



DOCUMENT/CONTRACT LOG SHEET

100682-61299.0

Check all that apply: Local State Federal

Failure to complete appropriate sections will cause a delay in contract processing.

PLEASE USE INK IF FILLING IN BY HAND (BLACK OR BLUE)

General Information

File No. 970.11

Firm/Agency/Contractor Name & Address:

Heritage Security Services

Document/Contract #: G1299.0-10

W.O.#

Attn: Lawrence Richman

This Contract Amendment Amount:

\$

1260 Morena Blvd, Suite 200

Total Contract Amount (including all amendments):

\$35,031,590

San Diego, CA 92110

Total Board Approval Amount

\$35,031,590

Board Approval Date: 6/24/10

Agenda Item No: 30

Corporation

Partnership

Revenue -or-

Expenditure

Public Agency

Sole Proprietor

Other:

LOCAL: Yes

No

IFAS

Elipse

Document/Contract Purpose:

FY Budget Line Item(s)/Project/WBS No.

Amount

Remaining Budget Balance

Security Services for a 4-year base period with two 1-year options

11 420-53510

5,782,614

12 420-53510

5,782,614

13 420-53510

5,782,614

14 420-53510

5,782,614

CONTRACT TYPE:

Construction (C)

Services (S)

Goods/Commod. (P)

Specialty (L)

Sole Source/Other (N)

DBE Firm: YES

NO

Goal:

Actual:

PPR:

List of Certified Firms/Subcontractors

Name:

Type of Work:

Amount:

Ethnicity/Gender:

		\$0.	
		\$0.	
		\$0.	
Total:		\$0.	

Insurance

Monitored

MTS

Insur. Consult

N/A

Less than 100k

100k or more

by:

Procurement justification attached

Routing Review/Approval

Document Mail-out

1. Proc. Mgr. [Signature]

Date: 6/22/10

Date Mailed:

Mailed by:

2. Proj. Mgr. [Signature]

Date: 6/28/10

Special Handling:

Database entry:

3. Director [Signature]

Date: 7/15/10

4. Finance [Signature]

Date: 6/30/10

5. Counsel [Signature]

Date: 7/1

Executed Document

Date: 7/1/10

6. CEO [Signature]

Date: 7/1

Distributions: Project Mgr.

Finance

Read

Chron

Completion Date: 6-30-14

Other cc: B. BURKE

Comments:

1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490
(619) 231-1466 • FAX (619) 234-3407

ORIGINAL



STANDARD SERVICES AGREEMENT

G1299.0-10
CONTRACT NUMBER
OPS 970.11
FILE NUMBER(S)

THIS AGREEMENT is entered into this 1st day of July 2010, in the State of California by and between San Diego Metropolitan Transit System ("MTS"), a California public agency, and the following contractor, hereinafter referred to as "Contractor":

Name: Heritage Security Services Address: 1260 Morena Boulevard, Suite 200
Form of Business: Corporation San Diego, CA 92110
(Corporation, partnership, sole proprietor, etc.) Telephone: 619.275.7000

Authorized person to sign contracts: Lawrence Richman Chairman
Name Title

The attached Standard Conditions are part of this agreement. The Contractor agrees to furnish to MTS services and materials, as follows:

Provide MTS security services as specified in MTS's Request for Proposals (RFP) MTS Doc. No. G1299.0-10, including Addendum No. 1, Responses to Approved Equals/Clarifications, and in accordance with the Standard Services Agreement, including the Standard Conditions Services, Scope of Work, MTS's Safety Department's Standard Operating Procedures (SOP) (SAF 016-03), and Heritage Security Services' proposal (hereinafter "Contract Documents"). If there are any inconsistencies between the Contract Documents, the following order of precedence will govern the interpretation of this contract.

1. MTS's Request for Proposals (RFP), Addendum No. 1, Responses to Approved Equals/Clarifications, MTS's Safety Department's Standard Operating Procedures (SOP) (SAF 016-03), and Heritage Security Services' proposal.
2. Standard Service Agreement, including the Standard Conditions Services, and Federal Requirements.

The term of the contract shall be a 4-year base term with two 1-year options. Total contract amount shall not exceed \$35,031,590.



STANDARD CONDITIONS SERVICES

1. INDEPENDENT CONTRACTOR

Contractor hereby declares that it is engaged in an independent business and agrees that in the performance of this agreement it shall act as an independent contractor and not as an employee of MTS. Contractor has and hereby retains full control of all the employment, compensation, and discharge of all employees of Contractor assisting in its performance hereunder. Contractor shall be fully responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding tax, and all other laws and regulations governing such matters. Contractor shall be responsible for its own acts and those of its agents and employees during the term of this agreement. MTS shall be responsible for its own acts and those of its agents and employees during the term of this agreement. Except as otherwise specifically provided, as an independent contractor, Contractor will be solely responsible for determining means and methods for performing the services described in the scope of work. Contractor shall perform the work contemplated with resources available within its own organization.

2. INSURANCE

Contractor will include the contract number on all insurance-related correspondence, i.e., the insurance certificate itself.

All policies required shall be issued by companies who hold a current policyholder's alphabetic and financial-size category rating of not less than AV, in accordance with Best's Insurance Report. All policies required shall be issued by companies who are licensed or approved to do business in the State of California and hold a current policyholder's alphabetic and financial-size category rating of not less than A-VI, in accordance with A.M. Best.

A. COVERAGE REQUIRED - ALL CONTRACTS

(1) Liability

- (a) Commercial General Liability At all times during this contract and, with respect to Products and Completed Operations Liability, for 12 months following the acceptance of the work by MTS, Contractor agrees to maintain Commercial General Liability Insurance utilizing Insurance Services Office (ISO) coverage form CG0001, edition date 10/01 or later, or an equivalent form and with insurance companies acceptable to MTS. The coverage shall contain no restricting or exclusionary endorsements with respect to the performing of services described in the scope of work.

All such policies shall name in the endorsement San Diego Metropolitan Transit System (MTS), San Diego Trolley, Inc. (SDTI), San Diego and Arizona Eastern Railway (SD&AE), San Diego and Imperial Valley Railroad (SD&IV), and San Diego Transit Corporation (SDTC), their

directors, officers, agents, and employees as additional insureds as their interests may appear.

- (b) Automobile Liability At all times during this contract, Contractor agrees to maintain Automobile Liability Insurance for bodily injury and property damage including coverage for all owned, nonowned, and hired vehicles.
- (c) Workers' Compensation/Employer Liability At all times during this contract, Contractor agrees to maintain Workers' Compensation and Employers' Liability Insurance in compliance with the applicable statutory requirements. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver.

B. ADDITIONAL COVERAGES REQUIRED (AS INDICATED)

- (1) Owner-Provided Builder's Risk
PROVIDED

MTS will provide Builder's Risk Insurance on a special form basis, excluding the perils of earthquake and flood, at a limit of not less than the full replacement value of the work and covering the work and all materials and equipment to be incorporated therein, including property in transit elsewhere, and insuring the interests of the Contractor, subcontractors, materialmen, and MTS, SDTI, SD&AE, SD&IV, SDTC, MTS's contractor for design, and MTS's contractor for construction management. However, Contractor is responsible for the portion of any loss that is within the deductible amount of this Builder's Risk Insurance, which is currently at \$50,000 but is subject to change.

- (2) Railroad Protective or Equivalent
REQUIRED

Any exclusions relating to performance of operations within the vicinity of any railroad, bridge, trestle, track, roadbed, tunnel, underpass, or crossing must be deleted. Option: purchase separate Railroad Protective Liability Policy as required.

- (3) Professional Liability
REQUIRED

At all times during this contract, and for 12 months following acceptance of work by owner, Contractor agrees to maintain Professional Liability Insurance with respect to services or operations under this agreement.

- (4) Pollution Legal Liability
REQUIRED

At all times during this contract, and for 24 months following, Contractor agrees to maintain Pollution Legal Liability Insurance with respect to services or

operations under this agreement. The extended discovery period must be no less than 24 months.

(5)
REQUIRED

Contractor Equipment

At all times during this contract, Contractor agrees to maintain Contractor's Equipment Insurance on a special form basis covering equipment owned, leased, or used by Contractor. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver. Contractor hereby releases and holds harmless MTS for any loss or damage to its equipment.

(6)
REQUIRED

Installation Floater

At all times during this contract, Contractor agrees to maintain Installation Floater Insurance on a special form basis covering property owned or provided by Contractor. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver. Contractor hereby releases and holds harmless these entities for any loss or damage to its property.

(7)
REQUIRED

Garage Keeper's Legal Liability & Automobile Portion

At all times during this contract, Contractor agrees to maintain Garage Keeper's Legal Liability as well Automobile Portion which covers the risk of loss or damage to MTS vehicles while in the care, custody or control of Contractor. Automobile portion shall cover the Contractor in the event of a vehicle accident while they are driving a MTS vehicle, which results in a third party claim of physical damage or bodily injury.

(8)
REQUIRED

Construction Work Agreements

- (a) Contractor agrees to utilize ISO coverage forms CG2010, 10/85 or ISO coverage forms CG2010 and CG2037, or equivalent forms, to comply with the additional Insured requirement stated in section 2.A.(1)(b).
- (b) Contractor agrees to provide a Designated Project Aggregate Limit Endorsement (per project aggregate) utilizing form CG2503 or equivalent Form.

(9)
REQUIRED

Umbrella or Excess Liability (if required to meet liability limits above)

Contractor agrees that any Umbrella or Excess Liability Policy utilized to provide the required limits of liability shall contain coverage at least as broad as that

provided by the General Liability Policy, and be written for a term concurrent with the General Liability Policy.

(10) Primary and Non-Contributory Insurance
REQUIRED

Contractor agrees that all general liability coverages required under this insurance section are PRIMARY and that any insurance of MTS, SDTI, SD&AE, SD&IV, and SDTC shall be excess and noncontributory (endorsement required).

C. MINIMUM POLICY LIMITS REQUIRED

	<u>Limits</u>
Commercial General Liability.....	<u>\$5,000,000</u> Per Occurrence
.....	<u>\$5,000,000</u> General Aggregate
.....	<u>\$2,000,000</u> Completed Operations & Products Aggregate
Automobile Liability.....	<u>\$1,000,000</u> Combined Single Limit
Worker's Compensation Employer's Liability.....	<u>\$1,000,000</u>

Additional Coverages (as indicated under Section B, Additional Coverages Required):

<input type="checkbox"/> B (1) Builder's Risk	Replacement Cost
<input type="checkbox"/> B (2) Railroad Protective	<u>\$5,000,000</u>
<input checked="" type="checkbox"/> B (3) Professional Liability	<u>\$5,000,000</u>
<input type="checkbox"/> B (4) Pollution Liability	<u>\$</u>
<input type="checkbox"/> B (5) Contractor Equipment	Replacement Cost
<input type="checkbox"/> B (6) Installation Floater	Replacement Cost
<input type="checkbox"/> B (7) Garage Keeper's Legal Liability (Combined Single Limit (CSL) Per Occurrence)	<u>\$</u>

D. POLICY PROVISION REQUIRED

All policies and coverages shall contain a provision for 30 days written notice by the Insurer(s) to MTS Contracts Specialist of any cancellation or material reduction of coverage. A ten-day notice is required for non-payment of premium.

E. EVIDENCE REQUIRED

Within ten working days following receipt of notice that a contract has been awarded, Contractor shall have provided the MTS Contracts Specialist with satisfactory certification by a qualified representative of the Insurer(s) that Contractor's insurance complies with all provisions in this insurance section.

F. SPECIAL PROVISIONS

The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor, and any approval of said insurance by MTS, SDTI, SD&AE, SD&IV, and SDTC, or their insurance Contractor(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant to this agreement, including but not limited to the provisions concerning indemnification.

MTS reserves the right to withhold payments to Contractor in the event of material noncompliance with the insurance requirements outlined above.

3. TERMINATION OF AGREEMENT

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

The Contractor shall notify subcontractors and service or supply vendors providing services under this contract of the early termination date of this contract. Failure to notify any subcontractor and service or supply vendor shall result in the Contractor being liable for the termination costs incurred by any subcontractor and service or supply vendor for work performed under this contract, except those specifically agreed to in the termination notice to the Contractor.

4. INDEMNITY

As between MTS and Contractor, Contractor is deemed to assume responsibility and liability for, and Contractor shall indemnify and hold harmless, MTS, SDTI, SDTC, SD&AE, SD&IV and any and all of its directors, officers, agents or employees from and against any and all claims, loss, damage, charge, or expense, whether direct or indirect, which MTS, SDTI, SDTC, SD&AE, SD&IV or such directors, officers, agents or employees may be put or subjected, by reason of any damage, loss, or injury of any kind or nature whatever to persons or property caused by or resulting from or in connection with any negligent act or action, or any neglect, omission, or failure to act when under a duty to act on the part of Contractor or any of its officers, agents, servants, employees or subcontractors in its or their performance under this Agreement. In addition to any other remedy authorized by law, so much of the money due Contractor under this agreement as shall be considered necessary by MTS may be retained until disposition has been made of any claim for damages.

5. NONASSIGNMENT

Any attempt by Contractor to assign, subcontract, or transfer all or part of this agreement shall be void and unenforceable without MTS's prior written consent; which consent shall not be

unreasonably withheld. Any such consent shall not relieve Contractor from full and direct responsibility for all services performed prior to the date of assigning, subcontracting, or transferring this agreement.

6. SUBCONTRACTORS

Any contract in excess of \$25,000, entered into as a result of this contract, shall contain all of the provisions stipulated in this contract to be applicable to subcontractors, including, but not limited to, provisions pertaining to costs, records, and payment methods.

7. NOTICES

All notices or other communications to either party by the other shall be deemed given when made in writing and deposited in the United States Post Office, addressed as follows:

To MTS:

San Diego Metropolitan Transit System (MTS)
Attention: Chief Executive Officer
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490

To Contractor:

As shown on front page.

8. CONSIDERATION PAID

MTS shall reimburse the Contractor for actual costs (including labor costs, employee benefits, overhead, and other direct costs) incurred by the Contractor in performance of the work, in an amount not to exceed \$35,031,590 exclusive of any fixed fee. Actual costs shall not exceed the estimated wage rates and other costs set forth in the Contractor's proposal.

In addition, MTS shall pay the Contractor a fixed fee of \$0.00. Said fixed fee shall not be altered unless there is a significant alteration in scope, complexity, or character of the work to be performed.

Fees and all other charges will be billed monthly as the work progresses, and the net amount shall be due at the time of billing.

Total expenditures made under this contract, including the fixed fee, shall not exceed the sum of \$35,031,590.

Reimbursement for transportation and subsistence costs shall not exceed the rates to be paid nonrepresented/excluded state employees under current State Department of Personnel Administration rules detailed in the State Travel and Expense Guide.

Equipment purchases shall be made in accordance with 49 CFR, Part 18.32.

9. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

MTS's Equal Employment Opportunity Program for Contractors, MTS Policy No. 25, is part of this agreement (a copy can be obtained from MTS's Clerk of the Board). A Certificate of Compliance and a Workforce Report form signed by the Contractor is a condition for the award of this contract.

Each Contractor who provides MTS labor, equipment, materials and services of \$50,000 or more per year with fifty (50) or more employees shall have, maintain, and submit an Equal Employment Opportunity (EEO) Plan to the Director of Human Resources and Labor Relations for MTS each year of the contract, and a Workforce Utilization Report on or before January 1 and July 1 for each year of the contract.

10. COST PRINCIPLES

The Contractor agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, shall be used to determine the allowability of individual items of cost.

The Contractor also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to state and local governments.

Any costs for which payment has been made to the Contractor that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to state and local governments, are subject to repayment by the Contractor to MTS.

11. NOTICE OF POTENTIAL CLAIM FOR OUT-OF-SCOPE WORK

The Contractor shall not be entitled to additional compensation for out-of-scope work unless he has given MTS a written notice of potential claim for any such work. The written notice of potential claim shall set forth the reasons for which the Contractor believes additional compensation will or may be due, the nature of the out-of-scope work involved, and, insofar as possible, the amount of the potential claim. The notice must be given to MTS prior to the time Contractor shall have performed the work, if based on an act or failure to act by MTS or in all other cases within 15 days after the happening of the event, thing, occurrence, or other cause, giving rise to the potential claim.

It is the intention of this section that any claim for out-of-scope work be brought to the attention of MTS at the earliest possible time in order that matters related to any such work can be settled in a prompt manner. The Contractor hereby agrees that he shall have no right to additional compensation for any claim for out-of-scope work for which no written notice of potential claim as herein required was filed.

12. LITIGATION EXPENSES

Should litigation be necessary to enforce any term or provision of this agreement, or to collect any portion of the amount payable under this agreement, then all litigation and collection expenses, witness fees, court costs, and attorney's fees shall be paid to the prevailing party.

13. EXCLUSIVE USE

The services hereunder are provided for the exclusive use of MTS and such services, data, recommendations, proposals, reports, design criteria, and similar information provided by Contractor, are not to be used or relied upon by other parties except as authorized by MTS.

14. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION (*applies to federally funded contracts only*)

This project is subject to Title 49, Code of Federal Regulations part 26 (49 CFR 26), entitled "Participation by Disadvantaged Business Enterprises (DBEs) in Department of Transportation Financial Assistance Programs." In order to ensure MTS achieves its federally mandated statewide overall DBE goal, MTS encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed in whole or in part with federal funds. Contractor is also encouraged to use services offered by financial institutions owned and controlled by DBEs. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

As required by federal law, the California Department of Transportation (Caltrans) has established a statewide overall DBE goal that MTS must participate in as a condition of receipt of funding. In order to ascertain whether that statewide overall DBE goal is being achieved, MTS is tracking DBE participation on all federal-aid contracts. To assist Proposers in ascertaining DBE availability for specific items of work, MTS advises that it has determined that DBEs could reasonably be expected to compete for subcontracting opportunities on this project, and the likely DBE availability advisory percentage is zero percent. **MTS also advises that participation of DBEs in the specified percentage is not a condition of execution of this Agreement.**

Contractor shall be fully informed in respect to the requirements of the DBE Regulations. The DBE Regulations in their entirety are incorporated herein by this reference. Contractor's attention is directed to the following matters:

- A. A DBE must be a small business concern as defined pursuant to Section 3 of 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 materials 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; 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.
- 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. Caltrans' "Civil Rights" Web site at: <http://www.dot.ca.gov/hq/bep>.
 - 2. Caltrans' DBE Directory This Directory may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California 95815, Telephone: (916) 445-3520.
- F. When reporting DBE participation, the Contractor may count the cost of materials or supplies purchased from DBEs as follows:
 - 1. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
 - 2. If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph.
 - 3. If the DBE is neither a manufacturer nor a regular dealer, count only the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

4. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.
- G. When reporting DBE participation, the Contractor may count the participation of DBE trucking companies 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.
 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 the purposes of paragraph 15(G), 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. Prior to the fifteenth of each month, the Contractor shall submit documentation to MTS showing the amount paid to DBE trucking companies. The Contractor shall also obtain and submit documentation to MTS showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contractor may count only the fee or commission the DBE receives as a result of the lease arrangement. The Contractor shall also submit to MTS documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that month.

If a DBE subcontractor is decertified during the life of the project, the decertified subcontractor shall notify the Contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the project, the subcontractor shall notify the Contractor in writing with the date of certification. The Contractor shall furnish the written documentation to the Engineer.

15. PROMPT PAYMENT

No retainage will be held by the agency from progress payments due to the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with MTS's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specific in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor, or subcontractor in the event of a dispute involving late payment, or nonpayment by the contractor, or deficient subcontractor's performance, or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

16. RECORDS RETENTION

The Contractor shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract including, but not limited to, the costs of administering the contract. The Contractor shall make such materials available at its respective office at all reasonable times during the contract period and for three years from the date of final payment under the contract. MTS, the state, the State Auditor, or any duly authorized representative of the federal government shall have access to any books, records, and documents of the Contractor that are pertinent to the contract for audit examination, excerpts, and transactions, and copies thereof shall be furnished if requested.

17. COVENANT AGAINST CONTINGENT FEES

Contractor warrants that she or he has not employed or retained any company or person, other than a bona fide employee working for the Contractor, to solicit or secure this agreement, and that she or he has not agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this agreement. For breach or violation of this warranty, MTS shall have the right to annul this agreement without liability or, at its discretion, to deduct from the agreement a price or consideration, or otherwise recover the full amount of such fee, percentage, brokerage fee, gift, or contingent fee.

18. OWNERSHIP OF DOCUMENTS

Tracings, plans, specifications, and maps prepared or obtained under the terms of this agreement shall be delivered to and become the property of MTS. Basic survey notes and

sketches, charts, computations, and other data prepared or obtained under this agreement shall be made available, upon request, to MTS without restriction or limitation on its use.

19. TIME

The Contractor acknowledges that timely performance is an important element of this agreement. Accordingly, the Contractor shall put forth its best professional effort to complete its services in accordance with the agreed-upon schedule.

20. ENTIRE AGREEMENT

This agreement is the entire agreement of the parties and no attempted modification shall be binding unless in writing and signed by MTS and the Contractor. All questions pertaining to the validity and interpretation of this agreement shall be determined in accordance with the laws of California applicable to contracts made to be performed within the state.

21. NONDISCRIMINATION BY CONTRACTOR

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 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 MTS deems appropriate.

22. DISPUTES, CLAIMS, AND RESOLUTION

MTS and the Contractor agree that every effort shall be made to resolve any dispute arising under this agreement informally through their designated representatives. If the informal efforts are unsuccessful, then either party may request mediation by submitting a written request signed by an officer with the authority to bind the Contractor or MTS. Within five (5) business days of the request of any party, the parties shall mutually agree on the person or alternative dispute resolution agency to conduct the mediation. If the parties are unable to agree on the person or alternative dispute resolution agency to conduct the mediation, the initiating party may arrange for the office of the American Arbitration Association in downtown San Diego, California, to perform the mediation. The initiating party shall then schedule the mediation so that it is conducted within fifteen (15) business days of the mediator's appointment. The costs of the mediation and fees of the mediator, if any, shall be borne by the requesting party. Any dispute not resolved through the mediation may proceed to litigation in a court of competent jurisdiction in the County of San Diego, State of California, unless the parties agree in writing to submit the dispute to binding arbitration.

Should the Contractor suffer any injury or damage to person or property because of any alleged act or omission of MTS, or if any of Contractor's employees, agents, or others for whose acts the Contractor is legally liable suffers any injury or damages to person or property because of any alleged act or omission of MTS, a written claim for damages shall be filed with the MTS

Office of General Counsel in accordance with the provisions of California Government Code section 800 et seq.

The duties and obligations imposed by this Agreement and the rights and remedies available hereunder 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 MTS or Contractor shall constitute a waiver of any right or duty afforded any of them under this Agreement, 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 to in writing.

23. DUTY TO CLARIFY OBVIOUS AMBIGUITY

The Contractor is required to seek clarification of any obvious ambiguity contained in the contract documents. Failure to do so will result in an interpretation of the ambiguous provision favorable to MTS should a dispute later arise concerning that provision.

CBROWN-SA
SA-G1299.0-10.HERITAGESECURITYSERVICES.MLAWRENCE
6/21/10

Attachments: Certificate of Compliance
Addendum No. 1 (attached via CD)
Responses to Approved Equals/Clarifications (attached via CD)
Heritage Security Services' proposal (attached via CD)
Contract Cost Details
MTS's Safety Department's Standard Operating Procedures (SOP) (SAF 016-03)
Federal Requirements

**CERTIFICATE OF COMPLIANCE
WITH MTS EQUAL OPPORTUNITY PROGRAMS AND DBE CONTRACTOR INFORMATION FORM**

I hereby certify that, in performing under contract(s) or purchase order(s) awarded by the San Diego Metropolitan Transit System (MTS), I will comply with the provisions of MTS Equal Employment Opportunity Program, and rules and regulations adopted pursuant thereto, Title VI of the Civil Rights Act of 1964, the California Fair Employment Practices Act, and any other applicable federal and state laws and regulations relating to equal employment opportunity, including laws and regulations hereinafter enacted.

DBE subcontractor participants are listed below, the successful bidder must execute and return this form even if no DBE participation will be reported:

Company Name and Address	Description of Work	Dollar Amount

If 100% of item is not to be performed or furnished by DBE, describe exact portion of item to be performed or furnished by DBE. I agree to make a good-faith effort to meet the goals of this plan as part of my contractual obligations to MTS.

Date: 7/1/10

Firm: TRANSIT SYSTEMS SECURITY

By: [Signature]

Title: CHAIRMAN

**HERITAGE SECURITY SERVICES
CONTRACT COST DETAILS**

Total contract is for 6 years including a 4-year base contract with two 1-year options. The base contract pricing is fixed for the entire 4 years at \$5,782,614 per year. In option year 1, pricing is escalated by 2% to \$5,893,842. In Option year 2, pricing is escalated by 2% to \$6,007,292.

Base Contract Year 1	\$5,782,614
Base Contract Year 2	\$5,782,614
Base Contract Year 3	\$5,782,614
<u>Base Contract Year 4</u>	<u>\$5,782,614</u>
Total Base Contract	\$23,130,456

Option Year 1	\$5,893,842
<u>Option Year 2</u>	<u>\$6,007,292</u>
Total Option Years	\$11,901,134

Total Base and Options \$35,031,590

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

SAFETY DEPARTMENT STANDARD OPERATING PROCEDURES

FOR

CONTRACTORS SAFETY AND HEALTH REQUIREMENTS

(SAF 016-03)
January 2003

SAF 016-03

Purpose: To establish environmental, safety and health requirements for San Diego Metropolitan Transit System Contractors.

Background: MTS is committed in providing and maintaining a safe work place, safe plant and equipment, and a safe and competent workforce as required by legislation and best industrial practice for our employees, customers, visitors, and general public.

To support this commitment, we require our Contractors to provide adequate leadership and safety training for their employees and require the same of their sub-contractors.

Objectives: This SOP requires all MTS Contractors to:

- Comply with the environmental, safety and health requirements of the contract as per FTA, OSHA, Cal OSHA, and San Diego Metropolitan Transit System.
- Assign a competent person the responsibility for the implementation of the safety regulations, personal protective equipment usage and compliance with hazardous materials/environmental policies, and drug and alcohol program.
- Ensure that all contractor employees and sub-contractors are trained and educated in safety and support on-site contractors on safe work and MTS safety programs.
- Sign the MTS Contractual Agreement with Outside Agencies (Safety Rules).

MTS Representatives are required to:

- Pro-actively monitor the contractors' workplace to identify all occupational health and safety hazards – Departmental/Safety representative.
- Safety and contract requirements compliance – Audit/Inspection conducted and documented (schedule and spot check) by Quality Assurance Department.

NOTE: Copies of both MTS Illness and Injury Prevention Program (IIPP) and the MTS Maintenance Department Code of Safe Practices are available in the Assistant Manager's office and in the Safety Department's office. MTS handles the Engineering/Construction site safety plans.

SAFETY RULES

MTS Contractual Agreement with Outside Agencies Work on MTS Premises

A. Safety Rules

These safety rules apply specifically to Contractors, Contractor's employees, or sub contractors working on San Diego Metropolitan Transit System (MTS) property. Any loss or damage, including death, resulting from Contractors, Contractor's employees, or subcontractors negligence shall hold MTS management and employees harmless from any such loss. No work shall be performed on MTS property without approval and proper permits, when required.

Requirements:

1. Comply with Cal OSHA, state, local and MTS's safety, and environmental policies.
2. Observe and follow all posted facilities safety regulations.
3. Use the proper Personal Protective Equipment required for the job.
4. No illegal drugs or alcohol will be consumed on site or off the premises while working for MTS.

B. Use of Tools and Equipment (when required)

1. Required Tools and Equipment must be in good condition, safe for use and calibrated (if required).
2. Follow safe engineering work practices/procedures.
3. Wear the required personal protective equipment when using tools.

C. Machinery and Vehicles (when required)

1. Do not attempt to operate MTS machinery or equipment without special permission.
2. Only licensed operators may operate Forklift Trucks and other equipment on MTS occupied spaces.

D. Contractor Requirements

1. Valid Contractor's license number.

DATE: 7/1/10 Authorized Representative:  Title: Chairman
Signature

Your signature implies that you have read and understand and agree to follow these safety requirements.

FEDERAL REQUIREMENTS

I. No Federal Government Obligations to Third Parties

As a Federal Transit Administration (FTA) grantee, the Metropolitan Transit System (MTS), a California Public Agency, is required to inform the Contractor of the following information:

The federal government shall not be subject to any obligations or liabilities to any third-party contractor or any other person not a party to the Grant Agreement or Cooperative Agreement in connection with the performance of this contract. Notwithstanding any concurrence provided by the federal government in or approval of any solicitation, subagreement, or third-party contract, the federal government continues to have no obligations or liabilities to any party, including the third-party contractor.

II. False or Fraudulent Statements or Claims

As an FTA grantee, MTS is required to inform the Contractor of the following information:

The Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. Section 3801, et seq., and U.S. Department of Transportation (DOT) regulations, "Program Fraud Civil Remedies" 49 CFR, Part 31, apply to its actions pertaining to this contract. Accordingly, by signing the contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the contract. In addition to other penalties that may be applicable, the Contractor also acknowledges that if it makes 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, as amended, on the Contractor to the extent the federal government deems appropriate. The Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government in connection with an urbanized area formula project financed with federal assistance authorized by 49 U.S.C., Section 5307, the government reserves the right to impose on the Contractor the penalties of 18 U.S.C., Section 1001 and 49 U.S.C., Section 5307(n) (1), to the extent the federal government deems appropriate.

III. Buy America

As an FTA grantee, MTS is required to inform the Contractor of the following information:

The bidder's attention is directed to the "Buy America" requirements set forth in Section 165 of the federal Surface Transportation Act of 1982, and the FTA regulations implementing Section 165 (49 CFR, Part 661). Information on "Buy America" requirements (49 CFR, Part 661) is available for review at the MTS office.

Any steel or manufactured product used in projects supported by FTA funds must be produced in the United States unless the Secretary of Transportation determines that one of the following exceptions applies:

- A. Applying this provision would be inconsistent with the public interest.

- B. The materials and products required for a project are not produced in the United States either in sufficient quantity or not of the quality required for this project.
- C. Including domestically produced material will increase the cost of the contract by more than 25 percent.
- D. Note: In calculating the cost of components under the terms of this provision, labor costs involved in the final assembly are not to be included.
- E. Where an FTA grantee is purchasing buses or other rolling stock (including train control, communication, and traction power equipment), the cost of components produced in the United States is more than 60 percent of the cost of all the components of the rolling stock or equipment, and final assembly of the stock or equipment has taken place in the United States.
- F. In reference to exception C above, FTA requires that the bid for nondomestic items must be adjusted by the appropriate differential (10 or 25 percent) and then the adjusted overall bid prices compared to determine if the inclusion of domestic materials will increase the "overall project contract." When both "rolling stock" and "nonrolling stock" are being procured in a single contract, the appropriate differentials will be applied to the different items only and not to the overall bid price.
- G. Thus, the foreign purchased components of the individual bid items will be adjusted upward for purposes of determining Buy America compliance only, by 10 percent for rolling stock and 25 percent for nonrolling stock, thereby increasing the contractor's cost proposal item by the adjusted amount, thereby adjusting the overall total bid price.
- H. The revised bid amount will be the basis for determining the lowest bidder.
- I. Within five days of written notification, the bidder shall provide the necessary information to substantiate the cost of nondomestic items and the factual basis for the claim of exception to the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982 and the regulations in 49 CFR, Part 661.
- J. The Buy America Certificate included in the Contract Documents, Alternative 'A' or 'B,' must be completed and submitted with the bid. A bid which does not include either Alternative 'A' or 'B' or which includes both Alternative 'A' and Alternative 'B' may be considered nonresponsive.
- K. A waiver from the Buy America provision may be sought by the Contractor if grounds for the waiver exist. Inclusion of the Alternative 'B' certificate in a bid constitutes an application by the bidder for an exception to the Buy America requirement applicable to this type of contract. If a bid includes the Alternative 'B' certificate and an exception is not granted by FTA, the bid will be considered nonresponsive.

IV. Environmental Violations

As an FTA grantee, MTS is required to inform the Contractor of the following information:

For all contracts and subcontracts in excess of \$100,000, Contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC, 1857H), Section 508 of the Clean Water Act (33 USC, 1368), Executive Order 11378, and Environmental Protection Agency regulations (40 CFR, Part 15) which prohibit the use under nonexempt federal contracts, grants, or loans of facilities included on the EPA list of Violating Facilities. Contractor shall report violations to FTA and to the USEPA Assistant Administrator for Enforcement (ENO329).

V. Environmental Requirements

As an FTA grantee, MTS is required to inform the Contractor of the following information:

The successful bidder shall recognize that many federal and state laws imposing environmental and resource conservation requirements may apply to the Project. Some, but not all, of the major federal laws that may affect the project include: the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq.; the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. and scattered sections of 29 U.S.C.; the Clean Water Act, as amended, scattered sections of 33 U.S.C. and 12 U.S.C.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq., and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq. The successful bidder shall recognize that U.S. EPA, FHWA and other agencies of the federal government have issued and are expected in the future to issue regulations, guidelines, standards, orders, directives, or other requirements that may affect the project. Thus, the successful bidder agrees to adhere to, and impose on its subcontractors and third-party contractors, any such federal requirements as the federal government may now or in the future promulgate. Listed below are requirements of particular concern to FTA and MTS. The successful bidder acknowledges that this list does not constitute the successful bidder's entire obligation to meet all federal environmental and resource conservation requirements.

- A. Environmental Protection The successful bidder shall comply with the applicable requirements of the National Environment Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq. in accordance with Executive Order no. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629, Feb. 16, 1994; FTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.
- B. Air Quality
1. The successful bidder 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. Specifically:
 - a. The successful bidder shall comply with applicable requirements of U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 C.F.R. part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93. To support the requisite air quality conformity finding for the Project, the successful bidder shall implement each air quality mitigation and control measure

incorporated in the Project. The successful bidder agrees that any Project identified in a State Implementation Plan (SIP) as a Transportation Control Measure, will be wholly consistent with the description of the design concept and scope of the Project described in the SIP.

- b. U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, that may apply to transit operators, particularly operators of large transit bus fleets. Thus, the successful bidder should be aware that the following U.S. EPA regulations, among others may apply to its projects: "Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines," 40 C.F.R. Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures," 40 C.F.R. Part 86; and "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600.

2. The successful bidder agrees to report and require each third-party contractor and subcontractor at any tier to report any violation of these requirements resulting from any project implementation activity of a third-party contractor, subrecipient, or itself to FTA and the appropriate U.S. EPA Regional Office.

C. Clean Water

1. The successful bidder 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.
2. The successful bidder agrees to report and require each third-party contractor and subcontractor at any tier to report any violation of these requirements resulting from any project implementation activity of a third-party contractor (at any tier), subcontractor (at any tier), or itself to FTA and the appropriate U.S. EPA Regional Office.

- D. Use of Public Lands The successful bidder agrees that no publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, state, or local significance as determined by the federal, state, or local officials having jurisdiction thereof, or any land from a historic site of national, state, or local significance may be used for the project unless the FTA makes the specific findings required by 49 U.S.C. § 303.

- E. Mitigation of Adverse Environmental Effects The successful bidder agrees that if the project should cause adverse environmental effects, the successful bidder will take all reasonable steps to minimize those effects in accordance with 49 U.S.C. § 5324(b), and all other applicable federal laws and regulations, specifically, the procedures of 23 C.F.R. Part 771 and 49 C.F.R. Part 622. The successful bidder agrees to undertake all environmental mitigation measures that may be identified as commitments in applicable environmental documents (such as environmental assessments, environmental impact statements, memoranda of agreement, and statements required by 49 U.S.C. § 303) and with any conditions the federal government has imposed in its finding of no significant impact or a record of decision. Those mitigation measures are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. As soon as the federal government and the successful bidder reach

agreement on any deferred mitigation measures, those measures will then be incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. The successful bidder agrees that any mitigation measures agreed upon may not be modified or withdrawn without the express written approval of the federal government.

VI. Energy Efficiency

As an FTA grantee, MTS is required to inform the Contractor of the following information:

The successful bidder agrees to comply with the mandatory energy efficiency standards and policies within the applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 et seq.

VII. Prohibited Interests

As an FTA grantee, MTS is required to inform the Contractor of the following information:

No, member, officer, or employee of a local public body, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this contract or the proceeds thereof. No member of or delegate to the Congress of the United States shall be admitted to a share or part of this contract or to any benefit arising there from.

VIII. Debarment and Suspension

As an FTA grantee, MTS is required to inform the Contractor of the following information:

This contract is a covered transaction for purposes of 49 C.F.R. Part 29. As such, the Contractor is required to verify that the Contractor, its principals, as defined at 49 C.F.R. 29.995, or affiliates, as defined at 49 C.F.R. 29.905, are not excluded or disqualified as defined at 49 C.F.R. 29.940 and 29.945.

The Contractor is required to comply with 49 C.F.R. 29, Subpart C and must include the requirement to comply with 49 C.F.R. 29 Subpart C in any lower tier covered transaction it enters into.

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

The certification in this clause is a material representation of fact relied upon by MTS. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to MTS, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 49 C.F.R. 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

IX. Title VI Civil Rights Act of 1964

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

- A. Compliance with Regulations The Contractor and any Subcontractors shall comply with the requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d; 49 U.S.C. § 5332 and DOT Regulations, "Non-Discrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21, and any implementing requirements FTA may issue, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- B. Nondiscrimination The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, religion, color, sex, or age, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- C. Solicitations for Subcontractors, including Procurements of Materials and Equipment In all solicitations either by competitive bidding or negotiations made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, or national origin.
- D. Information and Reports The Contractor shall provide all information and reports required by the regulations or directive issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FTA to be pertinent to ascertain compliance with such regulations, orders, and instructions. Where any information is required or a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to MTS or FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance In the event of Contractor's noncompliance with nondiscrimination provisions of this contract, MTS shall impose such contract sanctions as it or FTA may determine to be appropriate, including, but not limited to:
- withholding of payments to the Contractor under the contract until the Contractor complies; and/or
 - cancellation, termination, or suspension of the contract, in whole or in part.
- F. Incorporation of Provisions The Contractor shall include the provisions of Sections A through E of this section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as MTS or FTA may direct as a means of enforcing such provisions including sanctions for noncompliance provided; however, in the event a Contractor

becomes involved, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Contractor may request MTS to enter into such litigation to protect the interests of MTS, and in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

X. Restrictions on Lobbying

- A. MTS and Contractor shall not use federal assistance funds to support lobbying.
- B. In accordance with 31 U.S.C. § 1352 and U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, if the Project exceeds \$100,000, FTA will not make any federal assistance available to the Contractor until FTA has: (a) received the Contractor's certification that the Contractor has not and will not use federal appropriated funds to pay any person or organization to influence or attempt to influence an officer or employee of any federal department or agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal grant, cooperative agreement, or any other federal award from which funding for the project is originally derived, consistent with 31 U.S.C. § 1352, and (b) if applicable, the Contractor's statement disclosing any lobbying with nonfederal funds that has taken place in connection with obtaining any federal financing ultimately supporting the project.
- C. The Contractor agrees to provide MTS a copy of each lobbying disclosure statement with the accompanying lobbying certification provided by a prospective third-party contractor at any tier or subrecipient at any tier. The form is included in this package for your use.

XI. Employee Protections

- A. Construction Activities For construction activities exceeding \$2,000 performed in connection with the project, the successful bidder shall comply with the following construction employee protection requirements:
 - 1. Davis-Bacon Act, as amended The successful bidder shall comply and assure compliance with the requirements of 49 U.S.C. § 5333(a), the Davis-Bacon Act, 40 U.S.C. §§ 276a through 276a (7), and implementing U.S. Department of Labor (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. In addition to other requirements that may apply:
 - a. The successful bidder shall pay wages to laborers and mechanics performing third party contract work at a rate not less than the minimum wages specified in a wage determination issued by the U.S. Secretary of Labor and not less frequently than once a week. The MTS agrees to furnish the bidder a copy of the current prevailing wage determination issued by the U.S. DOL for third-party contract work under the project upon request, and agrees to refrain from awarding any affected third-party

contract until the third-party contractor agrees to the required wage determination.

- b. MTS shall report to FTA every suspected or reported violation of the Davis-Bacon Act or its federal implementing regulations.

2. Contract Work Hours and Safety Standards Act, as amended The successful bidder shall comply and assures compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 327 through 333; and 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; and U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. Part 1926. In addition to other requirements that may apply:

- a. In accordance with section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 327 through 332, the successful bidder shall assure that, for the project the wages of every mechanic and laborer will be computed on the basis of a standard work week of 40 hours, and that each worker shall be compensated for work exceeding the standard work week at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The successful bidder shall ensure that determinations pertaining to these requirements will be made in accordance with applicable 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.
- b. In accordance with section 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 333, the successful bidder shall assure that no laborer or mechanic working on a construction contract shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to his or her health and safety, as determined in accordance with U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. Part 1926."
- c. The requirements of this subsection do not apply to third-party contracts for the purchase of supplies, materials, or articles ordinarily available on the open market.

3. Copeland "Anti-Kickback" Act, as amended The successful bidder shall comply with the Copeland "Anti-Kickback" Act, 18 U.S.C. § 874 and 40 U.S.C. § 276c, and U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. Part 3. In addition to other requirements that may apply:

- a. The successful bidder will not induce, by any means, any person employed in the construction, completion or repair of public work, to give up any part of the compensation to which that employee is otherwise entitled.
 - b. MTS shall report every suspected or reported violation of the Copeland "Anti-Kickback" Act or its federal implementing regulations to FTA.

- B. Activities Not Involving Construction For nonconstruction activities exceeding \$2,500 performed in connection with the project, the successful bidder shall comply with the following employee protection requirements:
 - 1. In accordance with Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 327 through 332, the successful bidder shall assure that, for the project, the wages of every mechanic and laborer will be computed on the basis of a standard work week of 40 hours and that each worker will be compensated for work exceeding the standard work week at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The successful bidder agrees that determinations pertaining to these requirements will be made in accordance with the applicable 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.
 - 2. The requirements of this subsection do not apply to third-party contracts for the purchase of supplies, materials, or articles ordinary available on the open market.

- C. State and Local Government Employees The successful bidder shall ensure that the minimum wage and overtime provisions of the Fair Labor Standards Act, as amended, 29 U.S.C. §§ 206 and 207, apply to employees performing work involving commerce, including such state and local government employees as public transit authority employees, participating in the project. Consequently, each participant that is a state or local government agrees to comply with the Fair Labor Standards Act's minimum wage and overtime requirements for employees performing work in connection with the project.

- D. Transit Employee Protective Arrangements The successful bidder shall comply with the following requirements applicable to transit operations performed in connection with the project:
 - 1. Standard Transit Employee Protective Arrangements To the extent that transit operations are involved, the successful bidder shall carry out the project in compliance with terms and conditions determined by the Secretary of Labor to be fair and equitable to protect the interests of employees affected by the project and to meet the requirements of 49 U.S.C. § 5333(b), and U.S. guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in U.S. DOL's certification of transit employee protective arrangements to FTA, the date of which is included in the Grant Agreement or Cooperative Agreement. The successful bidder shall carry out the project in compliance with the conditions stated in that U.S. DOL certification. That U.S.

DOL certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. The requirements of this Subsection, however, do not apply to formula assistance projects for the elderly and persons with disabilities authorized by 49 U.S.C. § 5310(a) (2) or to formula assistance projects for nonurbanized areas authorized by 49 U.S.C. § 5311.

2. Transit Employee Protective Arrangements for Projects Authorized by 49 U.S.C. § 5310(a) (2) for the Elderly and Persons with Disabilities If the Secretary of Transportation has determined or determines in the future that employee protective arrangements required by 49 U.S.C. § 5333(b) are necessary or appropriate for public body subrecipients under the project, the successful bidder shall carry out the project in compliance with the terms and conditions determined by the Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in U.S. DOL's certification of transit employee protective arrangements to FTA, the date of which is included in the Grant Agreement or Cooperative Agreement. The successful bidder shall carry out the Project in compliance with the conditions stated in that U.S. DOL certification. That U.S. DOL certification and any documents cited there in are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement.
3. Transit Employee Protective Arrangement for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas The successful bidder shall comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

XII. Cargo Preference

If applicable, 46 U.S.C. 1241(b) (1) and 46 C.F.R. Part 381 which imposes U.S. cargo preference requirements on the shipment of foreign made goods shall apply to this procurement.

- A. The Contractor shall utilize privately owned United States-flagged commercial vessels to ship at least 50 percent of the gross tonnage (competed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flagged commercial vessels.
- B. The Contractor shall furnish within 20 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipments originating outside United States, a legible copy of a rated, "onboard" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (A) above to the Recipient (through the prime Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, S.W., Washington, D.C., 20590, marked with appropriate identification of the project.

- C. The Contractor shall insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

XIII. Reporting, Record Retention, Access to Records

- A. Reports At a minimum, the Contractor agrees to provide MTS and FTA those reports required by U.S. DOT's grant management rules and any other reports MTS or the Federal Government may require.
- B. Record Retention The Contractor shall, during the course of the project and for three years thereafter, maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to the project as MTS or the federal government may require for the project.
- C. Access to Records Upon request, the Contractor shall permit the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the successful bidder and its contractors pertaining to the project. In accordance with 49 U.S.C. § 5325(a), the successful bidder shall require each third-party contractor whose contract award is not based on competitive bidding procedures as defined by the Secretary of Transportation to permit the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that third-party contract and to audit the books, records, and accounts involving that third-party contract as it affects the Project.

XIV. Seismic Safety ***APPLICABLE TO ALL CONSTRUCTION CONTRACTS FOR NEW BUILDINGS OR ADDITIONS TO EXISTING BUILDINGS***

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

XV. Federal Changes

- A. The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (6) dated October 1999) 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.

XVI. FTA Protest Requirements

As an FTA grantee, MTS is required to inform the Contractor of the following information:

A. Duty to Exhaust Local Procedures

Once the Contractor exhausts MTS's protest procedures, as described in applicable MTS Board Policies, the Contractor may request review from the FTA.

B. FTA Review of Protests

The FTA will only review protests regarding the alleged failure of the grantee to have written protest procedures or the grantee's alleged failure to follow such procedures.

Alleged violations on other grounds are under the jurisdiction of appropriate state or local administrative or judicial authorities.

Alleged violations of a specific federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with that federal regulation. See Buy America Requirements, 49 C.F.R. Part 661 (Section 661.15); Participation by Minority Business Enterprise in Department of Transportation Programs, 49 C.F.R. Section 23.73.

The FTA will only review protests submitted by an interested party, as defined below.

C. Remedy

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

Definitions For the purposes of this section, the following definitions apply:

Days – refers to working days of the federal government.

File or Submit – refers to the date of receipt by the FTA.

Interested Party – means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract.

Bid – include the term "offer" or "proposal" as used in the context of negotiated procurements.

D. Time for Filing

Protestors shall file a protest with the FTA no later than five days after a final decision is rendered under the grantee's protest procedure. In instances where the protestor alleges that the grantee failed to make a final determination on the protest, protestors shall file a protest with the FTA no later than five days after the protestor knew, or should have known, of the grantee's failure to render a final determination on the protest.

Grantees shall not award a contract for five days following the decision on a bid protest, except in accordance with the provisions and limitations of subparagraph h. After five days, the grantee shall confirm with the FTA that it has not received a protest on the contract in question.

E. Submission of Protest to FTA

Protests should be filed with the appropriate FTA regional office with a concurrent copy to the grantee.

The protest filed with the FTA shall include the name and address of the protestor; identify the grantee, project number, and the number of the contract solicitation; and contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to follow protest procedures, or the alleged failure to have procedures and be fully supported to the extent possible. A copy of the local protest filed with the grantee and a copy of the grantee's decision should be included, if any.

F. Grantee Response

The FTA shall notify the grantee in a timely manner of the receipt of a protest. The FTA shall instruct the grantee to notify the contractor of the protest if award has been made, or, if no award has been made, to notify all interested parties. The grantee shall notify all who receive such notice that they may communicate further directly with the FTA.

The grantee shall submit the following information no later than ten days after receipt of notification by the FTA of the protest: a copy of the grantee's protest procedure; a description of the process followed concerning the protestor's protest; and any supporting documentation.

The grantee shall provide the protestor with a copy of the above submission.

G. Protestor Comments

The protestor must submit any comments on the grantee's submission no later than ten (10) days after the protestor's receipt of the grantee's submission.

H. Withholding of Award

When a protest has been filed in a timely manner with the grantee before award, the grantee shall not make an award prior to five days after the resolution of the protest, or if a protest has been filed with the FTA, during the pendency of that protest, unless the grantee determines that the items to be procured are urgently required; delivery or performance will be unduly delayed by failure to make the award promptly; or failure to

make prompt award will otherwise cause undue harm to the grantee or the federal government.

In the event that the grantee determines that the award is to be made during the five-day period following the local protest decision, or the pendency of a protest, the grantee shall notify the FTA prior to making such award. The FTA will not review the sufficiency of the grantee's determination to award during the pendency of a protest prior to the FTA's bid protest decision. The FTA reserves the right not to participate in the funding of any contract awarded during the pendency of a protest.

I. FTA Action

Upon receipt of the submissions, the FTA will either request further information or a conference among the parties or will render a decision on the protest.

XVII. Fly America Requirements

The 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 C.F.R. Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

XVIII. Charter Bus and School Bus Service Requirements (APPLICABLE ONLY TO OPERATIONAL BUS SERVICE CONTRACTS)

- A. Charter Service Operations The Contractor agrees to comply with 49 U.S.C. 5323(d) and 49 C.F.R. Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 C.F.R. 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.
- B. School Bus Operations Pursuant to 49 U.S.C. 5323(f) and 49 C.F.R. Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

XIX. Recycled Products Requirements (APPLICABLE TO ALL CONTRACTS INVOLVING ITEMS DESIGNATED BY THE EPA, WHERE THE PROCURING AGENCY PURCHASES \$10,000 OR MORE OF ONE OF THESE ITEMS IN A FISCAL YEAR, OR WHEN THE COST OF SUCH ITEMS PURCHASED DURING THE PREVIOUS FISCAL YEAR WAS \$10,000)

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

XX. 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:

- A. 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.
- B. 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 the FTA.

XXI. Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by the Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. 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 MTS requests which would cause MTS to be in violation of the FTA terms and conditions.

XXII. Patent and Rights in Data

- A. Rights in Data These following requirements apply to each contract involving experimental, developmental or research work:
1. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as

drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

2. The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:
 - a. Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
 - b. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "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 extend its Federal license to any other party.
 - (1) Any subject data developed under that contract, whether or not a copyright has been obtained; and
 - (2) Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part provided by FTA.
 - c. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to

adaptations of automatic data processing equipment or programs for the Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

- d. Unless prohibited by state law, upon request by the Federal Government, the Contractor agree to indemnify, save, and hold harmless the Federal Government, 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 Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
 - e. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
 - f. Data developed by Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Contractor identifies that data in writing at the time of delivery of the contract work.
 - g. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
3. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), Contractor agrees to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in 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.
4. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- B. Patent Rights The following requirements apply to each contract involving experimental, developmental, or research work:

1. **General** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, Contractor agrees to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
2. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in 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.
3. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

XXIII. Drug and Alcohol Testing Requirements (APPLICABLE TO OPERATIONAL BUS SERVICE CONTRACTS)

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, any California regulation agency, or MTS, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. Part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with Part 655 when requested by MTS and to submit the Management Information System (MIS) reports before March 1 annually to MTS. 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.

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Attachments: Buy America Certificate
 Additional Information for Buy America Certificate - Alternative B
 Subcontractor's Statement of Eligibility
 Public Contract Code Section 10162 Questionnaire/Statement of Eligibility
 Noncollusion Affidavit
 Certification of Restrictions on Lobbying
 Disclosure of Lobbying Activities
 Disclosure of Lobbying Activities Continuation Sheet
 Instructions for Completion of SF-LLL Disclosure of Lobbying Activities

BUY AMERICA CERTIFICATE

ALTERNATIVE A

CERTIFICATE OF COMPLIANCE WITH SECTION 165(a)

The bidder hereby certifies that it will comply with the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982 and the regulations in 49 C.F.R. 661.

Name of Contractor: Transit Systems Security
Signature of Contractor:  Date: 7/1/10
(SIGN HERE)

ALTERNATIVE B

The bidder hereby certifies that it cannot comply with the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982, but it may qualify for an exception to the requirement pursuant to Section 165(b) of the Surface Transportation Assistance Act and regulations in 49 C.F.R. 661.7.

Name of Contractor: _____
Signature of Contractor: _____ Date: _____
(SIGN HERE)

NOTE: COMPLETE EITHER ALTERNATIVE A OR B - DO NOT COMPLETE BOTH.


SUBCONTRACTOR'S STATEMENT OF ELIGIBILITY

Transit Systems Society certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any federal project by any federal department or agency.

Where the Subcontractor is unable to certify any of the statements in the certification, such Subcontractor shall attach an explanation with this form.

The Subcontractor certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable.

LAWRENCE RICHMAN
Name and Title of Official

Signature:  Date: 7/1/10

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BF-SSOE.DOC
5/18/01

PUBLIC CONTRACT CODE SECTION 10162 QUESTIONNAIRE

In accordance with Public Contract Code Section 10162, the Bidder shall complete, under penalty of perjury, the following questionnaire:

Has the contractor, any officer of the contractor, or any employee of the contractor who has a proprietary interest in the bidder, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or a safety regulation?

YES

NO

If the answer is yes, explain the circumstances in the following space.

Name of Contractor: Transit Systems Security

Signature of Contractor: *[Signature]* Date: 7/1/10
(SIGN HERE)

STATEMENT OF ELIGIBILITY

Transit Systems Security hereby certifies that it

is is not
(Must Check One)

included on the U.S. Comptroller General's Consolidated List of Persons or Firms Currently Debarred for Violations of Various Public Contracts.

Name of Contractor: LAWRENCE RICHMAN

Signature of Contractor: *[Signature]* Date: 7/1/10
(SIGN HERE)

NONCOLLUSION AFFIDAVIT

(Title 23 United States Code Section 112 and
Public Contract Code Section 7106)

In accordance with Title 23, United States Code Section 112, and Public Contract Code 7106, the bidder declares that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not, directly or indirectly, induced or solicited any other bidder to put in a false or sham bid; and has not, directly or indirectly, colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

Name of Contractor: Transit Systems Security
Signature of Contractor: [Signature] Date: 7/1/10
(SIGN HERE)

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8/10/98

CERTIFICATION OF RESTRICTIONS ON LOBBYING

The CONTRACTOR hereby certifies that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any 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 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 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 subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction is made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. 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.

Executed this 1st day of July, 2010.

Name of Contractor: Transit Systems Security

Signature of Contractor:  Date: 7/1/10
(SIGN HERE)

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8/10/98

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Reporting Entity: _____ Page _____ of _____

INSTRUCTIONS FOR COMPLETION OF SF-LLL DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient, at the initiation or receipt of a covered federal action, or a material change to a previous filing, pursuant to Title 31, U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity 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 a covered federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state, and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identified in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant or loan award number, or the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the federal agency, enter the federal amount of the award/loan commitment for the prime entity identified in items 4 or 5.
10.
 - A. Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered federal action.
 - B. Enter the full names of the individual(s) performing services, and include full address if different from 10A. Enter last name, first name, middle initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with federal officials. Identify the federal officials(s) or employee(s) contacted or the officer(s), employee(s), or member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503