

FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACTS > \$10,000

1.0 GENERAL

This Contract is subject to the terms of a financial assistance contract between the Santa Cruz Metropolitan Transit District and the Federal Transit Administration (FTA) of the United States Department of Transportation. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

2.0 NO OBLIGATION BY THE FEDERAL GOVERNMENT

- A. The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

3.0 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

- A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- C. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

4.0 INTEREST TO MEMBERS OF OR DELEGATES TO CONGRESS

In accordance with 18 U.S.C. 431, no member of, nor delegates to, the Congress of the United States shall be admitted to a share or part of this Contract or to any benefit arising therefrom.

5.0 GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

Instructions for Certification

- A. The certification in this clause is a material representation of fact upon which reliance was placed when this contract was entered into. If it is later determined that the contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, Santa Cruz METRO may pursue available remedies, including suspension and/or debarment, and/or contract termination.
- B. The contractor shall provide immediate written notice to Santa Cruz METRO if at any time the contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- C. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “persons,” “principal,” “bid,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact Santa Cruz METRO for assistance in obtaining a copy of those regulations.
- D. The contractor agrees that by executing this contract that, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by Santa Cruz METRO.
- E. The contractor further agrees by executing this contract that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction”, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- F. A contractor may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A contractor may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-Procurement List issued by U.S. General Service Administration.
- G. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- H. If a contractor covered by this contract knowingly enters into a lower tier covered contract with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this contract, in addition to all remedies available to the Federal Government, Santa Cruz METRO may pursue available remedies including suspension and/or debarment.

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

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

- (2) When the contractor is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this bid.

6.0 EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this Contract, the Contractor shall not discriminate against any employee or application for employment because of race, religion, color, sex, age (40 or over), national origin, pregnancy, ancestry, marital status, medical condition, physical handicap, sexual orientation, or citizenship status. The Contractor shall take affirmative action to insure that applicants employed and that employees are treated during their employment, without regard to their race, religion, color, sex national origin, etc. Such actions 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. Contractor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

7.0 CIVIL RIGHTS REQUIREMENTS

- 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, the contractor and subcontractor agree that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- B. Equal Employment Opportunity The following equal employment opportunity requirements apply to this contract:
 1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the contractor and subcontractor agree to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq. (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the contractor agrees to comply with any implementing requirements FTA may issue. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the contractor agrees to comply with any implementing requirements FTA may issue.

3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the contractor agrees to comply with any implementing requirements FTA may issue.
 4. In the event of the contractor's noncompliance with the nondiscrimination clauses of this agreement or with any of the said rules, regulations or orders, this agreement may be canceled, terminated or suspended in whole or in part. The contractor may be declared ineligible for further Government contracts or Federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor or as otherwise provided by law.
- C. The contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

8.0 ENERGY CONSERVATION

Contractor shall recognize 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 Section 6321, et seq.).

9.0 DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

A. Policy

It is the policy of the U.S. Department of Transportation that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this Agreement.

B. DBE Obligation

Santa Cruz METRO and Contractor agree to insure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts under this Agreement. In this regard, Santa Cruz METRO and Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to insure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform Contracts. Santa Cruz METRO and Contractor shall not discriminate on the basis of race, creed, color, national origin, age or sex in the award and performance of DOT-assisted Contracts.

The Contractor will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

C. Prompt Payment and Return of Retainage

- (a) The Contractor is required to pay its DBE subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from Santa Cruz METRO. In addition, Contractor is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by Santa Cruz METRO and Contractor's receipt of the partial retainage payment related to the subcontractor's work.

- (b) The Contractor must promptly notify Santa Cruz METRO whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Santa Cruz METRO.

10.0 CONFLICT OF INTEREST

No employee, officer or agent of Santa Cruz METRO shall participate in selection, or in the award of administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when (1) the employee, officer or agent; (2) any member of his or her immediate family; (3) his or her partner; or (4) an organization that employs, or is about to employ, has a financial or other interest in the firm selected for award. Santa Cruz METRO's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from Contractors, potential Contractors or parties of sub agreements.

11.0 PRIVACY (Applicable only to Contracts involving the administration of any system of records as defined by the Privacy Act of 1974, on behalf of the Federal Government)

A. General

Santa Cruz METRO and Contractor agree:

- (a) To comply with the Privacy Act of 1974, 5 U.S.C. 552a (the Act) and the rules and regulations issued pursuant to the Act when performance under the Contract involves the design, development or operation of any system of records on individuals to be operated by Santa Cruz METRO, its contractors or employees to accomplish a Government function.
- (b) To notify the Government when Santa Cruz METRO or Contractor anticipates operating a system of records on behalf of the Government in order to accomplish the requirements of this Agreement, if such system contains information about individuals which information will be retrieved by the individual's name or other identifier assigned to the individual. A system of records subject to the Act may not be employed in the performance of this Agreement until the necessary approval and publication requirements applicable to the system have been carried out. Santa Cruz METRO or Contractor, as appropriate, agrees to correct, maintain, disseminate, and use such records in accordance with the requirements of the Act, and to comply with all applicable requirements of the Act.
- (c) To include the Privacy Act Notification contained in this Agreement in every subcontract solicitation and in every subcontract when the performance of Work under the proposed subcontract may involve the design, development or operation of a system of records on individuals that is to be operated under the Contract to accomplish a Government function; and
- (d) To include this clause, including this paragraph in all in subcontracts under which Work for this Agreement is performed or which is awarded pursuant to this Agreement or which may involve the design, development, or operation of such a system of records on behalf of the Government.

B. Applicability

For purposes of the Privacy Act, when the Agreement involves the operation of a system of records on individuals to accomplish a Government function, Santa Cruz METRO, third party contractors and any of their employees are considered to be employees of the Government with respect to the Government function and the requirements of the Act, including the civil and criminal penalties for

violations of the Act, are applicable except that the criminal penalties shall not apply with regard to contracts effective prior to September 27, 1975. In addition, failure to comply with the provisions of the Act or of this clause will make this Agreement subject to termination.

C. Definitions

The terms used in this clause have the following meanings:

- (a) "Operation of a system of records" means performance of any of the activities associated with maintaining the system of records on behalf of the Government including the collection, use and dissemination of records.
- (b) "Records" means any item, collection or grouping of information about an individual that is maintained by Santa Cruz METRO or Contractor on behalf of the Government, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.
- (c) "System of records" on individuals means a group of any records under the control of Santa Cruz METRO or Contractor on behalf of the Government from which information is retrieved by the name of the individual or by some identifying number, symbol or other identifying particular assigned to the individual.

12.0 RESTRICTIONS ON LOBBYING

A. Prohibition

- 1. Section 1352 of Title 31, U.S. Code, provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, 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. The prohibition does not apply as follows:
 - (i) Agency and legislative liaison by Own Employees.
 - (ii) Professional and technical services by Own Employees.
 - (iii) Reporting for Own Employees.
 - (iv) Professional and technical services by Other than Own Employees.

B. Disclosure

- 1. Each person who requests or receives from an agency a Federal contract shall file with that agency a certification, included in Form of Proposal or Bid Forms, that the person has not made, and will not make, any payment prohibited by Section 20.1 of this clause.
- 2. Each person who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, Standard Form-LLL, "Disclosure of Lobbying Activities," if such person has made or has agreed to make any payment using non-appropriated funds (to include

profits from any covered Federal action), which would be prohibited under Section 20.1 of this clause if paid for with appropriated funds.

3. Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph (c)(2) of this section. An event that materially affects the accuracy of the information reported includes:
 - (i) a cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - (ii) a change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
 - (iii) a change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
4. Any person who requests or receives from a person referred to in paragraph (c)(i) of this section a subcontract exceeding \$100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.
5. All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraph (c)(i) of this section. That person shall forward all disclosure forms to the agency.

13.0 RECYCLED PRODUCTS

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. This clause is applicable when contractor procures \$10,000 or more of one of the designated items during the fiscal year using Federal funds.

14.0 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

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