

**Request for Quotes (RFQ)**

**RFQ-MNT24-31**

**Hydraulic Hoist Inspection and Repairs**



**OmniTrans**

Connecting Our Community.

PROJECT SCHEDULE	
November 9, 2023	Request for Quotes (RFQ) Issued
November 17, 2023, 3:00 p.m.	Deadline for Requests for Information, Clarifications, Recommendations and Technical Specifications
December 11, 2023, 3:00 p.m.	Bid Deadline
January 2024	Tentative Award Date
January 2024	Anticipated Start Date

**U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL TRANSIT ADMINISTRATION FUNDED PROJECT**

November 9, 2023

**NOTICE OF REQUEST FOR QUOTE (RFQ)**

RFQ-MNT24-31

To: All Interested Bidders

From: Omnitrans

Omnitrans invites qualified firms to submit bids for the provision of Hydraulic Hoist Inspections and Repairs. Omnitrans intends to award the Contract for a three (3) year base period with two (2) single option years.

To participate in the solicitation process, your firm must register as a vendor on Omnitrans' website at [www.omnitrans.org](http://www.omnitrans.org). Go to "About", and then to "Do Business with Omnitrans". Links are available to visit the online bidding system at [pbsystem.planetbids.com](http://pbsystem.planetbids.com). You must be identified as a prospective bidder for this solicitation to receive notifications of activities pertaining to the solicitation, such as addenda, awards and cancellations.

**Bids must be received as stated in this solicitation prior to 3:00p.m, December 11, 2023.** Omnitrans' online bidding system will not allow submittals after the date and time specified.

**All addenda must be acknowledged through Omnitrans' online bidding system. Failure to acknowledge addenda is grounds for disqualification.**

Any award as a result of this solicitation will be awarded to the lowest responsive and responsible bidder in accordance with the requirements of this solicitation.

All questions or clarifications must be submitted through Omnitrans' online bidding system, November 17, 2023 Q&A Closes prior to 3:00 p.m. Omnitrans will respond to all questions through the online bidding system by issuing a written addendum.

A California State Contractor's License is required of the prime bidder. Bidders must possess the proper license at the time of Contract award.

This project is funded under a financial assistance contract by the U.S. Department of Transportation and is subject to all conditions of the Davis-Bacon Act (40 U.S.C. 276a) and the Labor Code of the State of California commencing in Section 1770 et. seq. It is subject to monitoring and enforcement by the Department of Industrial Relations (DIR). Contractor is obligated to submit certified payroll records directly to the DIR's electronic certified payroll (eCPR) system.

No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5.

In compliance with Senate Bill 854 and the California Labor Code, all Bidders shall include with their Bid proof of registration from the Department of Industrial Relations (DIR) that includes the contractor's Legal Name, Registration Number, License Type/Number, Registration Date and Expiration Date, for every contractor and subcontractor, regardless of tier.

Department of Industrial Relations- Contractor Registration information and web link:  
<http://www.dir.ca.gov/Public-Works/PublicWorks.html>

As this Omnitrans project is funded in whole or in part with U.S. Department of Transportation (U.S. DOT), Federal Transit Administration (FTA) funds, it is subject to the Omnitrans Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs". The DBE Program requirements and forms are referenced in the attached Disadvantaged Business Enterprise (DBE) Requirements.

The successful bidder will be required to comply with all applicable Equal Employment Opportunity Laws and Regulations.

Omnitrans reserves the right to withdraw or cancel this solicitation at any time without prior notice and Omnitrans makes no representation that any award will be made to a bidder responding to this solicitation.

Guadalupe Rodriguez  
Contracts Review Analyst

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## **INSTRUCTIONS TO BIDDERS**

### **A. PURPOSE**

The purpose of this solicitation is to obtain competitive bids from qualified firms to provide Hydraulic Hoist Inspection and Repair.

### **B. BACKGROUND**

1. Omnitrans was established as a Joint Powers Authority in 1976, the transportation system was created to serve as a unifying umbrella agency to coordinate transit service authorities in the San Bernardino Valley.
2. Omnitrans operates in an area of approximately 450 square miles area including the cities of Chino, Chino Hills, Colton, Fontana, Grand Terrace, Highland, Loma Linda, Montclair, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Upland and Yucaipa, along with some unincorporated areas of San Bernardino County. Omnitrans travels beyond its service area to the cities of Pomona and Riverside, to connect to neighboring transit services. Approximately 1.4 million people reside in this service area.
3. Omnitrans provides a family of services including both fixed route and demand response transportation which provide over 11 million passenger trips per year.
  - a. Fixed Route: As of early 2019, Omnitrans provides transit service on 35 routes, including one BRT line, three freeway express routes, 26 local bus routes and five community circulator routes. Combined, these services provide over 35,000 passenger trips on a typical weekday.
  - b. Demand Response: Access is a lift-equipped, curb-to-curb, shared-ride service mandated by the Americans with Disabilities Act (ADA). It is available for pre-qualified persons with disabilities throughout the Omnitrans service area. Access provides approximately 500 passengers trips on a typical weekday.

### **C. PERIOD OF PERFORMANCE**

Omnitrans intends to award a Firm Fixed Fee contract for a period of three (3) years with two (2) option years. Omnitrans may award the contract at a time other than stated in the proposed schedule.

### **D. NON-MANDATORY PRE-BID MEETING – N/A**

1. All prospective Bidders are strongly encouraged to attend.

2. By investigation of the work site, bidder shall be satisfied as to the nature and location of the work and shall be fully informed as to all conditions and matters, which can in any way affect the work or the cost thereof.

#### **E. EXAMINATION OF DOCUMENTS**

1. By submitting a bid, the Bidder represents that it has thoroughly examined and become familiar with the work required and documents included under this RFQ/IFB.
2. By submitting a bid, Bidder represents that it has thoroughly examined and become familiar with the work required under this RFQ/IFB, and that it is capable of performing the work at the level of quality sufficient to achieve Omnitrans' objectives.
3. By submitting a Bid, Bidder also attests as to the truthfulness and accuracy of the contents of its Bid. Should any content be found to be untruthful, the Bidder may be disqualified from further participation in this competitive procurement.

#### **F. REQUEST FOR CLARIFICATION/APPROVED EQUALS/EXCEPTIONS**

1. All requests for Approved Equal, clarification, changes, exceptions or deviations to the Scope of Work or terms and conditions set forth in this solicitation must be submitted as described below using Omnitrans' online bidding system via the Q&A module prior to 3:00 p.m. November 17, 2023. Any requested exceptions must be submitted through the Q&A process. Bidders may be found non-responsive if additional exceptions are submitted with the bid.
  - a. The Q&A module is available through Omnitrans online bidding system is to be used for all request for approved equal, clarification, changes, exceptions, or deviations whether to the Scope of Work or Purchase Order terms and conditions.
  - b. Attachments, including drawings or schematics, may be submitted as Adobe Acrobat® files and attached to questions submitted through the Q&A tab.
  - c. Bidders must state any exceptions to or deviations from the requirements of this solicitation, segregating "technical" (scope of work) exceptions from "contractual" (terms and conditions) exceptions. **If no exceptions are requested or identified during the Q&A phase, Bidder(s) will be deemed to have accepted all requirements, including contractual terms and conditions, as set forth in the solicitation. Exceptions will not be considered after this phase of the solicitation.**
  - d. As applicable, requests must be fully supported with all the technical data, test results, or other pertinent information required as evidence that the substitute offered as approved equal is equal to or better than that required by the specifications, to support other changes requested, or to explain clarifications requested. The burden of proof as to the equality, substitutability, and the

compatibility of proposed alternates or equals shall be upon the Bidder, who shall furnish all necessary information at no cost to Omnitrans. Omnitrans' shall be the sole judge as to the equality, substitutability and compatibility of the proposed alternatives or equals.

- e. Questions submitted with inadequate data, information etc., will be denied.
- f. Omnitrans will respond to all requests by issuing an electronic answer via the online Q&A application and/or electronic addendum, which will be sent out to all firms who have registered to received the solicitation.
- g. Omnitrans will not accept any request for approved equal after the time and dates specified. Unless specifically requested or allowed by the solicitation, Omnitrans will not consider alternate bids.
- h. When any material, product, thing, or service is specified or indicated in the Contract Documents by brand, trade, patent, or proprietary name or by the name of the manufacturer, the item so specified or indicated shall be deemed to be followed by the words "or equivalent".

## 2. Preference for Materials

- a. In accordance with the California Public Contract Code Section 3400, reference to any equipment, material, article or patented process, by trade name, make, or catalog number, shall not be construed as limiting competition or waiving Buy America requirements.
- b. Where the specifications or drawings identify any material, product or service by one or more brand names, whether or not "or equal" is added, a Bidder is responsible to verify compliance with Buy America. If a Bidder wishes to propose the use of another item as being equal, approval shall be requested as set forth in below.

## 3. Omnitrans' Responses

Responses from Omnitrans will be posted on Omnitrans' online bidding system website, no later than five calendar days before the scheduled date of bid opening.

## G. ADDENDA

Omnitrans reserves the right to revise the solicitation documents. Revisions will be made by written addendum to this solicitation. Any written addenda issued pertaining to this solicitation shall be incorporated into the terms and conditions of any resulting Contract. Omnitrans shall not be bound to any modifications to or deviations from the requirements set forth in this solicitation as the result of oral instructions. **All addenda must be acknowledged through Omnitrans' online bidding system. Failure to acknowledge addenda is grounds for disqualification.**



## H. OMNITRANS CONTACT

All correspondence and submissions in connection with this solicitation should be directed through Omnitrans' online bidding system. Any contact with Omnitrans during the solicitation period outside the online bidding system is grounds for disqualification.

## I. SUBMISSION OF BIDS

1. Please note that **addenda** must be acknowledged through Omnitrans' online bidding system for your bid to be valid.
2. Bids received after the time and date due will be rejected without consideration or evaluation. Under no circumstances will any bid be accepted after the due date and time.
3. **ELECTRONIC ONLY** - Bidder will submit documents exclusively through Omnitrans' online bidding system. All required forms must be included with bid as PDF attachment and include signature.

## J. PRICING

1. Bid Submission Must Include ALL Costs
  - a. Prices submitted shall include all direct and indirect costs necessary to fully complete provision of the goods and or services required by the Request for Quotes.
  - b. These costs include, but are not limited to, labor, equipment, materials, applicable taxes, fees, delivery charges, and discounts, as required.
  - c. These costs include, but are not limited to: all conditions of the *Terms and Conditions*, the *Specifications* described therein; and all portions of the Bid that are accepted and included in the contract award.
  - d. No additional costs will be considered. Any additional costs will be disallowed and the BIDDER hereby agrees, upon Bid submittal, to bear any costs incurred which are not represented in the Bid pricing.
  - e. Bid prices are the only amounts considered for payment by Omnitrans irrespective of oversights, industry standard practices, lack of foresight, or governmental regulations or laws.
2. Price Discrepancies

In case of discrepancy between unit prices and totals, the unit prices shall prevail.

**K. PRE-CONTRACTUAL EXPENSES**

1. Omnitrans will not be liable for any pre-contractual expenses incurred by any bidder in preparation of its bid. Bidders shall not include any such expenses as part of their bid.
2. Pre-contractual expenses are defined as expenses incurred by the bidder in:
  - a. Preparing a bid in response to this solicitation;
  - b. Submitting that bid to Omnitrans;
  - c. Any other expenses incurred by bidder prior to date of award, if any, of the Contract.

**L. JOINT BIDS**

Where two or more firms desire to submit a single bid in response to this solicitation, they should do so on a prime-subcontractor basis rather than as a joint venture. Omnitrans intends to contract with a single firm and not with multiple firms doing business as a joint venture.

**M. TAXES**

Bids are subject to State and Local sales taxes. However, Omnitrans is exempt from the payment of Federal Excise and Transportation Taxes. Bidder is responsible for payment of all taxes for any goods, services, processes, and operations incidental to or involved in the Contract.

**N. WITHDRAWAL OF BIDS**

Bidders may withdraw its Bid at any time prior to the time set for the Bid deadline.

**O. SUBCONTRACTORS AND ASSIGNMENTS**

1. Pursuant to the provisions of the California Public Contract Code Section 4104 every bidder shall in the Bid set forth:
  - a. The name and location of the place of business (address) and California State License Bureau (CSLB) contractor license number of each subcontractor who will perform work or labor or render service to the bidder in or about the work in an amount in excess of one-half of one percent of the bidder's total Bid; and
  - b. The portion of the work that will be done by each subcontractor. The bidder shall list only one subcontractor for each portion of work as defined by the bidder in its Bid.
  - c. The dollar amount of the work which will be done by each such subcontractor.

2. Bidder shall complete form entitled "List of Subcontractors" with the above requested information.
3. If the bidder fails to specify a subcontractor for any portion of the work to be performed under the contract in excess of one-half of one percent of the bidder's total Bid, or if the bidder specifies more than one (1) subcontractor for the same portion of the work to be performed under the contract in excess of one-half of one percent of the bidder's total Bid, the bidder agrees to self-perform that portion.
4. The successful Proposer will be required to report subcontractor awards and payments via a web-based system on a monthly basis unless Omnitrans approves in writing the use of a Subcontractors Paid Monthly Report and Payment Verification form.
5. The successful bidder shall not, without the express written consent of Omnitrans, either:
  - a. Substitute any person, firm, or corporation as subcontractor in place of the subcontractor designed in the original Bid; or
  - b. Permit any subcontract to be assigned or transferred; or
  - c. Allow it to be performed by anyone other than the original subcontractor listed in the solicitation.
6. Each bidder shall set forth in its bid the name and location of the place of business (address) of each subcontractor certified as a disadvantaged business enterprise who will perform work or labor or render service to the prime contractor in connection with the performance of the contract.
7. Bidder shall not assign any interest it may have in any Contract with Omnitrans, nor shall bidder assign any portion of the work under any such Contract with a value in excess of one-half of one percent of Contract price to be sub-contracted to anyone other than these subcontractors listed in the "List of Subcontractors," except by prior written consent of Omnitrans. Omnitrans' consent to any assignment shall not be deemed to relieve bidder of its obligations to fully comply with its obligations under its Contract with Omnitrans. **Bidder with its own forces shall perform a minimum of 50% (calculated as a percentage of the total cost of the project) of the work under this Contract, unless the work includes specialty items which will be subtracted from the prime's minimum performance percentage.** Bidder shall also include in its subcontract agreements the provisions of its Contract with Omnitrans including the stipulation that each subcontractor shall maintain adequate insurance coverage compatible to the insurance coverage required of the bidder.

**P. DISADVANTAGED BUSINESS ENTERPRISE**

This project is subject to Title 49, Code of Federal Regulations (CFR), Part 26, entitled “Participation by Disadvantaged Business Enterprises (DBE) in Department of Transportation Financial Assistance Programs (“Regulations”). The Regulations in their entirety are incorporated herein by this reference. Omnitrans has established a Race Neutral Federal Transportation Administration (FTA) DBE program, which is also incorporated by reference. It is the policy of Omnitrans to ensure non-discrimination in the award and administration of all contracts and to create a level playing field on which DBEs can compete fairly for contracts and subcontracts. Omnitrans highly encourages the participation of DBE contractors and the utilization of DBE subcontractors in this project. There is no contract DBE goal on this project, however, Omnitrans has an overall agency DBE goal of 2.9% and any DBEs on this project will be used to satisfy the overall agency DBE goal. Contractor must comply with DBE regulations (49 CFR Part 26) in the execution of this contract. Key DBE provisions have been included in The DBE Program Requirements which is a part of this solicitation, and include assurance of nondiscrimination, prompt payment, and reporting requirements.

**Q. BID BOND AND SECURITY FORMS – N/A**

1. Bids shall be accompanied by a certified or cashier’s check, or an acceptable bid bond for an amount not less than ten percent (10%) of the bid, made payable to Omnitrans. A corporate surety (not an individual surety), registered in the state of California and registered to do business in the County of San Bernardino must issue bid bonds. Said check or bond shall be given as a guarantee that the Bidder will enter into a contract if awarded the work and in case of refusal or failure to enter into said contract, the check or bond, as the case may be, shall be forfeited to Omnitrans.
2. The successful Bidder will be required to furnish, within fifteen (15) calendar days of Contract Award, a Performance Bond in the amount of one hundred percent (100%) and a Payment (Material and Labor) Bond, in the amount of one hundred percent (100%) of the Contract amount, on the forms provided and in the manner described in this solicitation.

**R. PREVAILING WAGES**

1. This project is funded under a financial assistance contract by the U.S. Department of Transportation and is subject to all conditions of the Davis-Bacon Act (40 U.S.C. 276a) and the Labor Code of the State of California commencing in Section 1770 et. seq. It is required that all mechanics and laborers employed or working at the site be paid not less than the current basic hourly rates of pay and fringe benefits. No claim for additional compensation will be allowed which is based upon a lack knowledge or a misunderstanding of any such requirements by the Contractor or a failure to include in the Bidder’s price wages in affect at the time of bid. Wage schedules are attached in Attachment G, Prevailing Wages or available on the internet at:

[www.dir.ca.gov/DLSR/statistics\\_research.html](http://www.dir.ca.gov/DLSR/statistics_research.html)

and

<https://beta.sam.gov/>

2. Bidders shall utilize the relevant prevailing wage determinations in effect on the first advertisement date of the Notice of Requests for Quotes. In the event there are any differences between the minimum wage rates as determined by the United States Secretary of Labor and those determined by the State of California, the highest rate **MUST BE PAID.**

## S. BIDDER'S LICENSING REQUIREMENTS

1. In conformance with the current statutory requirements of Section 7028.15 of the Business and Professions Code of the State of California, regarding submission of a Bid without a license, the Bidder shall provide as part of the Bid the license number, class (or type), and date of expiration of the license.
2. A California State Contractor's License B-General Building Contractor may be required of the prime bidder.
3. Furthermore, the Bidder shall ensure that all subcontractors fully comply with the appropriate licensing requirements. The Bidder shall also certify that all information provided and representations made in the Bid are true and correct, and made under penalty of perjury. Bidders shall provide this information on form entitled "List of Subcontractors" presented in the solicitation. Failure to provide the information on the certification form or elsewhere as part of the Bid shall render the Bidder non-responsive to this solicitation and will result in the rejection of the Bid.
4. Business Registration/Business License: authorized by the city wherein business is to be conducted.

☒ Required: Business Registration/Business License: authorized by the city wherein business is to be conducted as indicated below:

☒ Registration Certificate from the City of San Bernardino:

[https://www.sbcity.org/city\\_hall/finance/business\\_registration](https://www.sbcity.org/city_hall/finance/business_registration)

and/or

☒ Registration Certificate from the City of Montclair

<https://www.cityofmontclair.org/establishing-conducting-business-in-montclair>

Business Licenses is not required for tangible goods delivered by common carriers.

**T. PERMITS AND INSPECTION COSTS**

The Contractor shall procure all permits and licenses and; pay all charges, assessments and fees, required by federal, state or local law, rule or regulation having jurisdiction over the areas in which the work is located, and shall comply with all the terms and conditions thereof and with all lawful orders and regulations of each such public agency relating to construction operations under the jurisdiction of such agency.

**U. LIQUIDATED DAMAGES – N/A****V. PROTEST POLICY**

Omnitrans Protest Policy can be found at Attachment E.

**W. OMNITRANS' RIGHTS**

1. Acceptance by Omnitrans of the Bidder to provide services described herein shall constitute a contract between the Bidder and Omnitrans which shall bind the Bidder on its part to furnish and deliver at the prices given and in accordance with conditions of said accepted Bids and specifications.
2. Omnitrans reserves the right, in its sole discretion to:
  - a. Accept or reject any and all Bids, or any item or part thereof, or to waive any minor informalities or irregularities in Bids.
  - b. Withdraw or cancel this solicitation at any time without prior notice. Omnitrans makes no representations that any contract will be awarded to any Bidder responding to this solicitation.
  - c. Issue a new solicitation for the project.
  - d. To postpone the bid opening for its own convenience.
  - e. Investigate the qualifications of any bidder, and/or require additional evidence of qualifications to perform the work.

**X. EXECUTION OF CONTRACT**

1. The successful Bidder shall submit to Omnitrans acceptable insurance certificates within fifteen (15) calendar days after notification of contract award from Omnitrans. Failure to sign the contract and submit acceptable insurance certificates within the specified time shall be just cause of the annulment of the award. Transfers of contract, or of interest in contracts, are prohibited.
2. Failure or refusal to enter into an agreement or to conform to any of the stipulated requirements shall be just cause for the annulment of the award. In the event the Bidder

to whom an award is made fails or refuses to execute the agreement within said time, Omnitrans may cancel the award and may award the work to the next lowest responsive and responsible Bidder or to subsequent lowest responsive and responsible Bidder(s) until an agreement is executed or call for new bids.

3. Failure or refusal of the next lowest responsive and responsive bidder or subsequent lowest responsive and responsible bidder(s) to enter into an agreement or to conform to any of the stipulated requirements (if an award is made) shall also be just cause for the annulment of the award.

## **Y. CONFLICT OF INTEREST**

Contractor agrees to avoid organizational conflict of interest. An organizational conflict of interest means that due to other activities, relationships or contracts, the Contractor is unable, or potentially unable to render impartial assistance or advise Omnitrans; Contractor's objectivity in performing the work identified in the specifications is or might be otherwise impaired; or the Contractor has an unfair competitive advantage. Contractor is obligated to fully disclose to Omnitrans in writing and Conflict of Interest issues as soon as they are known to the CONTRACTOR. All disclosures must be disclosed at the time of bid submittal.

## **Z. SINGLE RESPONSE**

1. If only one bid is received in response to the solicitation, Omnitrans will review the bid to determine whether or not the bidder is both responsive and responsible.
2. A detailed bid is required of the single bidder. A cost and price analysis and evaluation will be conducted. An audit may be performed on the bid in order to determine if the price is fair and reasonable.

## **AA. CONFIDENTIALITY AND PUBLIC RECORDS ACT**

Bidder fully understands the scope of work/specifications and has checked carefully all words and figures inserted in said solicitation and further understands that Omnitrans will in no way be responsible for any errors or omissions in the preparation of this solicitation.

1. Exclusive Property
  - a. Responses to this solicitation become the exclusive property of Omnitrans and are subject to the California Public Records Act.
  - b. Those elements of each bid that are *trade secrets*, as the term is defined in California Civil Code section 3426.1(d) or otherwise exempt by law from disclosure and which are not prominently marked as TRADE SECRET, CONFIDENTIAL or PROPRIETARY may not be subject to disclosure.
2. Disclosure of Records

- a. If disclosure is deemed to be required by law or by an order of the court, Omnitrans shall not, in any way, be liable or responsible for the disclosure of any such records including without limitation those so marked.
  - b. Any documents that are not marked “TRADE SECRET” or “CONFIDENTIAL” or “PROPRIETARY”, will be made available.
3. Exemption from Disclosure May be Deemed Unresponsive
- a. Omnitrans will take into consideration documents that the bidder deems exempt from disclosure which must be marked “TRADE SECRET” or “CONFIDENTIAL” or “PROPRIETARY”.
  - b. Bidders who indiscriminately identify all or most of their bid as exempt from disclosure without justification may be deemed non-responsive.
4. Indemnification of Omnitrans by Bidder
- a. The bidder agrees to defend and indemnify Omnitrans in defending any action on a Public Records Act request for any of the contents of a bid marked “TRADE SECRET” or “CONFIDENTIAL” or “PROPRIETARY”.
  - b. Bidder agrees to absorb all costs and expenses, including attorneys’ fees, in any action or liability arising under the California Public Records Act.
5. Public Interest

The public interest exemption of the California Public Records Act provides that an agency may withhold the disclosure of a record by showing that the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

## **BB. AWARD/EVALUATION PROCESS**

Any contract awarded as a result of this solicitation will be awarded to the lowest priced, responsive and responsible bidder in accordance with the solicitation.

## **CC. LACK OF FUNDING**

Any contract resulting from this solicitation is subject to the availability of funds determined by Omnitrans’ fiscal budget, which runs from July 1 through June 30 of each fiscal year and a financial assistance contract between Omnitrans and the United States Department of Transportation, Federal Transit (if applicable).



**DD. QUALIFICATIONS**

1. The bidder must have the capability and financial resources, to provide the products and/or services, in the manner required, when required and at the prices stated in this bid.
2. If at any time the bidder's qualifications are in doubt, Omnitrans reserves the right to suspend or cancel this solicitation and award an agreement according to the terms and conditions contained herein.

**EE. EXEMPTIONS**

1. Omnitrans, as a public agency that is federally, state and locally funded, is exempt from certain taxes and will provide certification as required.
2. Omnitrans is exempt from Federal Excise Tax.
3. Omnitrans is NOT exempt from San Bernardino County Sales Tax

**FF. SUBMISSION OF REQUIRED FORMS**

The following checked items **MUST** be submitted at the time of bid submission or your bid may be deemed non-responsive:

1. If a qualifier, i.e. (Required >\$100,000) follows the title of the form, then submit that form only if the solicitation meets that requirement.
2. Duplicate forms as necessary.
3. Submit **ONLY** those forms that are checked, unless required elsewhere in the solicitation.
  - ☒ Bid Form – Cost File (if required, or submit online)
  - ☐ Bid Security: 10% of the amount of bid.
  - ☒ Information Required of Bidder
  - ☒ Bidder's Certificate of Compliance: Workers' Compensation
  - ☒ Bidder's Certificate of Compliance: Business and Professions
  - ☒ Current Client References (5), Bidders must provide accurate contact information including a valid phone number and/or e-mail address.
  - ☒ Declaration of Non-Collusion
  - ☒ Not on Excluded Parties List – SAM.gov ([www.sam.gov](http://www.sam.gov))
  - ☒ List of Subcontractors (Required >1/2 of 1% Share of Project)
  - ☒ Bidders List (Required for all firms providing quotes, bids, or proposals to Primary Proposal whether accepted or rejected)
  - ☒ Proposed Disadvantage Business Enterprise (DBE) Race-Neutral Participation Listing
  - ☒ Status of Past and Present Contracts Form

Bidder is required to complete and sign the form entitled “Status of Past and Present Contracts” provided in this IFB/RFQ and submit as part of the bid. Bidder shall identify the status of past and present contracts where the firm has either provided services as a prime contractor or a subcontractor during the past five (5) years in which the contract has been the subject of or may be involved in litigation with the contracting authority. This includes, but is not limited to, claims, settlement agreements, arbitrations, administrative proceedings, and investigations arising out of the contract. Bidder shall have an ongoing obligation to update Omnitrans with any changes to the identified contracts and any new litigation, claims, settlement agreements, arbitrations, administrative proceedings, or investigations that arise subsequent to the submission of the bid. A separate form must be completed for each identified contract. Each form must be signed by the Bidder confirming that the information provided is true and accurate. Bidder is required to submit one copy of the completed form(s) as part of its bid.

- ☒ Debarment, Suspension & Other Responsibility Matters. (Prime) One (1) form required for each prime bidder and any proposed subcontractor having greater than \$25,000 share of the project.
- ☒ Restrictions on Lobbying (One (1) form required for prime bidder and each subcontractor having greater than \$100,000 share of the project)
- ☐ Buy America Certificate (Project Budget is greater than \$150,000)
- ☐ Iran Contracting Act Certification (Required > \$1,000,000)
- ☒ Warranty Procedures Form (Required)
- ☐ 2 Years Audited Financial Statements

4. Submit the following **Required** forms **at the time of Contract Award**:

- ☒ A. **Proof of Licenses.** As required by law, in addition to contract requirements. Must be California approved, valid, showing expiration dates and license numbers. These include, but are not limited to (**Only those items checked**):

- ☐ Sales or Services: If Applicable

- ☒ Required: Business Registration/Business License: authorized by the city wherein business is to be conducted as indicated below:

- ☒ Registration Certificate from the City of San Bernardino:  
[http://sbcity.org/businesses/business\\_development/default.asp](http://sbcity.org/businesses/business_development/default.asp)

and/or

- ☒ Registration Certificate from the City of Montclair  
[http://www.cityofmontclair.org/depts/admin/finance/business\\_license/default.asp](http://www.cityofmontclair.org/depts/admin/finance/business_license/default.asp)

Business Licenses is not required for tangible goods delivered by a common carriers.

- ☒ Driver's: within classification, required, valid, etc.
- ☒ Others: any not mentioned herein, but required by industry standards, required by law, by requirements of this contract.
- ☒ **B. Proof of Permits:** as required by law, in addition to contract requirements. Must be California approved, valid, showing expiration dates and license numbers.
- ☒ **C. Insurance Certificate (Proof)** must meet the requirements in the Request for Quotes/Invitation for Bids. If no insurance exclusions are noted, Bidder shall be deemed to have accepted the insurance requirements as set forth in the solicitation. If the Insurance Certificate with the additional insured endorsement is submitted with the bid, the Notice to Proceed may be issued earlier. Failure to submit this may result in contract award annulment.
- ☐ **D. Performance Bond:** 100% of the contract price.
- ☐ **E. Payment Bond:** 100% of the contract price.
- ☐ **F. Guaranty**

**\*END OF INSTRUCTIONS\***

ATTACHMENT A – SCOPE OF WORK  
RFQ-MNT24-31  
HYDRAULIC HOIST INSPECTION AND REPAIR

**I. GENERAL REQUIREMENTS**

Contractor shall furnish all necessary labor and equipment needed to provide complete service and repairs on all of Omnitrans' lifting and hoisting equipment (Rotary, Koni, Sefac and PKS) on an as needed, scheduled, and/or emergency basis and as may be determined during the life of the contract. Contractor shall respond to Omnitrans' request for emergency service within four (4) hours of the call. Contractor shall respond to the site within (24) twenty-four hours of notification for repairs and shall complete such work within (24) twenty-four hours of notification. All services and repairs shall be performed at Omnitrans facilities.

**II. SCOPE OF WORK**

- 1) This scope of work pertains to all lifts and hoists provided in the enclosed equipment lists per facility.
- 2) Work shall include, but not limited to: replacement of seals, glands, removal and replacement of pistons, automatic locking legs, bearings and pins. Repair of hydraulic and pneumatic lines and fittings. Repair of any controls, valve assemblies, pumps, and reservoirs associated with or attached to lifting and hoisting equipment. Troubleshooting and repair of all electrical components and controls associated with the lifts and hoists.
- 3) Contractor shall rebuild or remanufacture hoists, structures, platforms, components and controls. Contractor shall troubleshoot, repair any/all components and furnish all parts necessary to repair or rebuild equipment.
- 4) Contractor shall perform annual inspections and provide certifications as required. Contractor shall ensure that testing is conducted within the appropriate time frame to maintain compliance for all equipment.
- 5) Contractor shall ensure 100% equipment up time. Repair times shall be within 24 twenty-four hours of the initial call from Omnitrans representatives.
- 6) Contractor shall provide services for repairs, modifications, and maintenance of hoist equipment in accordance with all Local, State, and Federal regulations.
- 7) Contractor shall conduct examinations and testing of all equipment as required by local, state, federal laws and current applicable safety codes in compliance with Occupational Safety and Health Administration (OSHA) and American National Standards Institute (ANSI)/Automotive Lift Institute (ALI) ALOIM: Current Edition.
- 8) Contractor shall possess all licenses and certificates necessary to provide hoist crane inspections, testing, certification, repairs and preventive maintenance.

ATTACHMENT A – SCOPE OF WORK  
RFQ-MNT24-31  
HYDRAULIC HOIST INSPECTION AND REPAIR

**III. EQUIPMENT LIST**

East Valley: 1700 West 5<sup>th</sup> St., San Bernardino, CA 92411-2499

<b>Quantity</b>	<b>Description</b>	<b>Manufacturer</b>	<b>Age of Equipment</b>
5	Twin post/axel engaging	Rotary, 70-C	25 Years
1	Platform	Koni Skylifts, 250-9-FM-US	7 Years
1	Platform	Koni, 250-14.5-FM-US	7 Years
1	Triple post/axel engaging	Koni, ECO90-10-10	7 Years
2	Twin post/axel engaging	Rotary, SL90206	25 Years

West Valley: 4748 Arrow Highway, Montclair, CA 91763-1208

<b>Quantity</b>	<b>Description</b>	<b>Manufacturer</b>	<b>Age of Equipment</b>
6	Twin post	PKS, MCZC30-210HP	6 Years
2	Platform	Koni Skylifts, 250-9-FM-US	15 Years
1	Twin post	PKS PKDT-16	6 Year

I-Street: 234 South I Street, San Bernardino, CA 92410-2408

<b>Quantity</b>	<b>Description</b>	<b>Manufacturer</b>	<b>Age of Equipment</b>
4	Mobil Columns	Sefac, 1200-M65	23 Years

Omnitrans Mobil Column Lifts

<b>Quantity</b>	<b>Description</b>	<b>Manufacturer</b>	<b>Age of Equipment</b>
3	Sets of 4 Mobil Columns	Stertil Koni, ST1072	23 Years
1	Sets of 6 Mobil Columns	Stertil Koni, ST 1085 FWA US	8 Years
1	Set of 4 Mobil Columns	Stertil Koni, ST1085 FWA-US	8 Years

**IV. PARTS**

Contractor shall provide Omnitrans repair/spare parts for in-house repairs of all equipment included in the list of equipment.

**V. FINAL INSPECTION**

All work performed by the Contractor shall be inspected by the Facilities Maintenance Manager, or designee, prior to departing the premises. A “verification of work” document shall be completed and forwarded to the Facilities Manager prior to approve of invoice for payment.

# **Attachment B**

## **REGULATORY REQUIREMENT**

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## **REGULATORY REQUIREMENTS**

**\* Marks Required Subcontract Provisions that must flow down to all subcontracts as defined in the Article entitled SUBCONTRACTORS AND SUPPLIERS herein.**

### **Required Clauses for All FTA-Assisted Third-Party Contracts and Subcontracts**

#### **RR-01**

##### **NO FEDERAL OBLIGATION TO THIRD PARTIES \***

In connection with the Project, the Recipient agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, lessee, third party contractor, or other participant at any tier of the Project, or other person or entity that is not a party to the Grant Agreement or Cooperative Agreement for the Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, sub-agreement, lease, third party contract, or arrangement at any tier, the Federal Government has no obligations or liabilities to any entity other than the Recipient, including any subrecipient, lessee, third party contractor, or other participant at any tier of the Project.

#### **RR-02**

##### **FALSE OR FRAUDULENT STATEMENTS OR CLAIMS – CIVIL AND CRIMINAL FRAUD \***

###### **A. Civil Fraud.**

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 the Recipient's activities in connection with the Project. By executing the Grant Agreement or Cooperative Agreement for the Project, the Recipient certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the Recipient the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

###### **B. Criminal Fraud.**

If the Recipient makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Recipient

the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate.

- C. Contractor shall include this Article in each subcontract financed in whole or in part with Federal assistance provided by FTA. Contractor shall not modify the Article, except to identify the Subcontractor who will be subject to the provisions.

**RR-03**  
**ACCESS TO THIRD PARTY CONTRACT RECORDS \***

- A. Access to Third Party Contract Records.  
The Recipient agrees to require, and assures that its subrecipients require, their third party contractors and third party subcontractors at each tier to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third party contract records as required by 49 U.S.C. § 5325(g). The Recipient further agrees to require, and assures that its subrecipients require, their third party contractors and third party subcontractors, at each tier, to provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA.

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

- B. If this Contract is for a capital project or improvement (defined at 49 U.S.C. 5302(a) 1) and was entered in to through other than competitive bidding, the Contractor shall make records related to this Contract available to Omnitrans, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- C. Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until Omnitrans, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.



**RR-04**  
**FEDERAL FUNDING, INCORPORATION OF FEDERAL TRANSIT**  
**ADMINISTRATION (FTA) TERMS, AND FEDERAL CHANGES**

- A. This Contract includes, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008 and revised March 18, 2013 (including any changes), and 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. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Omnitrans requests which would cause Omnitrans to be in violation of the FTA terms and conditions.
- B. Federal Transit Administration of the US Department of Transportation and all laws, regulations, guidelines, and provisions of the financial assistance agreement apply to this Contract and are incorporated by reference as if fully set forth herein.
- C. Contractor shall at all times comply with all applicable federal laws and regulations, including without limitation FTA regulations, policies, procedures and directives, including those listed directly or by reference in Applicable Grant Agreements between Omnitrans and FTA, as they may be amended or promulgated from time to time during the term of this Contract collectively "Federal Requirements". These Federal Requirements may change and the changed Federal Requirements will apply to this Contract as required unless the Federal Government determines otherwise. Contractor's failure to so comply with the Federal Requirements shall constitute a material breach of this Contract.

**RR-05**  
**CIVIL RIGHTS REQUIREMENTS (TITLE VI, ADA, EEO (EXCEPT SPECIAL DOL**  
**CONSTRUCTION CLAUSE \***

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Contractor shall comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- B. Equal Employment Opportunity
  - (a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, Contractor shall comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of

Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq. , (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of the Contract. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor shall comply with any implementing requirements FTA may issue.

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

## **RR-06**

### **DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26**

#### **Disadvantaged Business Enterprises**

- A. This contract is subject to Title 49, Code of Federal Regulations (CFR), Part 26, entitled "Participation by Disadvantaged Business Enterprises (DBE) in Department of Transportation Financial Assistance Programs ("Regulations"). The Regulations in their entirety are incorporated herein by this reference. Omnitrans has established a Race Neutral Federal Transportation Administration (FTA) DBE program. It is the policy of Omnitrans to ensure non-discrimination in the award and administration of all contracts and to create a level playing field on which DBEs can compete fairly for contracts and subcontracts. Omnitrans highly encourages the participation of DBE contractors and the utilization of DBE subcontractors in this project. There is no contract DBE goal on this

project, however. Any DBEs on this project will be used to satisfy the overall agency DBE goal. CONTRACTOR must comply with DBE regulations (49 CFR Part 26) in the execution of this contract. Key DBE provisions have been included in Omnitrans' DBE Program Requirements, and include assurance of nondiscrimination, prompt payment, and reporting requirements.

- B. Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Contract. Failure by 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 Omnitrans deems appropriate. Each subcontract Contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).
- C. Contractor shall report subcontractor awards and payments via a Web-based system on a monthly basis unless Omnitrans approves in writing the use of a Subcontractors Paid Report and Payment Verification form.
- D. Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 7 days after the contractor's receipt of payment for that work from the Omnitrans. In addition, Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to his contract is satisfactorily completed.
- E. Contractor must promptly notify Omnitrans whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same value of work remaining to meet the original DBE subcontractor's award amount.. Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Omnitrans.

# **Required Clauses for Awards Exceeding \$2,000**

RR-07

## **DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS**

### **Background and Application**

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i) (5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

The clause language is drawn directly from 29 CFR 5.5(a) and any deviation from the model clause below should be coordinated with counsel to ensure the Acts’ requirements are satisfied.

### **Clause Language**

#### **Davis-Bacon and Copeland Anti-Kickback Acts**

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

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

classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) **Withholding** - Omnitrans 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, Omnitrans may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

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

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

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

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

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

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

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

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

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**(4) Apprentices and trainees - (i) Apprentices** - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to



journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractors 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 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that 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 CFR part 30.

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

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

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

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

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

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

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

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**RR-08**  
**SEISMIC SAFETY REQUIREMENTS 42 U.S.C. 7701 et seq. 49 CFR Part 41**

**Applicability to Contracts**

The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

**Flow Down**

The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

**Model Clauses/Language**

The regulations do not provide suggested language for third-party contract clauses. The following language has been developed by FTA.

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

**Required Clauses for Awards Exceeding \$10,000**

**RR-09**  
**TERMINATION 49 U.S.C. Part 18 FTA Circular 4220.1F**

**Applicability to Contracts**

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

**Flow Down**

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

- a. **Termination for Convenience (General Provision)** Omnitrans may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Omnitrans to be paid the Contractor. If the Contractor has any property in its possession belonging to the Omnitrans, the Contractor will account for the same, and dispose of it in the manner the Omnitrans directs.
- b. **Opportunity to Cure (General Provision)** Omnitrans 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 Omnitrans' satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from Omnitrans setting forth the nature of said breach or default, Omnitrans 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 Omnitrans from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- c. **Waiver of Remedies for any Breach** In the event that Omnitrans elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by Omnitrans shall not limit Omnitrans remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- d. **Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, Omnitrans may terminate this contract for default. Omnitrans shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, Omnitrans may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to Omnitrans resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Omnitrans in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The contractor, within [10] days from the beginning of any delay, notifies Omnitrans in writing of the causes of delay. If in the judgment of Omnitrans, the delay is excusable, the time for completing the work shall be extended. The judgment of Omnitrans shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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

## **Required Clauses for Awards Exceeding \$25,000**

### **RR-010 SUSPENSION AND DEBARMENT\***

- A. This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, Contractor shall verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

Contractor shall comply with 49 CFR 29, Subpart C and shall include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

- B. By entering into this Contract, Contractor certifies that it shall comply with the requirements of 49 CFR 29, Subpart C throughout the period of this Contract. This certification is a material representation of fact relied upon by Omnitrans. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to remedies available to Omnitrans, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

## **Awards Exceeding \$100,000 by Statute**

### **RR-011**

#### **COMPLIANCE WITH FEDERAL LOBBYING POLICY \***

The Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, requires that Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying," attached hereto as the certification entitled, "Certification of Compliance with Federal Lobbying Requirements." As set forth in the certifications, each tier of subcontractors shall certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures shall be forwarded from tier to tier up to Omnitrans.

### **RR-012**

#### **CLEAN WATER AND CLEAN AIR REQUIREMENTS\***

##### **A. CLEAN WATER REQUIREMENTS**

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., and all applicable clean water standards of the State of California and any state or local agency having jurisdiction. Contractor shall report each violation to Omnitrans. Omnitrans will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office, and all other agencies having jurisdiction.

##### **B. CLEAN AIR**

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. and all applicable Clean Air Standards of the State of California or any state or local agency having jurisdiction. Contractor shall report each violation to Omnitrans. Omnitrans will, in turn, report each violation as required to FTA, the appropriate EPA Regional Office and all other agencies having jurisdiction.

##### **C. Contractor shall include this Article in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.**

**RR-013**  
**NON-CONSTRUCTION ACTIVITIES**

Activities Not Involving Construction. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, and other participant at any tier of the Project, with the employee protection requirements for nonconstruction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with implementing U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5.

**Required Clauses for Awards Exceeding the Simplified Acquisition Threshold (\$150,000)**

**RR-014**  
**BUY AMERICA \***

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

Omnitrans may investigate Contractor's, any Subcontractor's, and any Supplier's compliance with this Article. If an investigation is initiated, Contractor, Subcontractor, or Supplier shall document its compliance, in accordance with 49 CFR 661.15, and cooperate with the investigation. Contractor shall incorporate the Buy America conditions set forth in this Article in every subcontract or purchase order and shall enforce such conditions.

- B. FTA requires a Buy America certification to be submitted with the proposal, or the proposal shall be considered non-responsive.

**RR-015**  
**BREACHES AND DISPUTE RESOLUTION 49 CFR Part 18 FTA Circular 4220.1F**

**Applicability to Contracts**

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach

contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

### **Flow Down**

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

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

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

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

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

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

## **Transport of Property or Persons**

### **RR-016 CARGO PREFERENCE\***

#### **A. Applicability**

The following Article applies to federally funded contracts involving equipment, materials, or commodities which may be transported by ocean vessels



**B. USE OF UNITED STATES FLAG VESSELS**

Contractor shall use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.

Contractor shall furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to Omnitrans (through Contractor in the case of a subcontractor's bill-of-lading.)

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

**RR-017  
FLY AMERICA**

**A. Applicability**

This Article applies to federally funded contracts if the contract or subcontracts may involve the international transportation of goods, equipment, or personnel by air.

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

# **CONSTRUCTION ACTIVITIES**

## **RR-018 DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS**

### **Background and Application**

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i) (5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

The clause language is drawn directly from 29 CFR 5.5(a) and any deviation from the model clause below should be coordinated with counsel to ensure the Acts’ requirements are satisfied.

### **Clause Language**

#### **Davis-Bacon and Copeland Anti-Kickback Acts**

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

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

Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) **Withholding** - Omnitrans 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, Omnitrans may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

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

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

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

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

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

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

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

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

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

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

of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractors 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 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that 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 CFR part 30.

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

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

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

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

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

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

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

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

## **RR-019**

### **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT \***

#### **A. Applicability**

This Article applies to federally funded construction contracts over \$2,000 (including ferry vessels), rolling stock purchases over \$2,500 and to operations/management contracts over \$2,500 (except transportation services)



B. Pursuant to the Labor Standards Provisions Applicable to Non-construction Contracts subject to the Federal Contract Work Hours and Safety Standards Act, 40 U.S.C.A. § 327 through 332 as implemented by U.S. Department of Labor regulations, 29 CFR 5.5 (b) and (c) Contractor and Subcontractor's contracting for any part of the Contract work shall comply with the following:

1. **Overtime requirements** – Neither Contractor nor any Subcontractor contracting for any part of the Contract work that requires or involves the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages** – In the event of any violation of the Article set forth in paragraph (1) of this Article Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages. In addition, Contractor and Subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this Article, in the sum of ten dollars (\$10) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this Article.
3. **Withholding for unpaid wages and liquidated damages** – Omnitrans 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 any monies payable on account of work performed by Contractor or Subcontractor under the Contract or any other Federal contract with Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by Contractor, such sums as may be determined to be necessary to satisfy any liabilities of Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this Article.
4. **Subcontracts** – Contractor or Subcontractor shall insert this Article in any Subcontracts and also an Article requiring the Subcontractors to include this Article in any lower tier Subcontracts. Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with this Article.
5. **Payrolls and basic records** – The records to be maintained hereinabove shall be made available by Contractor or Subcontractor for inspection, copying, or transcription by Omnitrans and U.S. Dept. of Labor. Contractor and Subcontractor shall maintain payrolls and basic records during the course of the work and shall preserve them for a period of three (3) years from the completion of the Contract

for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid.

## **RR-020**

### **BONDING REQUIREMENTS**

#### Applicability to Contracts

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

- A. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment and may be in any of the following forms: (a) cash; (b) cashier's check payable to Omnitrans; (c) a certified check payable to the city; or (d) a bidder's bond executed by an admitted surety insurer. Such as a bid bond, certifies check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- B. A performance bond on the part of the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- C. A payment bond on the part of the Contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract.

## **RR-021**

### **SEISMIC SAFETY REQUIREMENTS 42 U.S.C. 7701 et seq. 49 CFR Part 41**

#### Applicability to Contracts

The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

#### Flow Down

The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

### **Model Clauses/Language**

The regulations do not provide suggested language for third-party contract clauses. The following language has been developed by FTA.

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

## **NON-CONSTRUCTION ACTIVITIES**

Activities Not Involving Construction. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, and other participant at any tier of the Project, with the employee protection requirements for nonconstruction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with implementing U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5.

## **TRANSIT OPERATIONS**

### **RR-022 TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS \***

#### **A. Applicability**

Subject to the limitations in Sections B, C, and D, this Article applies if this Contract involves transit operations to be performed by employees of a Contractor recognized by FTA to be a transit operator, and if FTA has determined that it is financed in whole or in part with Federal assistance.

#### **B. General Transit Employee Protective Requirements**

If FTA has determined that this Contract involves transit operations financed in whole or in part with Federal assistance (other than Federal assistance authorized by 49 U.S.C. § 5310(a)(2) or 49 U.S.C. § 5311), and if the U.S. Secretary of Transportation has determined that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for Omnitrans under this Contract, then Contractor shall perform the transit

operations work under the Contract in compliance with terms and conditions, (a) determined by the U.S. Secretary of Labor to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. Department of Labor (“U. S. DOL”) guidelines at 29 C.F.R. Part 215, and any amendments thereto, and (b) stated in a U. S. DOL letter of certification to FTA, the date of which is set forth in the applicable Grant Agreement or Cooperative Agreement with Omnitrans, and which is incorporated in the Form of Contract as a Contract Document entitled “U. S. DOL Certification”.

**C. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a) (2) for Elderly Individuals and Individuals with Disabilities**

If FTA has determined that this Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for Omnitrans under the Contract, Contractor shall perform the Work in compliance with the terms and conditions determined, (a) by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto, and (b) stated in the U.S. DOL's letter of certification to FTA, the date of which is set forth in the applicable Grant Agreement or Cooperative Agreement with Omnitrans, and which is incorporated in the Form of Contract as a Contract Document entitled “U. S. DOL Certification”.

**D. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas**

If FTA has determined that this Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, Contractor shall comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

**E. Indemnity**

Contractor shall defend, indemnify and hold harmless Omnitrans, and its Board Members, employees and agents from and against all liability, claims, demands actions, costs, judgments, penalties, damages, losses and expenses arising out of or in connection with Contractor’s failure to comply with or failure to carry out its responsibilities under all applicable provisions of Sections B, C and D of this Article.

## **CHARTER BUS OPERATION**

### **Charter Service Operations.**

The Recipient agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142, will engage in charter service operations, except as authorized by 49 U.S.C. § 5323(d) and FTA regulations, “Charter Service,” 49 C.F.R. Part 604, and any Charter Service regulations or FTA

directives that may be issued, except to the extent that FTA determines otherwise in writing. The Charter Service Agreement the Recipient has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. If the Recipient has failed to select the Charter Service Agreement in its latest annual Certifications and Assurances to FTA and does conduct charter service operations prohibited by FTA's Charter Service regulations, the Recipient understands and agrees that: (1) the requirements of FTA's Charter Service regulations and any amendments thereto will apply to any charter service it or its subrecipients, lessees, third party contractors, or other participants in the Project provide; (2) the definitions of FTA's Charter Service regulations will apply to the Recipient's charter operations, and (3) a pattern of violations of FTA's Charter Service regulations may require corrective measures and imposition of remedies, including barring the Recipient, subrecipient, lessee, third party contractor, or other participant in the Project operating public transportation under the Project from receiving Federal financial assistance from FTA, or withholding an amount of Federal assistance as set forth in Appendix D to FTA's Charter Service regulations.

## **SCHOOL BUS OPERATIONS**

The Recipient agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142, will engage in school transportation operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as authorized by 49 U.S.C. §§ 5323(f) or (g), as applicable, and FTA regulations, "School Bus Operations," 49 C.F.R. Part 605 to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), in accordance with any School Transportation Operations regulations or FTA directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing. The School Transportation Operations Agreement the Recipient has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. If the Recipient has failed to select the School Transportation Agreement in its latest annual Certifications and Assurances to FTA and does conduct school transportation operations prohibited by FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent those regulations are consistent with 49 U.S.C. §§ 5323(f) or (g), the Recipient understands and agrees that: (1) the requirements of FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), will apply to any school transportation service it or its subrecipients, lessees, third party contractor, or other participants in the project provide, (2) the definitions of FTA's School Bus Operations regulations will apply to the Recipient's school transportation operations, and (3) if there is a violation of FTA's School Bus Operations regulations, to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), FTA will bar the Recipient, subrecipient, lessee, third party contractor, or other Project participant operating public transportation that has violated FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), from receiving Federal transit assistance in an amount FTA considers appropriate.

**RR-023**  
**ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM \***

**A. Applicability**

This Article applies to federally funded contracts for transit operations.

**B. FTA Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations Regulations**

Contractor and its Subcontractors shall comply with the FTA anti-drug and alcohol misuse regulations (49 CFR Part 655) and the U.S. Department of Transportation (DOT) Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR Part 40) to the full extent that they are, by their terms, applicable to Contractor and its Subcontractors. The regulations apply to all “contractors” that have “covered employees” that perform “safety sensitive functions” as those terms are defined in the regulations.

**C. Certificate of Compliance**

**The CERTIFICATE OF COMPLIANCE WITH 49 CFR PARTS 655, PREVENTION OF ALCOHOL MISUSE AND PROHIBITED DRUG USE IN TRANSIT**, submitted by Contractor prior to award, is incorporated as part of the Contract Documents.

**D. Drug and Alcohol Testing Program**

In the event that any part of the Work under this Contract falls within the scope of 49 CFR Part 655, Contractor, and its Subcontractors (as applicable), shall establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or Omnitrans, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. Contractor shall annually certify its compliance with Parts 653 and 65. To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

**E. Alcohol and Drug Free Workplace Program**

In addition to the above, for Work performed on Omnitrans property, Contractor shall provide an Alcohol and Drug-free Workplace Program in accordance with FTA requirements found at <http://transit-safety.fta.dot.gov/DrugAndAlcohol/default.asp>

# **PLANNING, RESEARCH, DEVELOPMENT AND DEMONSTRATION PROJECTS**

## **PATENT RIGHTS**

a. General. If any invention, improvement, or discovery of the Recipient or of any subrecipient, lessee, third party contractor, or other participant at any tier of the Project is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Recipient agrees to notify FTA immediately and provide a detailed report in a format satisfactory to FTA.

b. Federal Rights. The Recipient agrees that its rights and responsibilities, and those of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws and regulations, including any waiver thereof. Absent a determination in writing to the contrary by the Federal Government, the Recipient agrees to transmit to FTA those rights due the Federal Government in any invention, improvement, or discovery resulting from that subagreement, third party contract, third party subcontract, or arrangement, as specified in 35 U.S.C. §§ 200 *et seq.*, and U.S. Department of Commerce regulations, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” 37 C.F.R. Part 401, irrespective of the status of the Recipient, subrecipient, lessee, third party contractor or other participant in the Project (*i.e.*, a large business, small business, State government, State instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual).

c. License Fees and Royalties. FTA considers income earned from license fees and royalties for patents, patent applications, and inventions produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the Recipient has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 *et seq.*, which applies to patent rights developed under a research project.

## **RIGHTS IN DATA AND COPYRIGHTS**

a. Definition. The term “subject data,” as used in this Section 18 of this Master Agreement means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Grant Agreement or Cooperative Agreement for the Project. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. “Subject data” do not include financial reports, cost analyses, or other similar information used for Project administration.

b. General. The following restrictions apply to all subject data first produced in the performance of the Grant Agreement or Cooperative Agreement for the Project:

(1) Except for its own internal use, the Recipient may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Recipient authorize others to do so,

without the prior written consent of the Federal Government, unless the Federal Government has previously released or approved the release of such data to the public.

(2) The restrictions on publication of Paragraph 18.b(1) of this Master Agreement, however, do not apply to a Grant Agreement or Cooperative Agreement with an institution of higher learning.

c. Federal Rights in Data and Copyrights. The Recipient agrees to provide to the Federal Government a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the subject data described in this Subsection 18.c of this Master Agreement. As used herein, “for Federal Government purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not provide or otherwise extend to other parties the Federal Government’s license to:

(1) Any subject data developed under the Grant Agreement or Cooperative Agreement for the Project, or under a subagreement, lease, third party contract or other arrangement at any tier of the Project, supported with Federal assistance derived from the Grant Agreement or Cooperative Agreement for the Project, whether or not a copyright has been obtained; and

(2) Any rights of copyright to which a Recipient, subrecipient, lessee, third party contractor, or other participant at any tier of the Project purchases ownership using Federal assistance.

d. Special Federal Rights in Data for Research, Development, Demonstration, and Special Studies Projects. In general, FTA’s purpose in providing Federal assistance for a research, development, demonstration, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to Project participants. Therefore, when the Project is completed, the Recipient agrees to provide a Project report that FTA may publish or make available for publication on the Internet. In addition, the Recipient agrees to provide other reports pertaining to the Project that FTA may request. The Recipient agrees to identify clearly any specific confidential, privileged, or proprietary information it submits to FTA. In addition, except to the extent that FTA determines otherwise in writing, the Recipient of Federal assistance to support a research, development, demonstration, or a special studies Project agrees that, in addition to the rights in data and copyrights that it must provide to the Federal Government as set forth in Subsection 18.c of this Master Agreement, FTA may make available to any FTA recipient, subrecipient, third party contractor, third party subcontractor or other participant at any tier of the Project, either FTA’s license in the copyright to the subject data or a copy of the subject data. If the Project is not completed for any reason whatsoever, all data developed under the Project shall become subject data as defined in Subsection 18.a of this Master Agreement and shall be delivered as the Federal Government may direct. This Subsection 18.d, however, does not apply to adaptations of automatic data processing equipment or programs for the Recipient’s use when the costs thereof are financed with Federal assistance through an FTA capital program.

e. License Fees and Royalties. FTA considers income earned from license fees and royalties for copyrighted material, or trademarks produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the Recipient has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 *et seq.*, which applies to patent rights developed under a research project.



f. Hold Harmless. Except as prohibited or otherwise limited by State law or except to the extent that FTA determines otherwise in writing, upon request by the Federal Government, the Recipient agrees to indemnify, save, and hold harmless the Federal Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Recipient of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The Recipient shall not be required to indemnify the Federal Government for any such liability caused by the wrongful acts of Federal employees or agents.

g. Restrictions on Access to Patent Rights. Nothing in Section 18 of this Master Agreement pertaining to rights in data shall either imply a license to the Federal Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

h. Data Developed Without Federal Funding or Support. In connection with the Project, the Recipient may find it necessary to provide data to FTA developed without any Federal funding or support by the Federal Government. The requirements of Subsections 18.b, 18.c, and 18.d of this Master Agreement do not apply to data developed without Federal funding or support by the Federal Government, even though that data may have been used in connection with the Project. Nevertheless, the Recipient understands and agrees that the Federal Government will not be able to protect data from unauthorized disclosure unless that data is clearly marked “Proprietary” or “Confidential.”

- i. Requirements to Release Data. To the extent required by U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,” at 49 C.F.R. § 19.36(d), or other applicable Federal laws or Federal regulations, the Recipient understands and agrees that the data and information it submits to the Federal Government may be required to be released in accordance with the Freedom of Information Act (or another Federal law or Federal regulation providing access to such records).

## **SPECIAL NOTIFICATION REQUIREMENTS FOR STATES**

### **SPECIAL NOTIFICATION REQUIREMENTS FOR STATES**

To the extent required by Federal law, the State agrees that, in administering any Federal assistance Program or Project supported by the Grant Agreement or Cooperative Agreement, any request for proposals, solicitation, grant application, form, notification, press release, or other publication involving the distribution of FTA assistance for the Program or the Project shall indicate that FTA is the Federal agency that is providing the Federal assistance, the Catalog of Federal Domestic Assistance Number of the program from which the Federal assistance is authorized, as may be applicable, and the amount of Federal assistance FTA provided.

## **MISCELLANEOUS SPECIAL REQUIREMENTS**

### **RR-024 ENERGY CONSERVATION REQUIREMENTS**

#### **B. Applicability**

This Article applies to all federally funded contracts.

- C. Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 USC §6321 et seq.

### **RR-025 RECYCLED PRODUCTS**

#### **D. Applicability**

This Article applies to federally funded operations/management, construction, or materials & supplies contracts for items designated by the Environmental Protection Agency, when procuring \$10,000 or more per year.

- E. To the extent practicable and economically feasible, a competitive preference shall be given for products and services that conserve natural resources and protect the environment and are energy efficient.
- F. The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

### **NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS**

To the extent applicable, the Recipient agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307©, 23 U.S.C. § 512 note, and follow the provisions of FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

**RR-026**  
**ADA ACCESS**

**A. Applicability**

This Article applies to federally funded Architect & Engineer, Operations/Management, Rolling Stock Purchase, and Construction contracts

**B. Access Requirements for Persons with Disabilities**

Contractor shall comply with:

1. The requirements of 49 U.S.C. § 5301(d), which states the Federal policy that elderly persons and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy;
2. All applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps;
3. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act;
4. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act; and
5. All applicable requirements of the following regulations and any subsequent amendments thereto:
  - (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
  - (2) 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;
  - (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. 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
- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; and
- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609;
- (11) Any implementing requirements FTA may issue.

## **NOT INCLUDED IN UPDATED POLICY**

### **RR-027 ADMINISTRATIVE CODE \***

#### **A. Applicability**

This Article applies to all contracts.

#### **B. Compliance with §§1090 et. seq. and §§87100 et. seq. of the California Government Code**

Contractor shall comply with all applicable provisions of §§1090 et. seq. and §§87100 et. seq. of the California Government Code. Without reducing or affecting its obligation to comply with any and all of said provisions, Contractor specifically covenants:

1. Contractor shall not cause or permit any member, officer, or employee of Omnitrans to have any financial interest in the Contract;
2. Contractor shall not enter into any Subcontract involving services or property with a person or business prohibited from transacting such business with Omnitrans;
3. Contractor warrants and represents that to its knowledge no Board member, officer, or employee of Omnitrans has any interest, whether contractual, non-contractual, financial or otherwise, in this Contract, or in the business or any other contract or transaction of the Contractor or any Subcontractor and that if any such interest comes to Contractor's knowledge at any time, Contractor shall make a full and complete disclosure of all such information in writing to Omnitrans.

**C. Campaign Contributions**

Neither Contractor nor its Agents shall give or offer to give any campaign contribution to any member of Omnitrans Board of Directors in violation of the California Government Code §§84300 et seq., or of the Administrative Code. Contractor shall submit a Certification of Campaign Contributions with all COs of two hundred thousand dollars (\$200,000) or more.

**RR-028**

**DISCRIMINATION \***

**A. Applicability**

This Article applies to all contracts.

- B.** In connection with the performance of Work provided for under this Contract, Contractor agrees that it will not, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, medical condition, marital status, sex, sexual orientation, or age, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Federal, State or local laws.

**RR-029**

**WHISTLEBLOWER REQUIREMENTS \***

**A. Applicability**

This Article applies to all contracts.

- B.** Contractor shall not adopt any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, where the employee believes the information discloses violation or noncompliance with a state or Federal regulation; nor shall Contractor retaliate against an employee for taking such actions as set forth in the t. seq.

**RR-030**  
**PUBLIC RECORDS ACT \***

**A. Applicability**

This Article applies to all contracts.

- B. Except as otherwise provided herein, all records, documents, drawings, plans, specifications, and all other information relating to the conduct of Omnitrans business, including all information and documents submitted by Contractor (“Records”), shall become the exclusive property of Omnitrans and shall be deemed public records. Said Records are subject to the provisions of the California Public Records Act (Government Code §6250 et. seq.). Omnitrans use and disclosure of its records are governed by this Act. Omnitrans will use its best efforts to inform the Contractor of any request for any financial records or documents marked “Trade Secret”, “Confidential” or “Proprietary” provided by Contractor to Omnitrans. Omnitrans will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act.
- C. In the event of litigation concerning the disclosure of any Records, Omnitrans sole involvement will be as a stakeholder, retaining the Records until otherwise ordered by a court. The submitting party, at its sole expense and risk, shall be fully responsible for any and all fees for prosecuting or defending any action concerning the Records and shall indemnify and hold Omnitrans harmless from all costs and expenses including attorney’s fees in connection with any such action.

**RR-031**  
**PRIVACY ACT - 5 U.S.C. 552**

**Applicability to Contracts**

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

**Flow Down**

The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

**Model Clause/Language**

The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA.

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

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

### **RR-032 VETERANS PREFERENCE**

Veterans Employment. Contractors working on a capital project funded using FTA assistance shall give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) 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 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 former employee.

### **RR-033 NOTIFICATION TO FTA; FLOW DOWN REQUIREMENT**

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements 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.

(3) Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct

involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

#### **RR-034**

### **2 CFR § 200.216 Prohibition on certain telecommunications and video surveillance services or equipment**

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;  
(2) Extend or renew a contract to procure or obtain; or  
(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) 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).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the 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.

(b) In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.



## **RR-035**

### **Seat Belt Use**

The Recipient 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: (1) 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

(2) Including a “Seat Belt Use” provision in each third party agreement related to the Award.

## **RR-036**

### **Distracted Driving, Including Text Messaging While Driving**

The Recipient agrees to comply with: (1) 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);

(2) U.S. DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009; and

(3) The following U.S. DOT Special Provision pertaining to Distracted Driving: (i) Safety. The Recipient 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 Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award;

(ii) Recipient Size. The Recipient 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

(iii) Extension of Provision. The Recipient agrees to include the preceding Special Provision of section 34(b)(3)(i) – (ii) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

## **END OF REGULATORY REQUIREMENTS**



## CONTRACT AGREEMENT

between

CONTRACTOR

.  
. .  
.

(hereinafter "CONTRACTOR")

Telephone:

Email:

Remit Address

.  
. .  
.

And

Omnitrans

1700 West Fifth Street

San Bernardino, CA 92411

(hereinafter "OMNITRANS")

### CONTRACT DOCUMENTS

**CONTRACT NO. RFQ-MNT24-31**

**HYDRAULIC HOIST INSPECTION  
AND REPAIR**

Contract Amount: \$TBD

### Omnitrans Project Manager:

Name: xxx

Title: xxx

Telephone: (909) 379-xxx

Email:

[xxx@omnitrans.org](mailto:xxx@omnitrans.org)

### Contract Administrator:

Name: Lupe Rodriguez

Title: Contract Review Analyst

Telephone: (909) 379-7128

Email: [guadalupe.rodriquez@omnitrans.org](mailto:guadalupe.rodriquez@omnitrans.org)



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ATTACHMENT A - SCOPE OF WORK

ATTACHMENT B - REGULATORY REQUIREMENTS

This Agreement is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, by and between Omnitrans (hereinafter referred to as "OMNITRANS") and (hereinafter referred to as "CONTRACTOR").

## **RECITALS**

WHEREAS, OMNITRANS is a joint powers authority organized under Section 6500 et seq. of the California Government Code with power to contract for services described in Attachment A to this Agreement entitled "Attachment A, Scope of Work" (hereinafter referred to as "Work");

WHEREAS, CONTRACTOR has indicated it is qualified to perform such services and (1) has reviewed all the available data furnished by OMNITRANS pertinent to the Work to be rendered; (2) has inspected and reviewed the Work to be rendered; (3) will exercise the ordinary care and skill expected of a practitioner in its profession; and (4) is willing to accept responsibility of performing the Work set forth in this Agreement for the compensation and in accordance with the terms, requirements and conditions herein specified;

NOW, THEREFORE, for the consideration hereinafter stated, the parties agree as follows:

### **1. SCOPE OF WORK**

- A. CONTRACTOR will perform the Work and related tasks as described in Attachment A, Scope of Work hereto and is incorporated by reference into and made a part of this Agreement.
- B. This is a non-exclusive Agreement, whereby OMNITRANS may, at its sole discretion, augment or supplant the Work with its own forces or forces of another contractor or entity. CONTRACTOR will cooperate fully with OMNITRANS' staff or other contractor or entity that may be providing similar or the same Work for OMNITRANS.

### **2. PERIOD OF PERFORMANCE**

The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through \_\_\_\_\_, unless terminated as specified in Section 10 and 11 of this Agreement. Omnitrans has no obligation to purchase any specified amount of products/services. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

Omnitrans' election to extend the Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for Omnitrans' convenience or CONTRACTORS default as provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the period extended from through \_\_\_\_\_, which period encompasses the Initial Term and the Option Year One and Option Year Two.

### **3. CONTRACT OPTIONS**

- A. Omnitrans will have the unilateral right in the Agreement by which, for a specified time, Omnitrans may elect to purchase additional services called for by the Agreement or may elect to extend the term of the Agreement. The requirements below apply:
- 1) Any options that were requested by Omnitrans and/or contained in the CONTRACTOR's PROPOSAL or offer must have been evaluated in making the contract award prior to exercising any such options.
  - 2) Since CONTRACTOR's proposed pricing for the option years and additional services are considered in evaluating the CONTRACTOR's original proposal and form the basis for awarding the contract, CONTRACTOR shall be bound by the proposal pricing for additional services and/or option years, unless otherwise provided herein.
- B. Omnitrans will provide a minimum of thirty days (30) written notice to the CONTRACTOR of Omnitrans' exercise of its option to extend the Agreement years. Omnitrans may give notice of its exercise of the option for additional services at any time during the term of the Agreement. The minimum time for the written notice may be waived by mutual agreement.

### **4. COMPENSATION**

For CONTRACTOR's full and complete performance of its obligations under this Agreement, OMNITRANS shall pay CONTRACTOR on a FIRM FIXED PRICE basis at the fully burdened fixed rates shown in Attachment C, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

## 5. INVOICING AND PAYMENT

- A. CONTRACTOR shall invoice OMNITRANS monthly no later than the 15<sup>th</sup> of each month. CONTRACTOR shall furnish information as may be requested by OMNITRANS to substantiate the validity of an invoice.

CONTRACTOR shall submit invoices in duplicate to:

OMNITRANS  
1700 West Fifth Street  
San Bernardino, CA 92411  
Attn: Accounts Payable

[Accountspayable@omnitrans.org](mailto:Accountspayable@omnitrans.org)

A separate invoice shall be used for each shipment. Each invoice shall include, at minimum, the following information:

- Contract number
- Invoice number
- Description of delivery
- Delivery Date
- Total quantity delivered
- Information as requested by OMNITRANS

- B. OMNITRANS shall remit payment within thirty (30) calendar days of approval of the invoices by OMNITRANS' Project Manager.

In the event OMNITRANS should overpay CONTRACTOR, such overpayment shall not be construed as a waiver of OMNITRANS' right to obtain reimbursement for the overpayment. Upon discovering any overpayment, either on its own or upon notice of OMNITRANS, CONTRACTOR shall immediately reimburse OMNITRANS the entire overpayment or, at its sole discretion, OMNITRANS may deduct such overpayment amount from monies due to CONTRACTOR under this Agreement or any other Agreement between OMNITRANS and CONTRACTOR.

- C. Prompt Payment Clause

Omnitrans has, by a contract clause pursuant to 49 CFR 26.29; "Prompt Payment Mechanisms for Recipients", adopted a prompt payment provision on all DOT-assisted contracts, to facilitate timely payment to all subcontractors. This provision, governing the payment to subcontractors (DBEs and non-DBEs), requires the Prime CONTRACTOR to issue payment to all subcontractors for satisfactory work performed, no later than seven (7) days from CONTRACTOR's receipt of payment from Omnitrans. A provision

will also apply to the disbursement of retention proceeds withheld by Prime CONTRACTOR, requiring the prompt return of retention payments from CONTRACTOR to the subcontractor no later than seven (7) days Omnitrans after the subcontractor's work is satisfactorily completed. Prime CONTRACTOR will incorporate these prompt payment provisions in all subcontract agreements issued by Prime CONTRACTOR with respect to this Contract.

In accordance with §26.29 "Prompt Payment Provisions", Omnitrans at its discretion, utilizes the following method to comply with the prompt payment of retainage requirement:

Hold retainage from the Prime CONTRACTOR and require a contract clause obligating Prime CONTRACTOR to make prompt and full payment of any retainage kept by Prime CONTRACTOR to the subcontractor within 7 days after the subcontractor's work is satisfactorily completed.

Failure to comply with these prompt payment provisions or delay in issuing payment without prior written approval from Omnitrans will constitute noncompliance, which will result in the application of appropriate administrative sanctions, including, but not limited to, a penalty of 1% of the amount due per month to the affected subcontractor for every month that payment is not made.

CONTRACTOR will not be reimbursed for work performed by subcontractors unless and until the contractor ensures that the subcontractors are promptly paid for the work performed. CONTRACTOR shall include a prompt payment clause that complies with local, state, and federal prompt payment requirements in all subcontracts entered into under this contract. Should contractor fail to meet subcontractor prompt payment requirements for two (2) consecutive subcontractor payments without good cause, OMNITRANS may impose appropriate penalties for failure to comply with prompt payment requirements.

#### D. TITLE

- a. Title shall pass to Omnitrans at the time of payment.
- b. The title transferred as above shall in each case be good, and free and clear from any and all security interests, liens, and/or other encumbrances.
- c. The transfer of title as specified above shall not imply Acceptance by Omnitrans, nor relieve the CONTRACTOR from the responsibility for strict compliance with the Contract, including warranty as specified in the Section entitled Warranty of Work, and for any loss of or damage to the Work.
- d. The CONTRACTOR at its own expense shall promptly execute, acknowledge, and deliver to the Omnitrans proper bills of sale or other written instruments of title in a form as required by Omnitrans; said



instruments shall convey to the Omnitrans' title free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances.

e. CONTRACTOR shall have title to and bear the risk of any loss of or damage to Work purchased hereunder until they are delivered, unloaded, and received by Omnitrans at the FOB Destination specified herein. CONTRACTOR's responsibility for loss or damage except for loss or damage resulting from CONTRACTOR's negligence, shall cease when title passes to Omnitrans.

## **6. AUDIT AND INSPECTION OF RECORDS**

CONTRACTOR agrees that OMNITRANS or any duly authorized representative shall have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, timecards, employment records or other records relating to this Agreement. Such material, including all pertinent cost, accounting, financial records, and proprietary data must be kept and maintained by CONTRACTOR for a period of three (3) years after completion of this Agreement unless OMNITRANS' written permission is given to CONTRACTOR to dispose of material prior to this time.

## **7. NOTIFICATION**

All notices hereunder concerning this Agreement and the Work to be performed shall be physically transmitted by courier, overnight, registered, or certified mail, return receipt requested, postage prepaid and addressed as follows:

To OMNITRANS:

To CONTRACTOR:

Omnitrans  
1700 West Fifth Street  
San Bernardino, CA 92411  
Attn: Name  
Title

## **8. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES**

### **A. OMNITRANS' Project Manager**

Contracting Officer: OMNITRANS' CEO/General Manager or authorized designee who has authority to execute contracts on behalf of OMNITRANS.

Project Manager: Name, Title.

- a. Except as expressly specified in this Agreement, the Contracting Officer may exercise any powers, rights and/or privileges that have been lawfully delegated by OMNITRANS. Nothing in this Agreement should be construed to bind OMNITRANS for acts of its officers,

employees, and/or agents that exceed the delegation of authority specified herein.

- b. The Contracting Officer has delegated to the Project Manager certain powers and duties in connection with this Agreement. The Project Manager is the authorized representative of the Contracting Officer for matters related to this Agreement. The Project Manager or designee is empowered to:
  - 1. Have general oversight of the Work and this Agreement, including the power to enforce compliance with this Agreement.
  - 2. Reserve the right to remove any portion of the Work from CONTRACTOR which have not been performed to OMNITRANS' satisfaction.
  - 3. Subject to the review and acceptance by OMNITRANS, negotiate with CONTRACTOR all adjustments pertaining to this Agreement for revision.
- c. In addition to the foregoing, the Project Manager shall have those rights and powers expressly set forth in other sections of this Agreement.

**B. Contractor's Key Personnel**

The following are CONTRACTOR's key personnel and their associated roles in the Work to be provided:

<u>Name</u>	<u>Role</u>
_____	_____
_____	_____
_____	_____
_____	_____

Any proposed/substitution or replacement by CONTRACTOR of CONTRACTOR's key personnel shall ensure that such person possesses the same or better expertise and experience than the key personnel being substituted or replaced. Omnitrans reserves the right to interview such person to ascertain and verify if such proposed substitution or replacement does indeed possess such expertise and experience.

OMNITRANS awarded this Agreement to CONTRACTOR based on OMNITRANS' confidence and reliance on the expertise of CONTRACTOR's key personnel described above. CONTRACTOR shall not reassign key personnel or assign other personnel to key personnel roles until CONTRACTOR obtains prior written approval from OMNITRANS.

## **9. DISPUTE RESOLUTION**

Any disputes between the successful CONTRACTOR and OMNITRANS relating to the implementation or administration of the Agreement shall be resolved in accordance with this section.

- A. The parties shall first attempt to resolve the dispute informally in meetings or communications between proposer and OMNITRANS.
- B. If the dispute remains unresolved fifteen (15) days after it first arises, CONTRACTOR may request that Omnitrans' CEO/General Manager issue a recommended decision on the matter in dispute. Omnitrans' CEO/General Manager shall issue the recommended decision in writing and provide a copy to CONTRACTOR.
- C. If the dispute remains unresolved after review by Omnitrans' CEO/General Manager, either party may seek judicial resolution of the dispute in an appropriate Court of the State of California County of San Bernardino.
- D. Pending final resolution of a dispute under this section, CONTRACTOR shall proceed diligently with performance in accordance with the Agreement and Omnitrans' CEO/General Manager's recommended decision.

## **10. TERMINATION FOR CONVENIENCE**

OMNITRANS may terminate this Agreement in whole or in part for OMNITRANS' convenience. Omnitrans' CEO/General Manager shall terminate this Agreement by a written Notice of Termination to CONTRACTOR specifying the nature, extent, and effective date of the termination. Upon receipt of the notice of termination, CONTRACTOR shall immediately discontinue all Work affected and deliver all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Agreement, whether completed or in process, to Omnitrans' CEO/General Manager. OMNITRANS shall make an equitable adjustment in the Agreement for Work already performed but shall not allow anticipated profit on unperformed services. Force Majeure shall apply.

## **11. TERMINATION FOR BREACH OF AGREEMENT**

- A. If CONTRACTOR fails to perform any of the provisions of this Agreement or so fails to make progress as to endanger timely performance of this Agreement, OMNITRANS may give CONTRACTOR written notice of such

default. If CONTRACTOR does not cure such default or provide a plan to cure such default which is acceptable to OMNITRANS within the time permitted by OMNITRANS, then OMNITRANS may terminate this Agreement due to CONTRACTOR's breach of this Agreement.

- B. If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then OMNITRANS may immediately terminate this Agreement.
- C. If CONTRACTOR violates Section 29, Compliance with Lobbying Policies, of this Agreement, then OMNITRANS may immediately terminate this Agreement.
- D. In the event OMNITRANS terminates this Agreement as provided in this Section, OMNITRANS may procure, upon such terms and in such manner as OMNITRANS may deem appropriate, work similar in scope and level of effort to those so terminated, and CONTRACTOR shall be liable to OMNITRANS for all of its costs and damages, including, but not limited, any excess costs for such Work.
- E. All finished or unfinished documents and materials produced or procured under this Agreement shall become OMNITRANS' property upon date of such termination.
- F. If, after notice of termination of this Agreement under the provisions of this Section, it is determined for any reason that CONTRACTOR was not in default under the provisions of this Section, or that the default was excusable under the terms of this Agreement, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 10, Termination for Convenience.
- G. The rights and remedies of OMNITRANS provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

## **12. ASSIGNMENT**

This Agreement, any interest herein or claim hereunder, may not be assigned by CONTRACTOR either voluntarily or by operation of law, nor may all or any part of this Agreement be subcontracted by CONTRACTOR, without the prior written consent of OMNITRANS. Consent by OMNITRANS shall not be deemed to relieve CONTRACTOR of its obligations to comply fully with all terms and conditions of this Agreement.

### 13. SUBCONTRACTING

- A. OMNITRANS hereby consents to CONTRACTOR's subcontracting of portions of the Work to the parties identified below for the functions described in CONTRACTOR's proposal. CONTRACTOR shall include in each subcontract agreement the stipulation that CONTRACTOR, not OMNITRANS, is solely responsible for payment to the subcontractor for all amounts owing and that the subcontractor shall have no claim, and shall take no action against OMNITRANS, Member Agencies or officers, directors, employees or sureties thereof for nonpayment by CONTRACTOR.
- B. CONTRACTOR shall not, without the express written consent of Omnitrans, either:
- a. Substitute any person, firm, or corporation as subcontractor in place of the subcontractors identified below; or
  - b. Permit any subcontract to be assigned or transferred; or
  - c. Allow work to be performed by anyone other than the original subcontractor listed below.

Subcontractor's Name and Address	License #	Work to Be Performed

- C. CONTRACTOR shall report subcontractor awards and payments via a Web-based system on a monthly basis unless Omnitrans approves in writing the use of a Subcontractors Paid Report and Payment Verification form.

### 14. INDEPENDENT CONTRACTOR

CONTRACTOR's relationship to OMNITRANS in the performance of this Agreement is that of an independent CONTRACTOR. CONTRACTOR's personnel performing Work under this Agreement shall at all times be under CONTRACTOR's exclusive direction and control and shall be employees of CONTRACTOR and not employees of OMNITRANS. CONTRACTOR shall pay

all wages, salaries, and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers' compensation, and similar matters.

## **15. INSURANCE**

### **A. INSURANCE REQUIREMENTS**

#### **1) General Requirements for Contractor**

- a. Without limiting or diminishing the CONTRACTOR's obligation to indemnify or hold Omnitrans harmless, CONTRACTOR shall procure, prior to commencement of the services required under this Agreement and maintain for the duration of the Agreement at its own expense, insurance of the kinds and in the amounts as indicated below; and
- b. Provide Omnitrans with valid original certificates of insurance and endorsements showing Omnitrans as an additional insured.

#### **2) Deductibles or Self-Insured Retention (SIR)**

SIR must be declared to and approved by Omnitrans. At the option of Omnitrans, either: the insurer shall reduce or eliminate such deductibles or SIR or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

#### **3) Other Insurance Provisions**

##### **a. Commercial General Liability and Automobile Liability**

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury covering claims which may arise from or out of CONTRACTOR's performance of its obligations hereunder and if CONTRACTOR's vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then CONTRACTOR shall maintain liability insurance for all owned, non-owned or hired vehicles so used. Policy shall name Omnitrans, its officers, officials, employees, agents and volunteers as additional insured as respects: liability arising out of activities performed by or on behalf of CONTRACTOR; products and completed operations of CONTRACTOR; premises owned, occupied or used by CONTRACTOR; or automobiles owned, leased, hired or borrowed by CONTRACTOR. The coverage shall contain no special limitations of the scope of protection afforded Omnitrans, its officers, officials, employees, agents, and volunteers.

1. For any claims related to this project, CONTRACTOR's insurance coverage shall be primary insurance as respects Omnitrans, its officers, officials, employees, agents, and volunteers. Any insurance and/or deductibles and/or self-insured retentions or self-insured programs maintained by Omnitrans, its officers, officials, employees, agents, and volunteers shall be excess of CONTRACTOR's insurance and shall not be construed as contributory.
2. CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
3. Each insurance policy required by this Section shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to Omnitrans.

**b. Workers' Compensation**

If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of Omnitrans and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

**c. Care, Custody, and Control**

CONTRACTOR shall insure any Omnitrans property while under its Care, Custody, and Control according to the requirements listed in the insurance coverage required.

**d. Claims Made Policies**

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

4) **Acceptability of Insurers**

Insurance companies shall be State of California admitted or approved and have a current **A.M. Best's** rating of no less than **A:VIII**.

5) **Verification of Coverage**

- a. CONTRACTOR shall furnish Omnitrans with original endorsements affecting coverage required by this Section. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All insurance certificates and endorsements are to be received and approved by Omnitrans before work commences.
- b. As an alternative, CONTRACTOR's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.
- c. In lieu of purchasing insurance and providing original endorsements and or certificates of insurance, the CONTRACTOR may provide proof of self-insurance; such proof must be to the satisfaction of Omnitrans.

6) **Subcontractors**

CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

7) **Notification of Terminated Insurance**

Insurance shall not be terminated or expire without thirty (30) days written or electronic notice and are required to be maintained in force until completion of the Agreement.

**B. MINIMUM INSURANCE COVERAGE**

If the CONTRACTOR maintains broader coverage and/or higher limits than the minimum requirements shown below, Omnitrans requires and shall be entitled to the broader coverage and/or higher limits maintained by the CONTRACTOR.

- 1) ☒ **Commercial General Liability including Products/Completed Operations:** \$1,000,000; per occurrence for bodily and property damage liability and \$2,000,000 aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 2) ☒ **Automobile Liability:** \$1,000,000; per occurrence for bodily and property damage liability and aggregate; *Omnitrans named and endorsed as an Additional Insured.*



- 3) ☐ **Errors and Omissions Liability:** \$1,000,000 per claim; combined single limit bodily and property damage liability and \$3,000,000 aggregate or,
- 4) ☐ **Professional Liability:** \$1,000,000; per claim and aggregate.
- 5) ☒ **Workers' Compensation:** statutory limits or,
- 6) ☐ **Self-Insurance Program:** State Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California.
- 7) ☒ **Employer's Liability:** \$1,000,000; per occurrence.
- 8) ☐ **Environmental Liability:** \$1,000,000; per occurrence and aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 9) ☐ **Umbrella Policy:** \$4,000,000; per occurrence and aggregate Additional coverage for the above policies, *Omnitrans Additional Insured.*
- 10) ☐ **Hazardous Materials Endorsement:** All drivers making deliveries of products specified on this solicitation shall have Hazardous Materials Endorsements on their Commercial Drivers License, and such other Endorsements as may be required by relevant laws and/or regulations.
- 11) ☐ **Builders Risk Insurance:** CONTRACTOR shall maintain in force, at its own expense, Builder's Risk insurance on all risks of direct physical loss basis, excluding damage caused by an act of God, pursuant to California Public Contract Code §7105, for an amount equal to the full completed value of the covered structure or replacement value of alterations or additions. The policy shall include Omnitrans, CONTRACTOR and its subcontractors as loss payee as their interest may appear. Omnitrans shall not be responsible for the theft of any materials, equipment in the possession and control of CONTRACTOR.
- 12) ☐ **Installation Floater Insurance:** CONTRACTOR shall obtain, at CONTRACTOR's expense, and keep in effect during the term of this Agreement, a Builder's Risk Installation Floater for coverage of CONTRACTOR's labor, materials, and equipment to be used for completion of the work performed under this Agreement. The minimum amount of coverage to be carried shall be equal to the full amount of the CONTRACTOR's labor, equipment, materials, or fixtures to be installed, in transit, or stored off-site or on-site during the performance of this Agreement. The policy shall include as loss payee, Omnitrans, the CONTRACTOR, and its sub-contractors as their interest may appear. Omnitrans shall not be

responsible for the theft of any materials, equipment in the possession and control of CONTRACTOR.

## **16. INDEMNITY**

CONTRACTOR shall indemnify, defend and hold harmless OMNITRANS, and its member agencies, and their officers, directors, employees and agents from and against any and all liability, expense (including, but not limited to, defense costs and attorneys' fees), claims, causes of action, and lawsuits for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury or property damage (including property of CONTRACTOR) arising from or connected with any alleged act and/or omission of CONTRACTOR, its officers, directors, employees, agents, Subcontractors or suppliers. This indemnity shall survive termination or expiration of this Agreement and/or final payment thereunder.

## **17. REVISIONS IN SCOPE OF WORK**

By written notice or order, OMNITRANS may, from time to time, order work suspension or make changes to this Agreement. Changes in the Work shall be mutually agreed to and incorporated into an amendment to this Agreement. Upon execution of an amendment, CONTRACTOR shall perform the Work, as amended.

## **18. RIGHTS IN TECHNICAL DATA**

- A. No material or technical data prepared by CONTRACTOR under this Agreement is to be released by CONTRACTOR to any other person or entity except as necessary for the performance of the Work. All press releases or information concerning the Work that might appear in any publication or dissemination, including but not limited to, newspapers, magazines, and electronic media, shall first be authorized in writing by OMNITRANS.
- B. The originals of all letters, documents, reports and other products and data produced under this Agreement shall become the property of OMNITRANS without restriction or limitation on their use and shall be made available upon request to OMNITRANS at any time. Original copies of such shall be delivered to OMNITRANS upon completion of the Work or termination of the Work. CONTRACTOR shall be permitted to retain copies of such items for the furtherance of its technical proficiency; however, publication of this material is subject to the prior written approval of OMNITRANS. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.

## **19. OWNERSHIP OF REPORTS AND DOCUMENTS**

The originals of all letters, documents, reports and other products and data produced under this Agreement shall be delivered to and become the sole and

exclusive property of OMNITRANS. Copies may be made for CONTRACTOR's records but shall not be furnished to others without prior written authorization from OMNITRANS. Such deliverables shall be deemed works made for hire, and all rights in copyright therein shall be retained by OMNITRANS.

## **20. OWNERSHIP RIGHTS**

- A. In the event OMNITRANS rightfully obtains copies of Proprietary Data under the terms of the separate License Agreement and Escrow Agreement that govern rights in Documentation, Software and Intellectual Property created and/or developed by CONTRACTOR, its Third Party Software CONTRACTORS and its Suppliers as part of the Project, any derivative works and associated documentation created by or on behalf of OMNITRANS by Permitted Programmers (as defined in the License Agreement) shall be the sole and exclusive property of OMNITRANS (collectively, "OMNITRANS Intellectual Property"), and OMNITRANS may use, disclose and exercise dominion and full rights of ownership, in any manner in OMNITRANS Intellectual Property in connection with the use, operation and maintenance of a transportation system administered by OMNITRANS. No use of OMNITRANS Intellectual Property shall be made for any purpose other than in conjunction with a transportation system administered by CONTRACTOR, and OMNITRANS shall not sell, lease, rent, give away or otherwise disclose any OMNITRANS Intellectual Property to any outside third party other than Permitted Programmers. To the extent there may be any question of rights of ownership or use in any OMNITRANS Intellectual Property, CONTRACTOR shall require all of its subcontractors and suppliers (including without limitation its Third-Party Software CONTRACTORS) to assign to OMNITRANS, all worldwide right, title and interest in and to all OMNITRANS Intellectual Property in a manner consistent with the foregoing terms of this paragraph. CONTRACTOR shall execute any documents as OMNITRANS may, from time to time, reasonably request to effectuate the terms of this paragraph.
- B. All documentation and Software which predates this Agreement, and which otherwise owned by CONTRACTOR or its Third-Party Software CONTRACTORS, and all Documentation and Software which is created by CONTRACTOR or its Third Party Software CONTRACTORS shall be Licensed Software or Licensed Documentation, as appropriate. All Licensed Software and Licensed Documentation shall be governed by the License Agreement by and between the parties of event date herewith.

## **21. WORK FOR HIRE**

Any work created or produced as a part of this Agreement that may be defined under Section 101, Title 17, USC will be considered "work made for hire" as it pertains to ownership rights. CONTRACTOR, by his/her endorsement hereon agrees that all rights to any work(s) created or produced are waived, and that

ownership rests with OMNITRANS. CONTRACTOR further agrees to ensure transfer of all rights to such work(s), as defined under federal copyright law, that may be created or produced under this Agreement by its suppliers, contractors or subcontractors.

## **22. SUBMITTAL OF CLAIMS BY CONTRACTOR**

CONTRACTOR shall file any and all claims with OMNITRANS' Project Manager in writing within thirty (30) days of the event or occurrence giving rise to the claim. The claim shall be in sufficient detail to enable OMNITRANS to ascertain the claim's basis and amount, and shall describe the date, place and other pertinent circumstances of the event or occurrence giving rise to the claim and the indebtedness, obligation, injury, loss or damages allegedly incurred by CONTRACTOR.

Even though a claim may be filed and/or in review by OMNITRANS, CONTRACTOR shall continue to perform in accordance with this Agreement.

## **23. EQUAL OPPORTUNITY**

CONTRACTOR shall not, and shall cause the Subcontractors to not, discriminate on the basis of race, color, national origin or sex in the selection of Subcontractors and the performance of the Work under this Contract. CONTRACTOR shall carry out, and shall cause the Subcontractors to carry out, applicable requirements of 49 CFR Part 26. Failure by CONTRACTOR to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as Omnitrans deems appropriate (subject to CONTRACTOR's rights to notice and opportunity to cure set forth in this Agreement).

CONTRACTOR shall include this Section in every Subcontract (including purchase orders and in every subcontract of any Related Entity for the Work), and shall require that they be included in all Subcontracts at lower tiers, so that such provisions will be binding upon each Subcontractor.

CONTRACTOR confirms that CONTRACTOR has an equal employment opportunity policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion or handicap; and that CONTRACTOR maintains no employee facilities segregated on the basis of race, color, religion or national origin. CONTRACTOR shall comply with all applicable Governmental Rules relating to equal employment opportunity and nondiscrimination, Attachment B, and shall require its Subcontractors to comply with such provisions.

## **24. STANDARD OF PERFORMANCE**

- A. CONTRACTOR shall perform and exercise and require its subcontractors to perform and exercise due professional care and competence in the performance of the Work in accordance with the requirements of this

Agreement. CONTRACTOR shall be responsible for the professional quality, technical accuracy, completeness, and coordination of the Work, it being understood that OMNITRANS will be relying upon such professional quality, accuracy, completeness, and coordination in utilizing the Work. The foregoing obligations and standards shall constitute the "Standard of Performance" for purposes of this Agreement. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.

- B. All workers shall have sufficient skill and experience to perform the Work assigned to them. OMNITRANS shall have the right, at its sole discretion, to require the immediate removal of CONTRACTOR's personnel at any level assigned to the performance of the Work at no additional fee or cost to OMNITRANS, if OMNITRANS considers such removal in its best interests and requests such removal in writing and such request is not done for illegal reasons. Further, an employee who is removed from performing Work under this Agreement under this Section shall not be re-assigned to perform Work in any other capacity under this Agreement without OMNITRANS' prior written approval.

## **25. NOTIFICATION OF EMPLOYMENT OF OMNITRANS BOARD MEMBERS/ALTERNATES AND EMPLOYEES**

To ensure compliance with OMNITRANS' Ethics Policy, CONTRACTOR shall provide written notice to OMNITRANS disclosing the identity of any individual who CONTRACTOR desires to employ or retain under a contract, and who (1) presently serves as a Board Member/Alternate or an employee of OMNITRANS, or (2) served as a Board Member/Alternate or an employee of OMNITRANS within the previous 12 months of the date of the proposed employment or retention by CONTRACTOR. CONTRACTOR's written notice shall indicate whether the individual will be an officer, principal, or shareholder of the entity and/or will participate in the performance of this Agreement.

## **26. DISQUALIFYING POLITICAL CONTRIBUTIONS**

In the event of a proposed amendment to this Agreement, CONTRACTOR shall provide prior to the execution of such amendment, a written statement disclosing any contribution(s) of \$250 or more made by CONTRACTOR or its subcontractor(s) to Omnitrans Board Members/Alternates or employees within the preceding twelve (12) months of the date of the proposed amendment. Applicable contributions include those made by any agent/person/entity on behalf of CONTRACTOR or subcontractor(s).

## **27. COMPLIANCE WITH LAW**

- A. CONTRACTOR shall familiarize itself with and perform the Work required under this Agreement in conformity with requirements and standards of

OMNITRANS, municipal and public agencies, public and private utilities, special districts, and railroad agencies whose facilities and work may be affected by Work under this Agreement. CONTRACTOR shall also comply with all Federal, state and local laws and ordinances.

- B. If this work is financed in part with federal funds, it is therefore subject to federal statutes, rules, and regulations applicable to work financed with federal funds, including the requirements in Attachment B. CONTRACTOR shall comply and require its Subcontractors to comply with all applicable federal requirements, including those requirements in Attachment B. In the event of any conflict between any applicable federal requirements and the other requirements of this Contract, the federal requirements shall prevail.
- C. Government regulations that directly affect the CONTRACTOR'S performance of this Agreement and unforeseen impacts, which neither party could have contemplated at the onset of the Agreement and have an unconscionable impact on the CONTRACTOR may be given special pricing consideration. The parties, in good faith, shall review established rates and may adopt any mutually agreed new rates, which shall only be effective as agreed upon by the parties. Thorough documentation including all cost elements is required to support the CONTRACTOR's claim to any relief under this Section.

## **28. COMPLIANCE WITH LOBBYING POLICIES**

- A. CONTRACTOR agrees that if it is a Lobbyist Employer or if it has retained a Lobbying Firm or Lobbyist, as such terms are defined by OMNITRANS in its Ethics Policy, it shall comply or ensure that its Lobbying Firm and Lobbyist complies with OMNITRANS' Ethics Policy.
- B. If CONTRACTOR (Lobbyist Employer) or its Lobbying Firm or Lobbyist fails to comply, in whole or in part, with OMNITRANS' Ethics Policy, such failure shall be considered a material breach of this Agreement and OMNITRANS shall have the right to immediately terminate or suspend this Agreement.

## **29. PUBLIC RECORDS ACT**

- A. All records, documents, drawings, plans, specifications, and other material relating to conduct of OMNITRANS' business, including materials submitted by CONTRACTOR in its proposal and during the course of performing the Work under this Agreement, shall become the exclusive property of OMNITRANS and may be deemed public records. Said materials may be subject to the provisions of the California Public Records Act. OMNITRANS' use and disclosure of its records are governed by this Act.
- B. OMNITRANS will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act, including interpretations of the Act or the definitions of trade secret, confidential or proprietary. OMNITRANS will accept materials clearly and

prominently labeled "TRADE SECRET" or "CONFIDENTIAL" or "PROPRIETARY" as determined by CONTRACTOR. OMNITRANS will endeavor to notify CONTRACTOR of any request of the disclosure of such materials. Under no circumstances, however, will OMNITRANS be liable or responsible for the disclosure of any labeled materials whether the disclosure is required by law or a court order or occurs through inadvertence, mistake or negligence on the part of OMNITRANS or its officers, employees and/or contractors.

- C. In the event of litigation concerning the disclosure of any material submitted by CONTRACTOR, OMNITRANS' sole involvement will be as a stake holder, retaining the material until otherwise ordered by a court. CONTRACTOR, at its sole expense and risk, shall be responsible for prosecuting or defending any action concerning the materials, and shall defend, indemnify, and hold OMNITRANS harmless from all costs and expenses, including attorneys' fees, in connection with such action.

### **30. WAIVER/INVALIDITY**

No waiver of a breach of any provision of this Agreement by either party shall constitute a waiver of any other breach of the provision, or of any other breach of the provision of the Agreement. Failure of either party to enforce any provision of this Agreement at any time shall not be construed as a waiver of that provision.

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

### **31. FORCE MAJEURE**

Performance of each and all CONTRACTOR's and OMNITRANS' covenants herein shall be subject to such delays as may occur without CONTRACTOR's or OMNITRANS' fault from acts of God, strikes, riots, or from other similar causes beyond CONTRACTOR's or OMNITRANS' control.

### **32. CONFIDENTIALITY**

CONTRACTOR agrees that for and during the entire term of this Agreement, any information, data, figures, records, findings and the like received or generated by CONTRACTOR in the performance of this Agreement, shall be considered and kept as the private and privileged records of OMNITRANS and will not be divulged to any person, firm, corporation, or other entity except on the direct prior written authorization of OMNITRANS. Further, upon expiration or termination of this Agreement for any reason, CONTRACTOR agrees that it will continue to treat as private and privileged any information, data, figures, records, findings, and the like, and will not release any such information to any person, firm, corporation, or other entity, either by statement, deposition, or as a witness, except upon direct prior written authority of OMNITRANS.

### **33. CONTRACTOR'S INTERACTION WITH THE MEDIA AND THE PUBLIC**

- A. OMNITRANS shall review and approve in writing all OMNITRANS related copy proposed to be used by CONTRACTOR for advertising or public relations purposes prior to publication. CONTRACTOR shall not allow OMNITRANS related copy to be published in its advertisements and public relations programs prior to receiving such approval. CONTRACTOR shall ensure that all published information is factual and that it does not in any way imply that OMNITRANS endorses CONTRACTOR's firm, service, and/or product.
- B. CONTRACTOR shall refer all inquiries from the news media to OMNITRANS and shall comply with the procedures of OMNITRANS' Public Affairs staff regarding statements to the media relating to this Agreement or the Work.
- C. If CONTRACTOR receives a complaint from a citizen or the community, CONTRACTOR shall inform OMNITRANS as soon as possible and inform OMNITRANS of any action taken to alleviate the situation.
- D. The provisions of this Section shall survive the termination or expiration of this Agreement.

### **34. GOVERNING LAW**

The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of California, and the proper venue of any action brought hereunder is and shall be the County of San Bernardino, California.

### **35. MODIFICATIONS TO AGREEMENT**

Unless specified otherwise in the Agreement, this Agreement may only be modified by written mutual consent evidenced by signatures of representatives authorized to enter into and modify the Agreement. In order to be effective, amendments may require prior approval by OMNITRANS' Board of Directors, and in all instances require prior signature of an authorized representative of OMNITRANS.

### **36. LICENSING, PERMITS AND INSPECTION COSTS**

- A. The CONTRACTOR warrants that it has all necessary licenses and permits required by the laws of the United States, State of California, and the County of San Bernardino, the Local Jurisdictions, and all other appropriate governmental agencies, and agrees to maintain these licenses and permits in effect for the duration of the Agreement. Further, CONTRACTOR warrants that its employees, agents, and contractors and subcontractors shall conduct themselves in compliance with such laws and licensure requirements including, without limitation, compliance with laws applicable



to nondiscrimination, sexual harassment and ethical behavior throughout the duration of this Agreement. CONTRACTOR further warrants that it shall not retain or employ an unlicensed subcontractor to perform the Work on this Project. CONTRACTOR shall notify OMNITRANS immediately and in writing of its employees', agents', contractors', or subcontractors' inability to obtain or maintain, irrespective of the pendency of any appeal, any such licenses, permits, approvals, certificates, waivers, exemptions. Such inability shall be cause for termination of this Agreement.

- B. CONTRACTOR shall procure all permits and licenses; pay all charges, assessments, and fees, as may be required by the ordinances and regulations of the public agencies having jurisdiction over the areas in which the Work is located and shall comply with all the terms and conditions thereof and with all lawful orders and regulations of each such public agency relating to construction operations under the jurisdiction of such agency.

**37. PRECEDENCE**

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, and any and all of its Amendments, Appendices, Exhibits and Attachments; (2) provisions of [Click here to enter text.](#) and any and all of its Addenda, Appendices, Exhibits and Attachments; and (3) CONTRACTOR's proposal dated \_\_\_\_\_ and its Appendices, Exhibits, Attachments.

**38. ENTIRE AGREEMENT**

This Agreement, and any attachments or documents incorporated herein by inclusion or by reference, constitutes the complete and entire agreement between OMNITRANS and CONTRACTOR and supersedes any prior representations, understandings, communications, commitments, agreements, or proposals, oral or written.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date shown below, and effective on the date first hereinabove written.

OMNITRANS

CONTRACTOR  
Company name:

\_\_\_\_\_  
Erin Rogers  
CEO/General Manager

\_\_\_\_\_  
Name:  
Title:

Date

Date

Federal Tax I.D. No. \_\_\_\_\_

CM \_\_\_\_\_



## **ATTACHMENT D - FORMS**



**BIDDERS LIST INFORMATION (REQUIRED, IF APPLICABLE)**

OmniTrans has a contractual responsibility to the FTA to develop a Bidders List that contains the following information. Therefore, all bidders ***MUST*** supply information on each subcontractor, including both DBEs (Disadvantaged Business Enterprise) and non-DBEs, that bid or quote on sub-contracts for this project.

Prime Firm Name	
Firm Address	
Firm Status as a DBE or non-DBE	
Age of Firm	
Annual Gross Receipts	

Subcontractor Firm Name	
Firm Address	
Firm Status as a DBE or non-DBE	
Age of Firm	
Annual Gross Receipts	
Accepted / Rejected	<input type="checkbox"/> Accepted <input type="checkbox"/> Rejected

Subcontractor Firm Name	
Firm Address	
Firm Status as a DBE or non-DBE	
Age of Firm	
Annual Gross Receipts	
Accepted / Rejected	<input type="checkbox"/> Accepted <input type="checkbox"/> Rejected

Subcontractor Firm Name	
Firm Address	
Firm Status as a DBE or non-DBE	
Age of Firm	
Annual Gross Receipts	
Accepted / Rejected	<input type="checkbox"/> Accepted <input type="checkbox"/> Rejected

Subcontractor Firm Name	
Firm Address	
Firm Status as a DBE or non-DBE	
Age of Firm	
Annual Gross Receipts	
Accepted / Rejected	<input type="checkbox"/> Accepted <input type="checkbox"/> Rejected

(DUPLICATE THIS FORM AS REQUIRED)



**CURRENT CLIENT REFERENCES (MINIMUM OF FIVE (5) REQUIRED)**

*Submit this form with the BID, with valid contact information, failure to do so may be grounds for disqualification.*

Company \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Phone Number/Email \_\_\_\_\_  
Contact Name/Title \_\_\_\_\_  
Type of Engagement \_\_\_\_\_

Company \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Phone Number/Email \_\_\_\_\_  
Contact Name/Title \_\_\_\_\_  
Type of Engagement \_\_\_\_\_

Company \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Phone Number/Email \_\_\_\_\_  
Contact Name/Title \_\_\_\_\_  
Type of Engagement \_\_\_\_\_

Company \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Phone Number/Email \_\_\_\_\_  
Contact Name/Title \_\_\_\_\_  
Type of Engagement \_\_\_\_\_

Company \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Phone Number/Email \_\_\_\_\_  
Contact Name/Title \_\_\_\_\_  
Type of Engagement \_\_\_\_\_

Bidder's Company Name \_\_\_\_\_  
Legal Structure (corp./partner/proprietor) \_\_\_\_\_  
Principle Office Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Phone Number and Email \_\_\_\_\_  
Federal Employer Identification Number \_\_\_\_\_  
Title of Person Authorized to Bind Firm \_\_\_\_\_  
Print Name of Person Authorized to Bind Firm \_\_\_\_\_  
Date Signed and Authorized Signature \_\_\_\_\_



**DEBARMENT, SUSPENSION, & OTHER RESPONSIBILITY MATTERS**

**PRIME**

**(REQUIRED >\$25,000)**

*Submit this form with BID, failure to do so is grounds for disqualification.*

Participant must verify the eligibility of each subcontractor, as well as the principals of such entities, participating on the project from start to end. The SAM (system for award management) [www.sam.gov](http://www.sam.gov) is the official US Government system for verification of entity status related to debarred, suspended, proposed for debarment, or otherwise declared ineligible from receiving contracts.

**One (1) form required of each bidder having greater than a \$25,000 share of the bid.** US Code, Title 31, Section 6101 note and U.S. DOT regulations on “Debarment and Suspension,” 49 CFR Part 29.

The Participant (the bidder and potential contractor or potential subcontractor for a third party contract) certifies to the best of its knowledge and belief, that it and its principals:

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

*An explanation must be attached to this certification regarding any exception(s).*

The Primary Participant certifies that it has authority under State and local laws to comply with the subject assurances, the truthfulness and accuracy of the contents of this certification, any attached explanation submitted herewith, understands the applicability of 31 USC Sections 3801 *Et. Seq.* and that this certification has been legally made.

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Bidder's Company Name .....

Legal Structure (corp./partner/proprietor) .....

Principle Office Address .....

City, State, Zip .....

Phone Number /Email .....

Federal Employer Identification Number .....

Title of Person Authorized to Bind Firm .....

Print Name of Person Authorized Bind Firm .....

Date Signed and Authorized Signature .....





**DEBARMENT, SUSPENSION, & OTHER RESPONSIBILITY MATTERS**  
**SUBCONTRACTOR**  
**(REQUIRED >\$25,000)**

*Submit this form with BID, failure to do so is grounds for disqualification.*

Participant must verify the eligibility of each subcontractor, as well as the principals of such entities, participating on the project from start to end. The SAM (system for award management) [www.sam.gov](http://www.sam.gov) is the official US Government system for verification of entity status related to debarred, suspended, proposed for debarment, or otherwise declared ineligible from receiving contracts.

**One (1) form required of each bidder's proposed subcontractor having greater than a \$25,000 share of the bid.** US Code, Title 31, Section 6101 note and U.S. DOT regulations on "Debarment and Suspension," 49 CFR Part 29.

The Participant (the bidder and potential contractor or potential subcontractor for a third-party contract) certifies to the best of its knowledge and belief, that it and its principals:

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

*An explanation must be attached to this certification regarding any exception(s).*

The Primary Participant certifies that it has authority under State and local laws to comply with the subject assurances, the truthfulness and accuracy of the contents of this certification, any attached explanation submitted herewith, understands the applicability of 31 USC Sections 3801 *Et. Seq.* and that this certification has been legally made.

Proposed Subcontractor Company Name .....

Legal Structure (corp./partner/proprietor) .....

Principle Office Address .....

City, State, Zip .....

Phone Number /Email .....

Federal Employer Identification Number .....

Bidder's Title of Person Authorized to Bind Firm .....

Print Name of Person Authorized Bind Firm .....

Date Signed and Authorized Signature .....





**DECLARATION OF NON-COLLUSION (REQUIRED)**

*Submit this form with the BID, failure to do so may be grounds for disqualification.*

I hereby declare (or affirm) under penalty of perjury that:

1. I am the bidder (if the bidder is an individual), a partner in the bid (if the bidder is a partnership), or an officer or employee of the bidding corporation and have authority to sign on its behalf (if the bidder is a corporation);
2. The bidder has independently produced the attached bid(s) without collusion, agreement, understanding or planned common course of action, with any other source, that would limit independent bidding competition;
3. The contents of the bid(s) have not been communicated by the bidder and or its employees and or agents to any person not an employee and or agent of the bidder and or its surety, on any bond furnished with the bid, and will not be communicated to any such person prior to the official opening of the bid, and
4. I have fully informed myself regarding the accuracy of the statements made in this declaration.

Bidder's Company Name \_\_\_\_\_  
(corp./partnership/sole proprietor) \_\_\_\_\_

Principle Office Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Phone Number \_\_\_\_\_

Email \_\_\_\_\_

Federal Employer I.D. Number \_\_\_\_\_

Title of Person Authorized to Bind Firm \_\_\_\_\_

Print Name Authorized to Bind Firm \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Date Signed \_\_\_\_\_



**LIST OF SUBCONTRACTORS (REQUIRED >½ OF 1% SHARE OF BID)**

*Submit this form with the BID, failure to do so is grounds for disqualification.*

**List subcontractors having greater than ½ of 1% share of the bid.** Public Contract Code § 4104 on “Subletting and Subcontract Fair Practices Act”.

Company	_____	
Address	_____	
City, State, Zip	_____	
Phone Number/Email	_____	
Contact Name/Title	_____	
Type of Engagement	_____	
Type of work to be performed	_____	
Dollar value of participation	_____	Contractor License #:

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Company	_____	
Address	_____	
City, State, Zip	_____	
Phone Number/Email	_____	
Contact Name/Title	_____	
Type of Engagement	_____	
Type of work to be performed	_____	
Dollar value of participation	_____	Contractor License #:

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Company	_____	
Address	_____	
City, State, Zip	_____	
Phone Number/Email	_____	
Contact Name/Title	_____	
Type of Engagement	_____	
Type of work to be performed	_____	
Dollar value of participation	_____	Contractor License #:

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Bidder Company Name \_\_\_\_\_

Legal Structure (corp./partner/proprietor) \_\_\_\_\_

Principle Office Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Phone Number and Email \_\_\_\_\_

Federal Employer Identification Number \_\_\_\_\_

Title of Person Authorized to Bind Firm \_\_\_\_\_

Print Name of Person Authorized to Bind Firm \_\_\_\_\_

Date Signed and Authorized Signature \_\_\_\_\_

**DUPLICATE THIS FORM AS NECESSARY**



**NOT ON EXCLUDED PARTIES LIST - SAM.GOV (REQUIRED)**

*Submit this form with the BID, failure to do so may be grounds for disqualification.*

Bidder certifies that it is **NOT** ineligible to participate on federally financed and assisted construction, materials, equipment or services contracts. The SAM (system for award management) [www.sam.gov](http://www.sam.gov) is the official US Government system for verification of entity status related to debarred, suspended, proposed for debarment, or otherwise declared ineligible from receiving contracts.

Bidder's Company Name .....

Legal Structure (corp./partner/proprietor) .....

Principle Office Address .....

City, State, Zip .....

Phone Number .....

Email .....

Federal Employer Identification Number .....

Title of Person Authorized to Bind Firm .....

Print Name of Person Authorized to Bind Firm .....

Date Signed and Authorized Signature .....



**PROPOSED DISADVANTAGED BUSINESS ENTERPRISE (DBE) RACE-NEUTRAL  
PARTICIPATION LISTING**

*This form must be submitted with the BID, failure to do so is grounds for disqualification.*

Prime Bidder Name: \_\_\_\_\_ Contact Person: \_\_\_\_\_  
Prime Certified as DBE? \_\_\_\_\_ Yes \_\_\_\_\_ No Title: \_\_\_\_\_  
DBE Cert. #: \_\_\_\_\_ Email Address: \_\_\_\_\_

Bidder intends to utilize the following DBE contractors on this project. Signature of  
participating DBE is confirmation of willingness to participate on this project:

Company \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Phone Number \_\_\_\_\_  
Email \_\_\_\_\_  
Contact Name \_\_\_\_\_  
Type of work to be performed \_\_\_\_\_  
Dollar value of participation \_\_\_\_\_ DBE Cert. #: \_\_\_\_\_

Company \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Phone Number \_\_\_\_\_  
Email \_\_\_\_\_  
Contact Name \_\_\_\_\_  
Type of work to be performed \_\_\_\_\_  
Dollar value of participation \_\_\_\_\_ DBE Cert. #: \_\_\_\_\_

Company \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Phone Number \_\_\_\_\_  
Email \_\_\_\_\_  
Contact Name \_\_\_\_\_  
Type of work to be performed \_\_\_\_\_  
Dollar value of participation \_\_\_\_\_ DBE Cert. #: \_\_\_\_\_

Company \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Phone Number \_\_\_\_\_  
Email \_\_\_\_\_  
Contact Name \_\_\_\_\_  
Type of work to be performed \_\_\_\_\_  
Dollar value of participation \_\_\_\_\_ DBE Cert. #: \_\_\_\_\_

**DUPLICATE THIS FORM AS NECESSARY**



**RESTRICTIONS ON LOBBYING (REQUIRED >\$100,000)**

**PRIME**

*Submit this form with the BID, failure to do so is grounds for disqualification.*

**One form required of bidder and subcontractor having greater than a \$100,000 share of the bid.**

31 U.S.C., § 1352 and U.S. DOT regulations on "New Restrictions on Lobbying," 49 C.F.R. Part 20.

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

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

The Contractor, as signed below, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

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Bidder's Company Name .....

Legal Structure (corp./partner/proprietor) .....

Principle Office Address .....

City, State, Zip .....

Phone Number .....

Email .....

Federal Employer Identification Number .....

Title of Person Authorized to Bind Firm .....

Print Name of Person Authorized to Bind Firm .....

Date Signed and Authorized Signature .....

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**RESTRICTIONS ON LOBBYING (REQUIRED >\$100,000)**  
**SUBCONTRACTOR**

*Submit this form with the BID, failure to do so is grounds for disqualification.*

**One form required of bidder and subcontractor having greater than a \$100,000 share of the bid.**

31 U.S.C., § 1352 and U.S. DOT regulations on "New Restrictions on Lobbying," 49 C.F.R. Part 20.

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

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

The Contractor, as signed below, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

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Bidder's Company Name .....

Legal Structure (corp./partner/proprietor) .....

Principle Office Address .....

City, State, Zip .....

Phone Number .....

Email .....

Federal Employer Identification Number .....

Title of Person Authorized to Bind Firm .....

Print Name of Person Authorized to Bind Firm .....

Date Signed and Authorized Signature .....

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**STATUS OF PAST AND PRESENT CONTRACTS FORM (REQUIRED)**

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*Submit this form with the BID, failure to do so may be grounds for disqualification.*

Bidder shall list the status of past and present contracts where the firm has either provided services as a prime vendor or a subcontractor during the past five (5) years in which the contract has been terminated for convenience or cause or is the subject of or may be involved in litigation with the agency.

Additional forms may be submitted to cover all terminated contracts or contracts where option years were exercised.

Project city/agency/other: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Project Award Date: \_\_\_\_\_ Original Contract Value: \_\_\_\_\_

Term of Contract: \_\_\_\_\_

Completely explain the circumstances of any contract terminated and/or option years not exercised

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Project city/agency/other: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Project Award Date: \_\_\_\_\_ Original Contract Value: \_\_\_\_\_

Term of Contract: \_\_\_\_\_

Completely explain the circumstances of any contract terminated and/or option years not exercised

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Project city/agency/other: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Project Award Date: \_\_\_\_\_ Original Contract Value: \_\_\_\_\_

Term of Contract: \_\_\_\_\_



Completely explain the circumstances of any contract terminated and/or option years not exercised

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\_\_\_\_\_  
Signature of Person Authorized to Bind Firm

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title






## WARRANTY CLAIM PROCEDURE (REQUIRED)

*Submit this form with the proposal. Failure to do so is grounds for disqualification.*

Please provide an explanation of the Warranty Claim Procedure for exchange, replacement and reimbursement of repair costs. You may use the space below to explain or you may attach a copy of written procedures to this packet. Any attachment must be clearly marked as “Warranty Claim Procedure” to be considered responsive.

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

 <b>OmniTrans</b> Connecting Our Community.  Procurement Policy Manual	Policy 5000    Page 1 of 8
PROTEST POLICY	Board Approval: October 7, 2020

## 1. POLICY OVERVIEW

- 1.1. The purpose is to establish policy for administrative resolution of protests arising in the procurement process and to implement applicable Federal Transit Administration (FTA) requirements and California statutes.
- 1.2. The protest policy does not include the actions to be taken by Omnitrans in reacting to legal actions initiated by dissatisfied contractors in the U.S. Courts
- 1.3. Omnitrans shall have the responsibility to resolve protests of all contract awards.
- 1.4. The FTA shall be notified in a timely manner of a third-party contract protest on contracts funded by the FTA. The FTA shall remain informed on the status of such protests.
  - 1.4.1. The Federal awarding agency will not substitute its judgment for that of Omnitrans unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction. (Title 2, Code of Federal Regulations Part 200.318)
- 1.5. All Omnitrans procurements shall be conducted in a manner which assures that all prospective contractors are provided fair and equal consideration in the selection of the successful contractor and award of Omnitrans contracts in order to preserve and protect the integrity of the procurement system. To that end, any interested party shall have the right to have its complaint considered and resolved administratively by Omnitrans in an economical and expeditious manner.
- 1.6. "Interested party," as used in this Procurement Policy, means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. The term "interested party" includes all vendors, suppliers, contractors or consultants associated with subject procurement. The term may also include a subcontractor or supplier at any tier who shows that he/she has a substantial economic interest in the subject procurement.
- 1.7. Under certain circumstances, an interested party to procurement may protest to Omnitrans the award of a contract, which may or may not involve the direct application of funds from the FTA, if it is felt that the solicitation contained restrictive specifications or if improprieties are alleged in the procurement.
  - 1.7.1. The mere fact that Omnitrans is a recipient of FTA funds cannot be construed as evidence of the FTA's involvement in a particular procurement.

**PROTEST POLICY**

Board Approval: October 7, 2020

1.8. Protest procedures are intended to ensure that valid complaints are handled expeditiously and that the protesting firm receives a fair review of the complaint. It is Omnitrans' intent that all protests be resolved at the local level. Spurious protests may be subject to civil proceedings for the recovery of compensatory and/or punitive damages. All protests shall be filed, handled, and resolved in a manner consistent with Federal requirements. In all instances involving FTA funds, Omnitrans shall give notice to FTA regarding the protest.

**2. APPLICATION**

2.1. This Procurement Policy applies to all Omnitrans procurement actions except less than \$5,000 (micro purchases).

**3. PROTEST SUBMITTAL CRITERIA – General**

3.1. In order for a protest to be considered, the submittal must meet each one of the following criteria:

3.1.1. Must be submitted on a timely basis. "Timely" is defined in Section 5 entitled "Time Limits."

3.1.2. Must be submitted by an Interested Party. "Interested Party" is defined in Section 1 of this Policy;

3.1.3. Must identify the name, address, and telephone number of the protester;

3.1.4. Must identify the solicitation number or contract number being protested;

3.1.5. Must be submitted in writing;

3.1.6. Must include all supporting documentation for each material issue raised in the protest;

3.1.7. Must include a detailed statement of the legal and/or factual grounds for each material issue identified in the protest; and

3.1.8. Must describe the resolution to the protest desired by the Interested Party; and

3.1.9. Must be signed by a properly authorized representative of the Interested Party.

3.2. Omnitrans reserves the right to waive minor, non-substantive, or trivial deficiencies in a protest in its sole discretion.

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**4. AGENCY LEVEL PROTESTS**

4.1. The initial protest filed with Omnitrans must comply with the protest submittal criteria detailed above. The following applies to the protest:

4.1.1. The grounds for the protest must be supported to the fullest extent feasible;

4.1.1.1. Additional materials in support of an initial protest will be considered only if filed within the time limits specified in Procurement Procedure 5000, "Time Limits."

4.2. No formal briefs or other technical forms of pleading or motion are required, but a protest and other submissions should be concise, logical, clear, and legible.

4.3. Omnitrans' review of any protest will be limited to:

4.3.1. Violations of State or local laws or regulations (Note: Violations of Federal laws or regulations are under the jurisdiction of FTA);

4.3.2. Violations of the Omnitrans' procurement procedures, or the relevant procurement documents;

4.3.3. Violations of the Omnitrans' protest procedures or failure to review a complaint or protest.

**5. TIME LIMITS**

5.1. Protests must be filed with Omnitrans prior to the bid opening or proposal closing date if the protest is based on:

5.1.1. Unduly restrictive or severely defective specifications or scope of work; Defective specifications must represent a material weakness that affords an undue advantage to one bidder or proposer over another;

5.1.2. Improprieties that are apparent in any type of solicitation prior to bid opening or proposal closing date; or

5.2. Protests relating to the selection of a Consultant/Contractor must be filed with Omnitrans within three (3) days of the public bid opening for Invitations for Bids and three (3) days of notice of the award of a contract for Request for Proposals. Such protests may be based on:

5.2.1. Omnitrans' failure to adhere to its purchasing procedures, or the relevant procurement documents; or

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5.2.2. Omnitrans' failure to adhere to its protest procedures.

5.3. If the specifications for a particular procurement include specific protest procedures and time limits, that information shall take precedence over the time limits in this document.

5.4. If the initial filing is late, a protest may be considered in the following circumstances:

5.4.1. Good cause based on a compelling reason beyond the protester's control, where the lateness is due to the fault of Omnitrans in handling the protest submission;

5.4.2. Omnitrans determines that the protest raised issues significant to a procurement practice or procedure;

or

5.4.3. A court of competent jurisdiction requests, expects, or otherwise expresses interest in Omnitrans' decision.

**6. SUBMISSION OF ADDITIONAL INFORMATION**

6.1. Any additional information requested or required by Omnitrans from the protester or interested parties must be submitted as quickly as possible, but in no case later than five (5) days after the receipt of such request, unless specifically accepted by Omnitrans.

**7. CONFIDENTIALITY**

7.1. Materials submitted by a protester will not be withheld from any interested party outside of Omnitrans or from any government agency that may be involved in the protest, except to the extent that the withholding of information is permitted or required by law or regulation.

7.2. If the protester believes that the protest contains proprietary material that should be withheld, the protester should attach a statement to the front page of the protest document.

7.2.1. The statement should advise that the document may contain proprietary material.

7.2.2. The statement should identify the proprietary information wherever it appears in the document and all such material should be stamped "CONFIDENTIAL," "PROPRIETARY," or "TRADE SECRET," as appropriate.

**8. FURNISHING INFORMATION ON PROTESTS**

8.1. Omnitrans will, upon request, make available to any interested party, information bearing on the substance of the protest which has been submitted by the protester, or interested parties, except to the extent that withholding of information is permitted or required by

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law or regulation.

8.1.1. Any comments thereto shall be submitted within a maximum of ten (10) days.

8.1.2. Information identified by the protester as proprietary material, as specified in Section 7.2 above, will be withheld as permitted by law or regulation.

**9. WITHHOLDING OF AWARD**

9.1. When a protest has been timely filed before the contract award, and unless otherwise determined in consultation with legal counsel, Omnitrans will not make an award prior to the resolution of the protest.

9.2. When a protest has been filed before the opening date of bids or closing date of proposals, Omnitrans will not open solicitations prior to the resolution of the protest.

9.3. When a protest has been filed after the award of a contract and prior to the resolution of the protest, Omnitrans will notify the Contractor to suspend activity, unless Omnitrans determines that:

9.3.1. The items to be procured are urgently required;

9.3.2. Delivery or performance will be unduly delayed by failure to either make the award promptly or to continue with the procurement; or

9.3.3. Failure to make prompt award or to continue with the procurement will otherwise cause undue hardship to Omnitrans or other local, State or Federal governments.

**10. PROTEST REVIEW – LEVEL ONE**

10.1. If the protest is determined to be timely and meets the criteria in Section 3, Director of Procurement or designee will create an ad hoc Agency Protest Review Panel (Panel) to review all relevant materials associated with the protest.

10.1.1. The Panel will be composed of two Omnitrans representatives appointed by the Director of Procurement or designee.

10.1.2. The Panel will determine the validity of the protest and what actions will be taken.

10.2. The Panel will be directed to prepare a written report within fifteen (15) working days and to notify the protester and any interested parties of the Panel's findings, actions, and of the procedures for requesting reconsideration.

10.3. The Panel's report may include:

10.3.1. Copies of all relevant bids/proposal;

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10.3.2. A copy of the Invitation for Bids or Request for Proposals, including pertinent provisions of the specifications;

10.3.3. Any other documentation that pertains to the protest, including correspondence with the bidders/proposers; and

10.3.4. A statement by Omnitrans explaining its actions and supporting justification.

10.4. A conference on the merits of the protest with members of the Panel may be held at the request of the protester or the Panel. The request for a conference should be made in a timely manner so as not to interfere with the resolution of the protest and not later than ten (10) days after the initial protest was filed.

**11. PROTEST REVIEW – LEVEL TWO**

11.1. The protester or any interested party may request reconsideration of a decision by Omnitrans.

11.2. The request for reconsideration must contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered.

11.3. The request for the reconsideration of the Panel's decision must be filed with the CEO/General Manager or designee not later than ten (10) days after the Panel issues its written report.


11.3.1. The protest will not be considered pending during the 10day period identified above, or during any reconsideration period.

11.4. Upon receiving a request for reconsideration, the CEO/General Manager or designee will schedule an informal administrative hearing with the protester and the Panel. The hearing will be held not later than fifteen (15) days after the receipt of the request for reconsideration.

11.5. The CEO/General Manager or designee will issue, in writing, Omnitrans' final determination of the reconsidered protest within five (5) days of the administrative hearing.

**12. IMPACT OF JUDICIAL PROCEEDINGS**

12.1. Omnitrans may refuse to decide any protest where the matter involved is the subject of litigation before a court of competent jurisdiction or has been decided on the merits by such a court.

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12.2. This restriction does not apply to instances where the court requests, expects, or otherwise expresses interest in Omnitrans' decision.

### 13. DEFINITIONS

13.1. The following terms are used throughout this Policy. In all instances, the terms are defined as noted:

13.1.1. Omnitrans is a Joint Powers Authority established under the laws of the State of California and may also be referred to in this Procurement Policy as "the Agency;"

13.1.2. "Board" refers to the Board of Directors of Omnitrans;

13.1.3. "FTA" refers to the U.S. Department of Transportation Federal Transit Administration;

13.1.4. "Days" refers to working days of Omnitrans, when used in context with the Agency's protest procedures, and refers to working days of the Federal Government when used in context with the FTA;

13.1.5. The terms "file" or "submit" refer to the date of receipt by Omnitrans and/or FTA;

13.1.6. "Exhaustion of administrative remedies at the grantee level" means any action or inaction on the part of Omnitrans, which is prejudicial to the position taken in a written protest filed with the Agency. It may include, but is not limited to:

13.1.6.1. A final Omnitrans decision on the merits of the protest;

13.1.6.2. A procurement action, such as the award of a contract or rejection of a bid, despite the pendency of the protest;

13.1.6.3. Agency acquiescence in and active support of continued and substantial contract performance despite the pendency of a protest;

13.1.7. "Interested party" includes all actual or prospective proposers for a procurement. The term may also include a subcontractor or supplier at any tier who shows that he/she has a direct economic interest in a provision of the solicitation or of the interpretation of such a provision;

13.1.8. "Violation of Federal law or regulation" is defined as the infringement of any valid requirement imposed by Federal statute or regulation, which governs the letting of contracts pursuant to a grant agreement;



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13.1.8.1. However, any protests involving a local matter and/or determinations that are clearly within the discretionary powers of the Agency include, but are not necessarily limited to, determinations of responsiveness and responsibility, and the revision of specifications to incorporate the evaluation of life-cycle costing (LCC) factors in connection with any given procurement.

13.1.8.2. In other words, the protester must be able to demonstrate or establish a clear violation of the prohibition against unduly exclusionary and restrictive specifications, a violation of the Buy America requirements, or other specific violation of Federal statute or regulation.

13.1.9. “Local” refers to the County of San Bernardino and the State of California.

13.1.9.1. When used in conjunction with the phrase “laws and regulations,” “local” means only those laws or regulations associated with the provision of public mass transportation, the exercise of Omnitrans’ powers or the use of public funds. It does not include the purchasing and/or protest procedures used by either of those entities.

## ATTACHMENT F- PROHIBITING WEAPONS IN THE WORKPLACE

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<b>SUBJECT</b> <b>PROHIBITING WEAPONS IN THE WORKPLACE</b>	<b>APPROVED BY OMNITRANS BOARD OF DIRECTORS</b>  DATE: June 7, 2017

### **I. Purpose**

It is the policy of Omnitrans to maintain a work environment that is safe for all persons, including the community, and conducive to attaining high work standards. To achieve these objectives, the Agency prohibits the possession of firearms and weapons in the work place, regardless of any license or permit that an individual may have which otherwise authorizes the individual to carry firearms or weapons.

It is illegal and a criminal violation to possess weapons in public buildings (California Penal Code 171b and 171.7).

### **II. Scope**

This policy applies to all Omnitrans employees, including but not limited to staffing agency workers and contractors working for or with the Agency at any time, regardless of whether the Agency is the actual employer.

Possession of firearms and weapons is prohibited at all Omnitrans' offices, parking lots, agency vehicles and job sites, and in all Agency vehicles.

The following person/s are exempt from this policy as stated: a guard of a contract carrier operating an armored vehicle, and any law enforcement officer who is carrying out official duties engaged in protecting and preserving property or life within the scope of his or her employment.

Omnitrans will strictly enforce this policy. Violation of this policy will result in immediate disciplinary action, up to and including termination.

### **III. Procedure**

#### **A. COMMUNICATION OF POLICY**

(a) Each employee of the Agency shall receive a copy of this policy at the time of his/her hire and shall sign a copy of the acknowledgment. Employees who were employed before the effective date of this policy shall also receive a copy of this policy and shall sign a copy of the acknowledgment. A copy of the signed acknowledgment and of all new and revised policies throughout the employee's employment shall be maintained in each employee's personnel file.

(b) A copy of this policy shall be attached to each contractor's contract, and shall become a part of its contract. The contractor shall be responsible for communicating this policy to its employees and any subcontractors to which the contractor sublets any portion of its contract.



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### **B. PROHIBITED CONDUCT**

(a) The transportation of firearms or weapons in Agency vehicles is prohibited. This includes but is not limited to:

- (1) to and from work,
- (2) when conducting Agency business,
- (3) at all times in Agency-owned or leased vehicles.

(b) The possession or carrying of permitted and non-permitted firearms or weapons while at Agency buildings, parking lots, sponsored events, and job sites.

(c) Exception: Power actuated tools which are manufactured for the use of fastening building materials and sanctioned tools for the purpose of performing Agency job duties are not subject to this policy.

### **C. SEARCH**

(a) Omnitrans reserves the right to conduct reasonable, unannounced searches of Agency premises and personal searches of employees and others while entering, on, or leaving Agency premises, including, but not limited to, personal effects, vehicles, lockers, desks, tool boxes, clothing, meal containers, and baggage. Searches will be conducted when the Agency has a reasonable suspicion to believe that a particular employee may be in possession of a weapon or firearm.

(b) "Reasonable suspicion" is defined as a suspicion that is based on specific personal observations such as an employee's manner, disposition, behavior, speech, information provided to management by an employee, by law enforcement officials, by a security service, or by other persons believed to be reliable, or a suspicion that is based on other surrounding circumstances.

(c) Individuals refusing to allow an inspection will not be detained or forced to submit to the inspection. Refusal violates Agency policy and constitutes an act of insubordination constituting disciplinary action, up to and including separation of the employment relationship. Non-employees who refuse to allow an inspection will not be permitted on Agency premises and will be required to immediately leave the premises. Employees will be relieved of all duties while pending investigation.

### **D. DISCIPLINE**

(a) Violations of any portion of this policy will subject the employee to discipline,



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up to and including separation of employment.

(b) Violations by a contractor's employee or subcontractor of any portion of this policy may constitute a breach of contract and regardless will mandate the immediate removal of the contractor's employee from Agency premises, prohibition against the individual accessing Agency premises in the future, and may also constitute a breach of contract.

## E. REPORT OF VIOLATIONS

### 1. Employee Violations

Employees are required to report violations of this policy without regard to the relationship between the individual who initiates the prohibited behavior and the individual reporting it. An employee who believes that another employee may be in violation of this policy must report the alleged violation to the employee's manager or supervisor, the department director, security, or the appropriate departmental Human Resources representative.

Departments are responsible for implementing this policy. The Agency will promptly investigate allegations of violations of this policy.

OmniTrans reserves the right to authorize searches for prohibited weapons on its property when a violation is reported or when probable cause or reasonable suspicion is present consistent with law.

Employees should be aware that there is no reasonable expectation of privacy with respect to weapons in the workplace. The Agency's right to conduct searches includes, but is not limited to, such areas and items as lockers, desks, workstations, offices, purses, briefcases, bags, toolboxes, and lunch bags.

Searches of the employee's work area and belongings, as described above, may be conducted by the Security & Emergency Preparedness Coordinator, or designee. Searches of all types, including surrounding agency property, personal property and the employee may be conducted by law enforcement in accordance with law should reasonable suspicion be present. Any weapon found in violation of this policy may be confiscated. Refusal to permit a search may result in discipline, up to and including separation.

### 2. Visitor Violations

Visitors are not allowed to carry a weapon on the premises. Any visitor carrying a weapon into a posted no-carry agency facility is creating an elevated risk to security and safety that warrants a response leading to compliance with the law. If the visitor



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poses an immediate risk to security or safety, law enforcement shall be notified immediately by calling 9-911. The visitor shall be considered an immediate risk to safety and security if he/she is acting in an aggressive, belligerent, confrontational, suspicious or in an otherwise questionable manner while carrying a weapon.

#### F. FALSE REPORTS

Employees making intentionally false and malicious complaints of weapons in the workplace will be subject to disciplinary action, up to and including separation and/or will be reported to the proper authorities as appropriate.

#### G. ROLES AND RESPONSIBILITIES

Employees are responsible for understanding and complying with the Policy Prohibiting Weapons in the Workplace.

Whenever there is a question as to whether an instrument, article or substance is considered a weapon in violation of this policy, it is the employee's responsibility to seek clarification. Employees seeking clarification should direct their questions to the agency's Security & Emergency Preparedness Coordinator at 909-379-7117 prior to bringing the item(s) to Omnitrans work sites and events, as well as agency-owned or leased facilities or vehicles.

#### H. SAFETY FIRST

In applying this policy, no employee shall take any action that will risk his or her own safety or the safety of other individuals. No attempt should ever be made by an employee to restrain or forcibly evict an armed person from agency premises.

An individual's continued non-compliance after being properly informed of the law (California Penal Code 171 (b)) will result in notification to law enforcement and discipline, up to and including separation of employment. Employees should notify security immediately.

An employee who feels an imminent danger to his or her own safety or the safety or security of others, should avoid any interaction with the individual. Immediately contact law enforcement by calling 9-911 and security at 909-379-7117.

#### I. ANTI-RETALIATION PROVISION

Omnitrans strictly prohibits any retaliation against an employee who has reported a possible breach of policy. If an employee feels that he or she has been subjected to retaliation in violation of this policy, the employee must immediately report it to his or her supervisor or other designated Human Resources representative.



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### J. DEFINITIONS

1. **Firearm or weapon includes, but is not limited to:** A weapon, a pistol or rifle, whether loaded or unloaded, capable of firing a projectile and using an explosive as a propellant.

- A firearm, whether loaded or unloaded, from which a shot may be discharged including but not limited to handguns, pistols, revolvers, shotguns, rifles, and bb guns;
- A gun that can discharge a shot or a projectile by means of an explosive or gas, or compressed air;
- A device designed to be used as a weapon, from which can be expelled a projectile by the force of any explosion or force of combustion;
- Any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
- Any destructive device;
- Any device designed as a weapon and capable of producing great bodily harm, including but not limited to, stun guns, stun batons;
- An electric weapon such as a taser gun;
- Any combustible or flammable liquid, or other substance, device, or instrumentality that, in a manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm;
- Any knife that is carried with intention or calculation to produce death or great bodily harm having a blade length in excess of four (4) inches, the blade of which is fixed or is capable of being fixed in an unguarded position by the use of one or two hands. Switchblades are specifically prohibited. (Knives intended to be used as eating utensils, and stored or maintained in office kitchens or lunchrooms do not represent a violation of this policy.)

2. **Office:** All permanent facilities, all mobile facilities, all leased facilities, and any facility designated as an office by the agency.

3. **Parking lot:** All lots at permanent facility, park and rides, lots at project sites, any lot that the agency designates as a parking lot that is not at a permanent facility or project site.

4. **Agency vehicle:** All agency-owned buses/vehicles, all agency-leased buses/vehicles, all agency-rental buses/vehicles, and all personal vehicles for which the owner receives a vehicle allowance, all personal vehicles where the owner receives reimbursement for mileage.



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5. **Search:** To examine in order to find something concealed.

6. **Job sites:** Any and all locations where the agency conducts business.

### SIGNS

1. At each entrance to buildings, parking lots, and project sites, a sign shall be posted in a location that is conspicuous to all who could enter a building, parking lot, or project site.
2. Signs shall have wording or pictogram that prohibits firearms, weapons and give notice of video surveillance. Signs shall be vandalism resistant and of the quality that they will not fade due to the elements.

# **ATTACHMENT G – DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM REQUIREMENTS**

**MNT24-31**

## Disadvantaged Business Enterprise (DBE) Participation

### **I. Race-Neutral DBE Participation**

The Contractor is required to submit a DBE Race-Neutral Participation Listing to identify DBE subcontractor(s) proposed in the performance of this U.S. DOT-assisted contract, and further agrees to ensure that DBE subcontractors listed in the “DBE Race-Neutral Participation Listing” perform work and/or supply materials in accordance with original commitments, unless otherwise directed and/or approved by the Omnitrans prior to the Prime Contractor effectuating any changes to its race-neutral DBE participation commitments. The Contractor is required to submit this form whether or not DBE subcontractors have been proposed.

Prime Contractor shall ensure the DBE information submitted shall include the North American Industry Classification System (NAICS) code applicable to the kind of work the DBE subcontractor(s) will perform on the contract.

In the event the Contractor commits to utilizing a DBE in the performance of this contract after contract award, the Contractor will comply with the same reporting requirements delineated above and submit a “DBE Race-Neutral Participation Listing” for new DBE commitments made after award and during contract performance.

### **II. DBE Policy and Applicability**

In accordance with federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), Omnitrans has adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR, Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.”

The project is subject to these stipulated regulations and Omnitrans’ DBE Program. In order to ensure that Omnitrans achieves its overall DBE Program goal, Omnitrans encourages the participation of DBEs as defined in 49 CFR, Part 26 in the performance of contracts financed in whole or in part with U.S. DOT funds. Pursuant to the intent of these regulations, it is also the policy of Omnitrans to:

Fulfill the spirit and intent of the Federal DBE Program regulations published under U.S. DOT Title 49 CFR, Part 26, by ensuring that DBE’s have equitable access to participate in all of Omnitrans’ and identified Prime Contractor DOT-assisted contracting opportunities.

- a. Ensure that DBEs can fairly compete for and perform on all DOT-assisted contracts and subcontracts.
- b. Ensure non-discrimination in the award and administration of Omnitrans’ DOT-assisted contracts.
- c. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
- d. Ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs in DOT-assisted contracts.
- e. Help remove barriers to the participation of DBEs in DOT-assisted contracts.
- f. Assist in the development of firms that can compete successfully in the marketplace outside the DBE Program.



# **ATTACHMENT G – DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM REQUIREMENTS**

## **MNT24-31**

Contractor will not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

Any terms used in this section that is defined in 49 CFR, Part 26, or elsewhere in the Regulations, will have the meaning set forth in the Regulations. In the event of any conflicts or inconsistencies between the Regulations and Omnitrans' DBE Program with respect to DOT-assisted contracts, the Regulations will prevail.

### **III. Omnitrans' Race-Neutral DBE Policy Implementation Directives**

Pursuant to Race-Neutral DBE policy directives issued by the U.S. DOT in response to the Ninth Circuit U.S. Court of Appeals decision in *Western States Paving Co. v. Washington State Department of Transportation*, Omnitrans has implemented a wholly Race-Neutral DBE Program.

A Race-Neutral DBE Program is one that, while benefitting DBEs, is not solely focused on DBE firms. Therefore, under a Race-Neutral DBE Program, Omnitrans does not establish numeric race-conscious DBE participation goals on its DOT-assisted contracts. However, the Prime Contractor will adhere to race-neutral DBE participation commitments made at the time of contract award.

### **IV. Definitions**

The following definitions apply to the terms as used in these provisions:

- a. "Disadvantaged Business Enterprise (DBE)" means a small business concern: (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- b. "Socially and Economically Disadvantaged Individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Subcontinent Asian Americans, women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, pursuant to 49 CFR part 26.65. Members of the following groups are presumed to be socially and economically disadvantaged:
  1. "Black Americans" which includes persons having origins in any of the Black racial groups of Africa;
  2. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
  3. "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
  4. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust

## **ATTACHMENT G – DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM REQUIREMENTS**

### **MNT24-31**

Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

5. “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka; and
  6. Women.
  - c. “Owned and Controlled” means a business: (a) which is at least 51 percent owned by one or more “Socially and Economically Disadvantaged Individuals” or, in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by one or more “Socially and Economically Disadvantaged Individuals”; and (b) whose management and daily business operations are controlled by one or more such individuals.
  - d. “Manufacturer” means a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the contractor.
  - e. “Regular Dealer” means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. The firm must engage in, as its principal business, and in its own name, the purchase and sale of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock if it owns or operates distribution equipment.
  - f. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- V. Race-Neutral DBE Submission and Ongoing Reporting Requirements (Post- Award)

Contractor shall report both DBE and non-DBE subcontractor payment details to Omnitrans using the web-based system by the 15th of each month. The web-based system allows Contractor to manage their own records, maintain accurate contract award information, and report subcontractor payment details online.

Use of the web-based system is mandatory for the Contractor and subcontractor to use unless Omnitrans instructs otherwise in writing to Contractor. A Contractor account will be created after award, which will allow Contractor to enter data into the web-based system via an internet browser. After award, Contractor will receive instructions to set up their account and enter required subcontractor data. Contractor must require each of its subcontractors to enter required payment verification information into the web-based system. Subcontractors with lower tier subcontractors must require lower tier subcontractors to enter required payment data into the web-based system. Failure of Contractor or its subcontractors to enter required information on a timely basis may result in delay of payment by Omnitrans and may subject Contractor to withholding of payments or penalties for noncompliance.

If Omnitrans approves in writing the use of a form instead of the web-based system to report monthly payments to subcontractors, Contractor will complete and submit the following exhibit at the times specified:

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## **Summary Subcontractors Paid Monthly Report and Payment Verification: (Requires Omnitrans Approval in Writing).**

The Contractor will be required to complete and submit a Form 103 to Omnitrans designee by the 15<sup>th</sup> of each month until completion of the contract to facilitate reporting of all subcontractor payments, including DBE firms, following the first month of contract activity. The Contractor will report the total dollar value paid to all subcontractors, including DBEs, for the applicable reporting period. The Contractor will also report the subcontractor's scope of work and the total subcontract value of commitment for each subcontractor reported.

Upon completion of the contract, the Contractor will be required to prepare and submit to Omnitrans a "Summary Subcontractor Paid Monthly Report and Payment Verification" (Form 103) clearly marked "Final" to facilitate reporting and capturing actual subcontractor payments. Contractor will complete and submit a Final Form 103 whether or not DBEs were utilized in the performance of the contract.

Contractor is advised not to report the participation of DBEs toward the Contractor's race-neutral DBE attainment until the amount being counted has been paid to the DBE.

Contractor is responsible for providing subcontractor's proof of DBE Certification.

Contractor and subcontractors are subject to periodic audits by Omnitrans and or their designated representative. Program audits serve as a part of Omnitrans assessing program compliance. The audit may include comprehensive review of program related forms, documents and procedures, including but not limited to site visits. The information presented for review shall be provided in an auditable manner.

## **VI. DBE Eligibility and Commercially Useful Function Standards**

- a. A DBE must be a small business concern as defined pursuant to Section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto.
- b. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, vendor of material or supplies, or as a trucking company.
- c. A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- d. A DBE must perform a commercially useful function in accordance with 49 CFR 26.55 (i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.) A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce to presume it is performing a commercially useful function.
- e. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:
  1. The CUCP website, accessed at <https://californiaucp.dbesystem.com/>.

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2. The CUCP DBE Directory, which may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, CA 95815; Telephone (916) 445-3520.

#### **VII. DBE Crediting Provisions**

When a DBE is proposed to participate in the contract, either as a Prime Contractor or Subcontractor, only the value of the work proposed to be performed by the DBE with its own forces may be counted toward race-neutral DBE participation. If the Contractor is a DBE joint venture participant, only the DBE proportionate interest in the joint venture will be counted.

- a. If a DBE intends to subcontract part of the work of its subcontract to a lower tier Subcontractor, the value of the subcontracted work may be counted toward race-neutral DBE participation only if the DBE Subcontractor is a certified DBE and actually performs the work with their own forces. Services subcontracted to a non-DBE firm may not be credited toward the prime Contractor's race-neutral DBE attainment.
- b. Contractor is to calculate and credit participation by eligible DBE vendors of equipment, materials, and suppliers toward race-neutral DBE attainment, as follows:
  1. Sixty percent (60%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a regular dealer; or
  2. One hundred percent (100%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a DBE manufacturer.
- c. The following types of fee or commissions paid to DBE Subcontractors, Brokers, and Packagers may be credited toward the prime Contractor's race-neutral DBE attainment, provided that the fee or commission is reasonable, and not excessive, as compared with fees or commissions customarily allowed for similar work, including:
  1. Fees and commissions charged for providing bona fide professional or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies required in the performance of the Contract;
  2. Fees charged for delivery of material and supplies (excluding the cost of materials or supplies themselves) when the licensed hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the material and supplies;
  3. Fees and commissions charged for providing any insurance specifically required in the performance of the Contract.
- d. Contractor may count the participation of DBE trucking companies toward race-neutral DBE attainment, as follows:
  1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.
  2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
  3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

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4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
6. For purposes of this paragraph, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
7. If the Contractor listed a non-certified DBE 1<sup>st</sup> tier Subcontractor to perform work on this contract, and the non-certified DBE subcontractor subcontracts a part of its work or purchases materials and/or supplies from a lower tier DBE certified Subcontractor or Vendor, the value of work performed by the lower tier DBE firm's own forces can be counted toward race-neutral DBE participation on the contract.

#### **VIII. Performance of DBE Subcontractors**

DBE subcontractors listed by the Prime Contractor in its “DBE Race-Neutral Participation Listing” submitted at the time of proposal submission or added during performance of the contract will perform the work and supply the materials for which they are listed, unless the Contractor has received prior written authorization from Omnitrans to perform the work with other forces or to obtain the materials from other sources.

The Contractor will provide written notification to Omnitrans in a timely manner of any changes to its anticipated DBE participation. This notice should be provided prior to commencement of that portion of the work and the Prime Contractor shall demonstrate good faith efforts in continuing doing business with DBE's.

Contractor cannot fully or partially terminate or substitute a DBE subcontractor without good cause and prior written consent from Omnitrans. This includes, but is not limited to, instances in which a prime seeks to perform work originally designated for a DBE with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm. If the Contractor fails to obtain written consent, the Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE(s). Contractor shall exercise good faith efforts to replace the original DBE subcontractor with another DBE firm for at least the same amount remaining on the original DBE's subcontract.

#### **IX. Additional DBE Subcontractors**

In the event Contractor identifies additional DBE subcontractors or suppliers not previously identified by Contractor for race-neutral DBE participation under the contract, Contractor will notify Omnitrans by submitting the form “DBE Race-Neutral Participation Listing” to enable Contractor and Omnitrans to capture all race-neutral DBE participation.

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**X. DBE Certification Status**

If a listed DBE subcontractor is decertified during the life of the project, the decertified subcontractor will notify the Contractor in writing with the date of decertification. The Contractor will furnish the written documentation to Omnitrans in a timely manner.

**XI. Contractor’s Assurance Clause Regarding Non-Discrimination**

In compliance with State and Federal anti-discrimination laws, the Contractor will affirm that they will not exclude or discriminate on the basis of race, color, national origin, or sex in consideration of contract award opportunities. Further, the Contractor will affirm that they will consider, and utilize subcontractors and vendors, in a manner consistent with non-discrimination objectives.

Contractor (and each subcontract the Contractor signs with a subcontractor) must include the following assurance: Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- a. Withholding monthly progress payments;
- b. Assessing sanctions;
- c. Liquidated damages; and/or
- d. Disqualifying the contractor from future bidding as non-responsible.

**XII. Prompt Payment**

Omnitrans has, by a contract clause pursuant to 49 CFR 26.29; “Prompt Payment Mechanisms for Recipients”, adopted a prompt payment provision on all DOT-assisted contracts, to facilitate timely payment to all subcontractors. This provision, governing the payment to subcontractors (DBEs and non-DBEs), requires the Prime Contractor to issue payment to all subcontractors for satisfactory work performed, no later than seven (7) days from Contractor’s receipt of payment from Omnitrans. A provision will also apply to the disbursement of retention proceeds withheld by Prime Contractor, requiring the prompt return of retention payments from Contractor to the subcontractor no later than seven (7) days Omnitrans after the subcontractor’s work is satisfactorily completed. Prime Contractor will incorporate these prompt payment provisions in all subcontract agreements issued by Prime Contractor with respect to this Contract.

In accordance with §26.29 “Prompt Payment Provisions”, Omnitrans at its discretion, utilizes the following method to comply with the prompt payment of retainage requirement:

Hold retainage from the Prime Contractor and require a contract clause obligating Prime Contractor to make prompt and full payment of any retainage kept by Prime Contractor to the subcontractor within 7 days after the subcontractor’s work is satisfactorily completed.

Failure to comply with these prompt payment provisions or delay in issuing payment without prior written approval from Omnitrans will constitute noncompliance, which will result in the

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application of appropriate administrative sanctions, including, but not limited to, a penalty of 1% of the amount due per month to the affected subcontractor for every month that payment is not made.

Contractor will not be reimbursed for work performed by subcontractors unless and until the contractor ensures that the subcontractors are promptly paid for the work performed. Contractor shall include a prompt payment clause that complies with local, state, and federal prompt payment requirements in all subcontracts entered into under this contract. Should contractor fail to meet subcontractor prompt payment requirements for two (2) consecutive subcontractor payments without good cause, OMNITRANS may impose appropriate penalties for failure to comply with prompt payment requirements.

#### **XIII. Records Retention**

Prime Contractor shall maintain all DBE program records, including a thorough and updated bidder's list.

Omnitrans requires prime contractors to maintain records of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for Omnitrans' financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of Omnitrans or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

#### **XIV. Bidders List**

The U.S. Department of Transportation (DOT) requires Omnitrans to maintain a "Bidders List" containing information about all firms (DBE and non-DBE) that bid, propose or quote on Omnitrans' DOT-assisted contracts, in accordance with 49 CFR Part 26.11, for use in the Omnitrans' overall triennial DBE goal-setting process. Therefore, the Contractor shall provide at a minimum, the following requested information for every firm who submitted a quote, bid, or proposal, including the primary Contractor, whether successful or unsuccessful in their attempt to obtain a contract:

- a. Firm name
- b. Firm address
- c. Status of DBE or non-DBE
- d. Age of the business
- e. Range of annual gross receipts for the last year

A Bidders List form is attached for completion by Contractor. It is the responsibility of the Contractor to verify accuracy of information submitted by each subcontractor. The Bidders List content will not be considered in evaluating the bid/proposal or determining award of the contract.