America requirements, the Contractor is not eligible for a waiver of those requirements. The City of Ocala reserves the right to request additional information, and/or to conduct both pre-award and post-award audits to ensure that the Contractor is in compliance with Buy America requirements.

In addition to the aforementioned Buy America Requirements, the Infrastructure Investment and Jobs Act ("IIJA"), Pub. L. No. 117-58 that includes the Build America, Buy America Act ("the Act") Pub. L. No. 117-58, §§ 70901-58, specifically §70914 of the Act, requires the following Buy America preference:

1. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

2. All manufacturer products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufacturer product that are mined, produced or manufactured in the United States is greater than 55 percent (55%) of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established in applicable law or regulation.
3. All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States (IIJA §70912(2) and (6)(B)(ii)).

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

Definitions

“Construction materials” include an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives – that is or consists primarily of:

- Non-ferrous metals;
- Plastic and polymer-based products (including polyvinylchloride, composite building materials and polymers used in fiber optic cables);
- Glass (including optic glass);
- Lumber; or
- Drywall.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

[Flow Down Requirements](#) - The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

11. RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION.

Authority – FTA Master Agreement FY2020 at Section 39(b)(1)-(2). Applicability – all contracts

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the Authority. The Contractor must include a similar notification requirement in its subcontracts at every tier for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

[Flow Down Requirements](#) - The Contractor must include a similar notification requirement in its subcontracts at every tier for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

12. RESTRICTIONS ON LOBBYING

(a) The Contractor shall timely comply with the requirements of the lobbying restrictions set forth in Section 319 of Public Law 101-121, as implemented by the Department of Transportation in 49 C.F.R. Part 20, and as those authorities may be hereafter amended.

(c) If a Standard Form LLL, "Disclosure Form to Report Lobbying," is required to be completed by the Contractor or Subcontractor at any tier, such disclosure form shall be furnished to CITY OF OCALA.

13. CLEAN AIR AND WATER ACT

(a) Definitions:

(i) "Air Act," as used in this clause, means the Clean Air Act (42 U.S.C. § 7401 et seq.).

(ii) "Clean air standards," as used in this clause means:

(1) any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738.

(2) an applicable implementation plan as described in Section 110(d) of the Air Act [42 U.S.C. § 7410(d)]; or

(3) an approved implementation procedure under Section 112(d) of the Air Act [42 U.S.C. § 7412(d)].

(iii) "Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by Section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pre-treatment regulations as required by Section 307 of the Water Act (33 U.S.C. § 1317).

(iv) "Compliance," as used in this clause, means compliance with:

(1) clean air or water standards; or

(2) a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

(v) "Facility," as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised, by a contractor or subcontractor, sued in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility

except when the Administrator, or a designee of the Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

(vi) "Water Act," as used in this clause, means Clean Water Act (33 U.S.C. § 1251 et seq.).

(b) The Contractor agrees:

- (i) to comply with all the requirements of Section 114 of the Clean Air Act (42 U.S.C. § 7414) and Section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this Contract.
- (ii) that no portion of the work required by the prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this Contract was awarded unless and until the EPA eliminates the name of the facility from the listing;
- (iii) to use best efforts to comply with clean air standards and clean water standards at the facility in which the Contract is being performed; and
- (iv) to insert the substance of this clause into any nonexempt Subcontract, including this paragraph (b)(4).

14. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS

This clause only applies to contracts in which materials, equipment, or commodities may be transported by ocean vessel in carrying out the terms of the contract. As required by 46 C.F.R. Part 381, the Contractor agrees:

- (a) to utilize privately owned United States flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this section, to the extent such vessels are available at fair and reasonable rates of United States flag commercial vessels; and
 - (b) to furnish within thirty (30) days following the date of loading for shipments originating with the United States, or within thirty (30) working days following the date of loading for shipments originating outside of the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a) above to CITY OF OCALA, (through the prime contractor in the case of a subcontractor's bills-of-lading) and to Inter-Agency Liaison, Division of National Cargo, Office of Market Development, Maritime Administration, 400 7th Street, S.W., Washington, D.C. 20590, marked with appropriate identification of the project; and
- (a) to insert the substance of the provisions of this clause in all Subcontracts issued pursuant to this Contract.

15. FLY AMERICA

The Contractor agrees that international air transportation of any persons involved in or property acquired for the Contract must be provided by U.S. flag air carriers to the extent service by these carriers is available, as required by the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. 40118, in accordance with U.S. GAO regulations, "Uniform Standards and Procedures for Transportation Transactions," 4 C.F.R. Part 52, and U.S. GAO Guidelines for Implementation of the "Fly America Act" B-138942, 1981 U.S. Comp. Gen. LEXIS 2166. March 31, 1981.

16. DAVIS-BACON ACT (40 USC § 3141-3148 (2002))

Applicability to Contract: Construction contracts over \$2,000.00

Flow Down: [Applies to third party contractors and subcontractors](#)

Model Clause/Language: (The language in this clause is mandated under the DOL regulations at 29 C.F.R. § 5.5.)

(a) **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 C.F.R. 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 C.F.R. 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) (1) 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:
- (a) Except with respect to helpers as defined as 29 C.F.R. § 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (b) The classification is utilized in the area by the construction industry; and
 - (c) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 - (d) With respect to helpers as defined in 29 C.F.R. § 5.2(n)(4), such a classification prevails in the area in which the work is performed.
- (2) 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 thirty (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.
- (3) 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 thirty (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.

- (4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account, assets for the meeting of obligations under the plan or program.
- (v) (1) 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 therefore only when the following criteria have been met:
- (a) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (b) The classification is utilized in the area by the construction industry; and
 - (c) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (2) 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 thirty (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.
- (3) 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 thirty (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.
- (4) 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.
- (b) **Withholding** - CITY OF OCALA 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, CITY OF OCALA 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.

- (c) **Payrolls and basic records** - 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 C.F.R. 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.
- (i) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to CITY OF OCALA 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 C.F.R. 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.
- (ii) 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 C.F.R. 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 C.F.R. 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.
- (iii) 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.
- (iv) 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.
- (1) 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 C.F.R. § 5.12.

(d) **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 ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (ii) Trainees - Except as provided in 29 C.F.R. § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

- (e) **Compliance with Copeland Act requirements** - The Contractor shall comply with the requirements of 29 C.F.R. Part 3, which are incorporated by reference in this Contract.
- (f) **Subcontracts** - The Contractor or Subcontractor shall insert in any Subcontracts the clauses contained in 29 C.F.R. §§ 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier Subcontracts. The prime Contractor shall be responsible for the compliance by any Subcontractor or lower tier Subcontractor with all the contract clauses in 29 C.F.R. § 5.5.
- (g) **Contract termination: debarment** - A breach of the contract clauses in 29 C.F.R. § 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 C.F.R. § 5.12.
- (h) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. Parts 1, 3, and 5 are herein incorporated by reference in this Contract.
- (i) **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 C.F.R. Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- (j) **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 C.F.R. § 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 C.F.R. § 5.12(a)(1).
- (i) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION

- (b) **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 laborers or mechanics in any workweek in which the individual is employed on such work to work in excess for forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
- (b) **Violation, Liability for Unpaid Wages, Liquidated Damages.** In the event of any violation of the provisions set forth in paragraph (a) above, the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under the Contract for the District of Columbia or a territory, to such District or to 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 provisions set forth in paragraph (a) above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the provisions set forth in paragraph (a) above.

- (c) Withholding for Unpaid and Liquidated Damages. CITY OF OCALA shall upon CITY OF OCALA's own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.
- (d) Payroll and Basic Records
- (ii) The Contractor or Subcontractor shall maintain payroll records during the course of Contract work and shall preserve them for a period of three (3) years from the completion of the Contract for all laborers and mechanics working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 209 C.F.R. 5.5(a)(3) implementing the Davis-Bacon Act.
- (iii) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or Subcontractor for inspection, copying, or transcription by authorized representatives of CITY OF OCALA or the Department of Labor. The Contractor or Subcontractor shall permit such representatives to interview employees during working hours on the job.
- (e) Subcontracts. The Contractor or Subcontractor shall insert in any Subcontracts the provisions set forth in paragraphs (a) through (d) above, and also a provision requiring the Subcontractors to include these clauses in any lower tier Subcontracts. The Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the provisions set forth in paragraphs (a) through (d) above.
- (f) Construction Site Safety

Authority - Section 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3704, 40 U.S.C. § 3701 et seq.; U.S. DOL regulations, "Recording and Reporting Occupational Injuries and Illnesses," 29 C.F.R. part 1904; "Occupational Safety and Health Standards," 29 C.F.R. part 1910; and "Safety and Health Regulations for Construction," 29 C.F.R. part 1926, and FTA Master Agreement FY 2020 at Section 24(a)(4)

Applicability - all construction contracts

The Contractor agrees that it will comply with all federal laws, regulations, and requirements providing protections for construction employees involved in the Project or related activities, including the: (i) Section 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3704, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq.; and (ii) U.S. DOL regulations, "Recording and Reporting Occupational Injuries and Illnesses," 29 C.F.R. part 1904; "Occupational Safety and Health Standards," 29 C.F.R. part 1910; and "Safety and Health Regulations for Construction," 29 C.F.R. part 1926.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

18. COPELAND ANTI-KICKBACK ACT

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

19. **SEISMIC SAFETY REGULATIONS**

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 C.F.R. 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.

20. **Special Department of Labor (DOL) EEO clause for Construction Projects.**

Authority - Executive Order 11246, 41 CFR § 60-1.4(b), FTA Master Agreement FY2020 at Section 12(d), FTA C 4220.1F at Appendix D

Applicability – Federal or federally assisted construction contracts and subcontracts in excess of \$10,000.

Additional Equal Opportunity Clauses for Construction Contracts.

The equal opportunity clause published at 41 CFR 60-1.4(a) and published at 41 CFR 601.4(b) in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." are incorporated herein by reference. In addition to those clauses, the following applies to all construction contracts in excess of \$10,000.

(full language follows):

Equal Opportunity Clause

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender

identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246

of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

[Flow Down Requirements - The Special Department of Labor \(DOL\) EEO clause for Construction Projects requirements flow down to all third party contractors at every tier who perform a safety-sensitive function for the recipient or subrecipient.](#)

21. AUDIT AND INSPECTION OF RECORDS

- (a) This clause is applicable if this Contract was entered into by means of negotiation and shall become operative with respect to any modification to this Contract whether this Contract was initially entered into by means of negotiation or by means of formal advertising.
- (b) The Contractor shall maintain records, and CITY OF OCALA, 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 (3) years after final payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such Contractor, involving transactions related to the Contract, for the purpose of making audit, examination, excerpts and transcriptions.
- (c) The Contractor further agrees to include in all Subcontracts hereunder a provision to the effect that the Subcontractor agrees that CITY OF OCALA, 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 (3) years after final payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers and records of such Subcontractor, involving transactions related to the Subcontract, for the purpose of making audit, examination, excerpts and transactions.

22. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

FLOW DOWN. The DBE contracting requirements flow down to all third-party contractors and their contracts at every tier. It is the recipient's and prime contractor's responsibility to ensure the DBE requirements are applied across the board to all subrecipients/contractors/subcontractors. Should a subcontractor fail to comply with the DBE regulations, FTA would look to the recipient to make sure it intervenes to monitor compliance. The onus for compliance is on the recipient.

For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1). As an additional resource, recipients can draw on the following language for inclusion in their federally funded procurements.

Overview. It is the policy of the AGENCY and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of the AGENCY to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE's;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

This Contract is subject to 49 C.F.R. part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. The AGENCY shall make all determinations with regard to whether or not a Bidder/Offeror is in compliance with the requirements stated herein. In assessing compliance, the AGENCY may consider during its review of the Bidder/Offeror's submission package, the Bidder/Offeror's documented history of non-compliance with DBE requirements on previous contracts with the AGENCY.

Contract Assurance. The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the AGENCY deems appropriate.

DBE Participation. For the purpose of this Contract, the AGENCY will accept only DBE's who are:

1. Certified, at the time of bid opening or proposal evaluation, by the [certifying agency or the Unified Certification Program (UCP)]; or
2. An out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an agency whose DBE certification process has received FTA approval; or

3. Certified by another agency approved by the AGENCY.

DBE Participation Goal. The DBE participation goal for this Contract is set at 2.55%. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling not less than 2.55% of the total Contract price. Failure to meet the stated goal at the time of proposal submission may render the Bidder/Offeror non-responsive.

Proposed Submission. Each Bidder/Offeror, as part of its submission, shall supply the following information:

1. A completed DBE Utilization Form (see below) that indicates the percentage and dollar value of the total bid/contract amount to be supplied by Disadvantaged Business Enterprises under this Contract.
2. A list of those qualified DBE's with whom the Bidder/Offeror intends to contract for the performance of portions of the work under the Contract, the agreed price to be paid to each DBE for work, the Contract items or parts to be performed by each DBE, a proposed timetable for the performance or delivery of the Contract item, and other information as required by the DBE Participation Schedule (see below). No work shall be included in the Schedule that the Bidder/Offeror has reason to believe the listed DBE will sub-contract, at any tier, to other than another DBE. If awarded the Contract, the Bidder/Offeror may not deviate from the DBE Participation Schedule submitted in response to the bid. Any subsequent changes and/or substitutions of DBE firms will require review and written approval by the AGENCY.
3. An original DBE Letter of Intent (see below) from each DBE listed in the DBE Participation Schedule.
4. An original DBE Affidavit (see below) from each DBE stating that there has not been any change in its status since the date of its last certification.

Good Faith Efforts. If the Bidder/Offeror is unable to meet the goal set forth above (DBE Participation Goal), the AGENCY will consider the Bidder/Offeror's documented good faith efforts to meet the goal in determining responsiveness. The types of actions that the AGENCY will consider as part of the Bidder/Offeror's good faith efforts include, but are not limited to, the following:

1. Documented communication with the AGENCY's DBE Coordinator (questions of IFB or RFP requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion);
2. Pre-bid meeting attendance. At the pre-bid meeting, the AGENCY generally informs potential Bidder/Offeror's of DBE subcontracting opportunities;
3. The Bidder/Offeror's own solicitations to obtain DBE involvement in general circulation media, trade association publication, minority-focus media and other reasonable and available means within sufficient time to allow DBEs to respond to the solicitation;
4. Written notification to DBE's encouraging participation in the proposed Contract; and
5. Efforts made to identify specific portions of the work that might be performed by DBE's.

The Bidder/Offeror shall provide the following details, at a minimum, of the specific efforts it made to negotiate in good faith with DBE's for elements of the Contract:

1. The names, addresses, and telephone numbers of DBE's that were contacted;
2. A description of the information provided to targeted DBE's regarding the specifications and bid proposals for portions of the work;
3. Efforts made to assist DBE's contacted in obtaining bonding or insurance required by the Bidder or the Authority.

Further, the documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted when a non-DBE subcontractor was selected over a DBE for work on the contract. 49 C.F.R. § 26.53(b) (2) (VI). In determining whether a Bidder has made good faith efforts, the Authority may take into account the performance of other Bidders in meeting the Contract goals. For example, if the apparent successful Bidder failed to meet the goal, but meets or exceeds the average DBE participation obtained by other Bidders, the Authority may view this as evidence of the Bidder having made good faith efforts.

Administrative Reconsideration. Within five (5) business days of being informed by the AGENCY that it is not responsive or responsible because it has not documented sufficient good faith efforts, the Bidder/Offeror may request administrative reconsideration. The Bidder should make this request in writing to the AGENCY's Buyer, David Williams (dwilliams@ocalaf.gov). The Buyer will forward the Bidder/Offeror's request to a reconsideration official who will not have played any role in the original determination that the Bidder/Offeror did not document sufficient good faith efforts.

As part of this reconsideration, the Bidder/Offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Offeror will have the opportunity to meet in person with the assigned reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The AGENCY will send the Bidder/Offeror a written decision on its reconsideration, explaining the basis for finding that the Bidder/Offeror did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Termination of DBE Subcontractor. The Contractor shall not terminate the DBE subcontractor(s) listed in the DBE Participation Schedule (see below) without the AGENCY's prior written consent. The AGENCY may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the reason for the request. The Contractor shall give the DBE five days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE and immediately notify the AGENCY in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement. Failure to comply with these requirements will be in accordance with Section 8 below (Sanctions for Violations).

Continued Compliance. The AGENCY shall monitor the Contractor's DBE compliance during the life of the Contract. In the event this procurement exceeds ninety (90) days, it will be the responsibility of the Contractor to submit quarterly written reports to the AGENCY that summarize the total DBE value for this Contract. These reports shall provide the following details:

- DBE utilization established for the Contract;
- Total value of expenditures with DBE firms for the quarter;
- The value of expenditures with each DBE firm for the quarter by race and gender;
- Total value of expenditures with DBE firms from inception of the Contract; and
- The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

Reports and other correspondence must be submitted to the DBE Coordinator with copies provided to the FDOT and AGENCY (City of Ocala). Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful Bidder/Offeror shall permit:

- The AGENCY to have access to necessary records to examine information as the AGENCY deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder/Offeror and other DBE parties entered into during the life of the Contract.
- The authorized representative(s) of the AGENCY, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.
- All data/record(s) pertaining to DBE shall be maintained as stated in the ACCESS TO RECORDS AND REPORTS SECTION.

Sanctions for Violations. If at any time the AGENCY has reason to believe that the Contractor is in violation of its obligations under this Agreement or has otherwise failed to comply with terms of this Section, the AGENCY may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

- Suspension of any payment or part due the Contractor until such time as the issues concerning the Contractor's compliance are resolved; and
- Termination or cancellation of the Contract, in whole or in part, unless the successful Contractor is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein.

DBE UTILIZATION FORM

The undersigned Bidder/Offeror has satisfied the requirements of the solicitation in the following manner (please check the appropriate space):

_____ The Bidder/Offer is committed to a minimum of 2.55% DBE utilization on this contract.

_____ The Bidder/Offeror is unable to meet the DBE goal of 2.55% and is committed to a minimum of _____% DBE utilization on this contract and submits documentation demonstrating good faith efforts.
 _____ Bidder/Offeror cannot commit to any DBEs since work will not be subcontracted.

DBE PARTICIPATION SCHEDULE

The Bidder/Offeror shall complete the following information for all DBE's participating in the contract that comprises the DBE Utilization percent stated in the DBE Utilization Form. The Bidder/Offeror shall also furnish the name and telephone number of the appropriate contact person should the Authority have any questions in relation to the information furnished herein.

DBE IDENTIFICATION AND INFORMATION FORM

Firm Name	Address	Contact Name	Telephone Number	Description of Work to be Performed	Race & Gender of Firm	Participation % (of Total Contract Value)

23. RECYCLED PRODUCTS; 42 U.S.C. § 6962, 40 C.F.R. Part 247, Executive Order 12873

(a) Applicability to Contracts

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

(b) Flow Down: These requirements flow down to all contractor and subcontractor tiers.

(d) 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 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

24. ACCESS REQUIREMENTS TO INDIVIDUALS WITH DISABILITIES (ADA)

The Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 et seq. and 49 U.S.C. § 322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. app. 1612; and the following regulations and any amendments thereto:

- (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

- (c) U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 39;
- (d) Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 36;
- (e) DOJ Regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (f) General Services Administration regulations, "Construction and Alteration of Public Buildings," "Accommodations for the Physically Handicapped," 41 C.F.R. Parts 101-10;
- (g) Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (h) Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- (i) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609.

25. VETERANS PREFERENCE

CITY OF OCALA is a recipient of Federal financial assistance on this Contract. The Contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in Section 2108 of Title 5 C.F.R.) who have the requisite skills and abilities to perform the construction work required under the Contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

26. MOTOR CARRIER SAFETY

Authority - FTA Master Agreement, FY2020 Section 33 Applicability - all contracts

Contractor agrees that it will comply with the applicable economic and insurance registration requirements of the:

- (1) U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, "Minimum Levels of Financial Responsibility for Motor Carriers," 49 C.F.R. part 387, if it is engaged in operations requiring compliance with 49 C.F.R. part 387, it is engaged in interstate commerce, and it is not within a defined commercial zone;
- (2) The provisions of 49 U.S.C. § 31138(e)(4), which supersede inconsistent provisions of 49 C.F.R. part 387, and reduce the amount of insurance the Recipient must obtain to the highest amount required by any state in which the public transportation provider operates, if it operates within a public transportation service area located in more than one state, and receives federal assistance under 49 U.S.C. §§ 5307, 5310, and 5311;
- (3) The safety requirements of U.S. FMCSA regulations, "Federal Motor Carrier Safety Regulations," 49 C.F.R. parts 390 – 397, to the extent applicable; and
- (4) The driver's license requirements of U.S. FMCSA regulations, "Commercial Driver's License Standards, Requirements, and Penalties," 49 C.F.R. part 383, and "State Compliance with Commercial Driver's License," 49 C.F.R. part 384, to the extent applicable, with the substance abuse requirements and guidance of U.S. FMCSA's regulations, "Controlled Substances and Alcohol Use and Testing," 49 C.F.R. part 382, and implementing federal guidance, to the extent applicable.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

27. PRIVACY ACT

- (a) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restriction 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 Contract.
- (b) The Contractor agrees to include the above clause in each Subcontract associated with this Contract. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

28. SAFE OPERATION OF MOTOR VEHICLES

CITY OF OCALA encourages the Contractor, to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies that bar text messaging while driving company-owned or –rented vehicles, or government-owned, leased, or rented vehicles or privately-owned vehicles when on official Authority business or when performing any work for or on behalf of CITY OF OCALA. See Executive Order 13513 “Federal Leadership on Reducing Text Messaging While Driving”, Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm>) and DOT Order 3902.10 “Text Messaging While Driving”, Dec. 30, 2009, as implemented by Financial Assistance Policy Letter (No. FAP-2010-01, February 2, 2010, available at https://www.transportation.gov/sites/dot.dev/files/docs/FAPL_2010-01.pdf). This includes, but is not limited to:

- (a) Considering new rules and programs or re-evaluating existing programs to prohibit text messaging while driving;
- (b) Conducting education, awareness, and other outreach for employees about the safety risks associated with texting while driving; and
- (c) Encouraging voluntary compliance with the agency’s text messaging policy while off duty.

The Contractor is encouraged to insert the substance of this clause in all tier subcontract awards.

29. DISTRACTED DRIVING, INCLUDING TEXT MESSAGING WHILE DRIVING

- (a) The Contractor agrees to comply with:
 - (i) Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225);
 - (ii) U.S. DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009; and:
 - (1) Adopt and enforce policies that ban text messaging while driving in Contractor-owned or rented vehicles or, if applicable, Authority-owned vehicles; or while driving privately-owned vehicles when performing any Work for or on behalf of CITY OF OCALA.
 - (2) Conduct initiatives in a manner commensurate with the size of the business, such as,
 - (a) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - (b) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
 - (iii) The following U.S. DOT Special Provision pertaining to Distracted Driving:

- (1) *Safety*. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Contract, or when performing any work for or on behalf of the Contract;
- (2) *Contractor Size*. The Contractor agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving; and
- (3) *Extension of Provision*. The Contractor agrees to include these Special Provisions of this Contract in its sub-contract agreements and encourage its sub-contractors to comply with this Special Provision.

For purposes of this paragraph, the phrase “text messaging” means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise; it does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

30. SEAT BELT

Seat Belt Use. The Contractor agrees to implement Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:

- (a) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles; and
- (b) Including a “Seat Belt Use” provision in each of its sub-contractor agreements related to the Contract.

31. Protection of Sensitive and Personally Identifiable Information

Authority - FTA Master Agreement, FY2020 Section 36(c), US DOT Common Rules Applicability - all contracts.

Contractor must implement reasonable measures to safeguard protected personally identifiable information as well as any information that the FTA or pass-through entity designates as sensitive.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

32. Trafficking in Persons

Authority - Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g); FTA Master Agreement FY 2020 at Section 4(f)

Applicability - all contracts

Contractor agrees that it and its employees that participate in the Contract, may not: Engage in severe forms of trafficking in persons during the period of time that the Contract is in effect, Procure a commercial sex act during the period of time that the Contract is in effect, or Use forced labor in the performance of the Contract or subagreements thereunder. Violation of this provision provides City of Ocala the right to unilaterally terminate the Contract.

[Flow Down Requirements](#) – This requirement flows down to all subcontracts at every tier.

33. Federal Tax Liability and Recent Felony Convictions

Authority - 2019 Pub. L 116-6; FTA Master Agreement FY 2020 at Section 4(g), DOT Order 4200.6.

Applicability - all contracts.

By submitting a bid or otherwise attempting to enter into a contract with the City of Ocala, the undersigned Contractor certifies that it:

- (A) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- (B) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

[Flow Down Requirements](#) – This requirement flows down to all subcontracts at every tier.

34. Construction Site Safety

Authority - Section 107 of the Contract Work Hours and Safety Standards Act, as amended, 40

U.S.C. § 3704, 40 U.S.C. § 3701 et seq.; U.S. DOL regulations, "Recording and Reporting Occupational Injuries and Illnesses," 29 C.F.R. part 1904; "Occupational Safety and Health Standards," 29 C.F.R. part 1910; and "Safety and Health Regulations for Construction," 29 C.F.R. part 1926, and FTA Master Agreement FY 2020 at Section 24(a)(4)

Applicability - all construction contracts

The Contractor agrees that it will comply with all federal laws, regulations, and requirements providing protections for construction employees involved in the Project or related activities, including the: (i) Section 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3704, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq.; and (ii) U.S. DOL regulations, "Recording and Reporting Occupational Injuries and Illnesses," 29 C.F.R. part 1904; "Occupational Safety and Health Standards," 29 C.F.R. part 1910; and "Safety and Health Regulations for Construction," 29 C.F.R. part 1926.

[Flow Down Requirements](#) – This requirement flows down to all subcontracts at every tier.

35. Domestic Preferences for Procurements

Authority - 2 CFR part 200 Appendix II (L); 2 C.F.R. § 200.322 Applicability - all contracts

As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this Contract.

[Flow Down Requirements](#) – This requirement flows down to all subcontracts at every tier.

36. PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

- (a) Pursuant to Public Law 115-232, Section 889, and 2 Code of Federal Regulations (CFR) Part 200, including §200.216 and §200.471, CITY OF OCALA is prohibited from using federal funds to:
- (i) Procure or obtain,
 - (ii) Extend or renew a contract to procure or obtain; or
 - (iii) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use “Covered Telecommunications Equipment or Services” as a substantial or essential component of any system, or as critical technology as part of any system.
- (b) As described in Public Law 115-232, section 889, “Covered Telecommunications Equipment or Services” is:
- (i) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities)
 - (ii) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (iii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iv) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- (c) Contractor shall not use or provide to CITY OF OCALA Covered Telecommunications Equipment or Services in the performance of this Contract.
- (d) Contractor shall insert the substance of this Paragraph in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.
- (d) Contractor shall notify CITY OF OCALA immediately if Contractor cannot comply with the prohibition during the performance of this Contract.

FTA Clauses Required when DBE Threshold Has Been Met

[Applicability – all contracts where there is DBE Participation](#)

a. Contract Assurance. 49 CFR Part 26.13

The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 C.F.R. part 26.13 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Authority deems appropriate.

[Flow Down Requirements - This requirement flows down to all subcontracts at every tier.](#)

b. Monitoring the Performance of other Program Participants. 49 CFR Part 26.37

The City of Ocala will monitor each DOT funded contract with DBE participation to ensure that all work committed to DBEs at contract award or subsequently (as a result of contract modification) is actually performed by the

DBEs to which the work was committed. Site visit will be conducted periodically by staff. Contractor's Request for Payment forms will be monitored to ensure that DBEs are being paid in accordance to their signed agreements.

All Prime Contractors will be required to self-report all payments received from the City of Ocala into the B2GNow (Contract Compliance Tracking System). This system tracks payments made to the prime contractor and all payments made by the prime to any subcontractors, to include DBEs, and the timeliness of those payments in accordance to City of Ocala's Prompt Payment Clause.

[Flow Down Requirements - This requirement flows down to all subcontracts at every tier.](#)

c. Prompt Payment. 49 CFR part 26.29(a)

Contractors are required to pay all subcontractors for satisfactory performance of their contracts within seven (7) business days from receipt of each payment from the City of Ocala. Failure to comply may result in future withholdings of prime contractor's reimbursements and/or other sanctions until the prime contractor ensure all subcontractors are being promptly paid for all work performed.

[Flow Down Requirements - This requirement flows down to all subcontracts at every tier.](#)

d. Return of Retainage. 49 CFR Part 26.29(b), FY2019 FTA Procurement System Review Guide at P11.

Contractor is required to ensure prompt and full payment of retainage to all subcontractors within thirty (30 days) after the subcontractor's work is satisfactorily completed. Contractor is prohibited from holding retainage from subcontractors until the project is completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the City of Ocala. When City of Ocala has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

[Flow Down Requirements - This requirement flows down to all subcontracts at every tier.](#)

e. Termination for Convenience (DBE). 49 CFR Part 26.53

No prime contractor will terminate for convenience a DBE subcontractor that was listed and agreed to perform a project task (or an approved substitute DBE firm) and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without prior written consent from City of Ocala's Diversity & Equity Program Office.

The prime contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the prime contractor obtains written consent from City of Ocala's Diversity & Equity Program Office; and unless the consent is provided the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

Appropriate administrative remedies will be invoked to any Prime Contractor that terminates and/or removes a DBE firm/s for convenience. Those remedies may include requirement to pay terminated DBE firm/s; withholding of future payments and/or retainage; and/or disbarment from future consideration of project awards with the City of Ocala.

[Flow Down Requirements - This requirement flows down to all subcontracts at every tier.](#)

Other Federal Requirements

The following requirements are not federal clauses, but apply to all contracts except micro-purchases (\$3,500 or less)

Full and Open Competition.

In accordance with 49 U.S.C. § 5325(a) all procurement transactions shall be conducted in a manner that provides full and open competition.

Prohibition Against Exclusionary or Discriminatory Specifications.

Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

Access Requirements for Persons with Disabilities.

Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

Notification of Federal Participation.

To the extent required by law, in the announcement of any third-party contract award for goods and services (including construction services) having an aggregate value of

\$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

Interest of Members or Delegates to Congress.

No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

NAME (Print)

Signature

Company Name

Date