

# **REQUEST FOR PROPOSALS**

Casco Bay Island Transit District in Portland, Maine

## **NEW FERRY - RFP #3 - 2017**

### **I. PROJECT OVERVIEW.**

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Casco Bay Island Transit District ("Casco Bay Lines") is seeking proposals for naval architectural and engineering services (Consultant) for the evaluation and design of at least one and possibly two new sub-chapter K ferry vessels to operate from the Casco Bay Ferry Terminal located at 56 Commercial Street Portland, Maine to various islands in Casco Bay. (See Exhibit A - Work Elements to be considered) This project is being undertaken with funding from the Federal Transit Administration which is being matched with funding from Casco Bay Lines. This project is subject to all applicable federal and state laws, policies and procedures.

Casco Bay Lines is requesting naval architecture and engineering support to develop the project. The primary deliverables will be to build upon the vessel recommendations put forward from the current Schedule and Fleet Analysis Project which will be completed in early 2018 and develop a Preliminary Design Report (PDR) indicating vessel style, size and amenities. It is possible that the effort will identify a second primary vessel. Currently funding is available for construction of one, but a second request has been submitted for consideration. With the results from the Schedule and Fleet Analysis Project, the Consultant will work with Casco Bay Lines on the development of a PDR. Once the PDR is accepted, the Consultant will design the primary vessel, seek US Coast Guard approvals for the design and deliver a final Plans, Specifications and Estimate (PS&E) package suitable for bidding. Should funding become available for a second vessel, the Consultant may be asked to add that vessel to the effort. Once a vessel is advertised for construction, the Consultant will be available to respond to questions during the bid phase of the project and will be retained to provide engineering support through the construction phase.

Proposers must provide a technical proposal and a separate sealed price proposal. No mention of price shall be included in the technical proposal; otherwise, that proposal shall be rejected in its entirety.

**DATE OF RFP POSTING: November 3, 2017**

**PROPOSALS ARE TO BE RECEIVED NO LATER THAN:**

Date Due: December 6, 2017

Local Time: 3:00 PM

## COMMUNICATIONS:

All communication in reference to this RFP shall be in writing and sent to the attention of:

**Name:** Paul D. Pottle

**Title:** Director of Projects

**Email:** [paulp@cascobaylines.com](mailto:paulp@cascobaylines.com)

*Casco Bay Lines, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the accompanying Regulations, hereby notifies all bidders that it will affirmatively insure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.*

## II. CONSULTANT RESPONSIBILITIES

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The successful proposer (Consultant) shall be required to perform the services listed below:

1. Develop a project-specific preliminary design report (PDR) that evaluates all of the work elements listed in Exhibit A. The PDR will include the following:
  - a) Scope of work, project background, and purpose and need;
  - b) A summary of physical characteristics of the new ferry vessel;
  - c) Preliminary design plans (50%) and a preliminary estimate of construction cost prepared in accordance with industry standards. Preliminary design plans shall include general arrangement plan views for deck layouts, outboard profiles, vessel speed, performance characteristics and typical and critical sections;
2. Coordinate two (2) public meetings to obtain feedback on the project;
3. Attend and participate in regular meetings with the staff and the Vessel Advisory Committee as required and help establish the frequency of those meetings. Keep minutes of all meetings attended and distribute to all attendees;
4. Coordinate the project with the United State Coast Guard and seek approvals, as applicable;
5. Determine what permits or approvals are necessary, and then prepare documents for submission to the appropriate authority. Attend any required meetings and present information and respond to inquiries;
6. Develop final Plans, Specifications and Estimate package (PS&E) in accordance with the current industry standards, following ABS guidelines and U.S. Coast Guard regulations and requirements;

7. Conduct and document quality-control design checks at 50% and 95% plans complete;
8. Inform Casco Bay Lines in writing in advance of any issues that may cause the firm's design costs to exceed the budget for the project or otherwise cause additional expense;
9. Keep Casco Bay Lines informed of the engineer's estimate of probable construction cost throughout the design phase, so that Casco Bay Lines may make decisions about the project according to its funding limitations;
10. Provide engineering support during the bidding process;
11. Provide Construction Engineering support during construction if desired. Do not include a fee with the fee proposal, for it will be requested at the time the service is requested.
12. Provide monitoring and documentation support during construction, if desired. Do not include a fee with the fee proposal, for it will be requested at the time the service is requested.
13. Be available for additional design services in the event the need for services is identified during the evaluation process. The intent of the proposal is to have a designer under contract to complete all anticipated work and any other items that may arise, even if those items are extended into an additional phase of the project due to funding constraints. This may include the addition of a second ferry, at the discretion of Casco Bay Lines.

### III. PROPOSER INFORMATION

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Proposers shall provide the following information as part of their technical proposals:

1. **Proposer's Qualifications:** Please identify the staff the proposer will assign to fulfill the contract requirements, including but not limited to the Project Manager, Naval Architects, Professional Engineers, Project Engineers, Technicians and any Sub-Consultants. Provide résumés describing the education and experience of those staff. [Please limit this to 3 pages, not including the resumes]
2. **Proposer's Experience:** Please describe the proposer's experience and capabilities in providing naval architecture and engineering support to ferry services leading to the successful delivery of locally administered federal-aid projects. Identify projects, clients, dates and results. [Please limit this to 7 pages including all areas of work and any pictures]
3. **Proposer's Approach to the Project:** Please describe the proposer's approach to understanding the needs and how to find solutions to those needs based on the work elements identified in Exhibit A. [Please limit this to 6 pages including all areas of work]

4. **Proposer's ability to control Schedule and Costs on this project:**

- a) *Quality control.* Describe the methods the proposer will use to control and monitor client costs, control quality, and ensure constructability of the design plans in accordance with US Coast Guard regulations and standards, ABS Guidelines, industry standards, and Casco Bay Lines standards and needs. [Please limit to 3 pages]
  - b) *Communications and schedule.* Discuss how the proposer will coordinate its work on the project with Casco Bay Lines; describe how the proposer will manage its role and how it intends to stay on schedule while maintaining effective communication; and state how the proposer will communicate to Casco Bay Lines any anticipated changes in the design budget for this project, as well as any changes in the engineer's estimate of probable cost for the construction stage of the project. [Please limit to 3 pages]
5. **Proposer's References:** Provide a list of 3 to 5 ferry services with which the proposer has done business similar to that required in this solicitation in the last 5 years. Include points of contact and a brief description of each project. Casco Bay Lines will determine which if any references are contacted. The results of any reference checks will be used to help score the proposal. [Please limit to 4 pages]
6. **Contact Information:** Please provide the name, address, phone number, FAX number and e-mail address of the proposer. A signature page shall be included with the technical and price proposals stating that "I certify that all of the information contained in this technical/price proposal to be true and accurate."
7. **Schedule:** Please include a schedule outlining project deliverables in Section II, which should include milestones and a projected completion date. [Please limit this to 2 pages including any graphics and/or text.]
8. **Price proposal:** The price proposal shall be provided in a separately sealed envelope. NO MENTION OF PRICE OR RATES SHALL BE INCLUDED IN THE TECHNICAL PROPOSAL, OTHERWISE THAT PROPOSAL SHALL BE REJECTED IN ITS ENTIRETY.

#### IV. PACKAGING AND SUBMITTING PROPOSAL

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1. **Organization and Format.** Your proposal, which should be organized as closely as possible to the format and sequence indicated in these instructions, shall include a cover letter (up to 2 pages), a 28 page maximum technical proposal, a contact information sheet and resumes of all key people for the prime and key sub-consultants. Along with the technical proposal, please submit the signed FTA required assurances located in Appendix A and a DBE utilization form. The entire package shall be submitted as outlined below:

2. **Electronic Format or Hard Copy:** Electronic submissions should be by e-mail, USB drive, or CD; PDF electronic format is preferred. Three (3) bound paper copies shall be provided along with an electronic copy.
3. **Hand Carried Proposals, Federal Express, or UPS:** Hand-carried proposals shall be delivered to Paul D. Pottle, Director of Projects, Casco Bay Lines, located at 56 Commercial Street, Portland, Maine 04101, before the time and date for which proposals are due. **Note:** *Any proposal, portion of a proposal, or unrequested revision received after the time and date specified on the cover page of this RFP will be returned unopened.*
4. **Proposals shall be delivered as follows:**

An electronic submission meeting the format list above and three (3) bound hard copies.

**ATTN: Paul D. Pottle, Director of Projects**  
**Casco Bay Lines**  
**P.O. Box 4656**  
**56 Commercial Street**  
**Portland, Maine 04112**

## V. RATING AND SELECTION PROCESS

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1. Technical proposals will be reviewed and rated using the responses to the information outlined in Sections II and III of this RFP, as follows:
  - Firm's qualifications (20 points)
  - Firm's experience (20 points)
  - Firm's approach to the project (30 points)
  - Firm's key project leaders (15 points)
  - Firm's ability to control schedule and costs (5 points)
  - Firm's proposed project schedule (5 points)
  - Firm's references (5 points)
2. Casco Bay Lines reserves the right to conduct interviews as necessary to determine the highest-ranked consultant.
3. This is a Qualifications-Based Selection (QBS) process that will adhere to the Brooks Act requirements. The review of technical proposals and supplemental interviews, if applicable, will be used to select the successful proposer. Once the successful proposer has been selected, an independent estimate prepared by Casco Bay Lines will be compared against the successful proposer's price proposal, and contract negotiations will begin.
4. At the successful conclusion of the selection process, sealed cost proposals from the unsuccessful proposers will be returned unopened.

## VI. PRICE PROPOSAL

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The price proposal shall be provided in a separate sealed envelope. Prices shall be outlined for all required items from preliminary design through final design and the bidding process, using the attached Consultant's Detailed Cost Proposal Form or something that provides similar data. The proposer should assume that the design will be for one ferry that is capable of handling both passengers and vehicles as well as freight and bicycles. Each proposal will be evaluated for all technical criteria, and then costs shall be evaluated independently. The price proposal shall consist of the following:

1. **Direct Labor**. Please list all employees, including their classifications, who are expected to perform services on this project. Provide a breakdown of each employee's salary rate including direct labor, indirect costs, and profit.
2. **Indirect Labor (Overhead)**. Please provide documentation to support the indirect (overhead) costs that will be applied to this project. This will be required of the successful proposer after selection.
3. **Profit**. The percentage of profit is based on criteria specific to a project, including degree of risk, relative difficulty of work and the size of the job.
4. **Direct Expenses**. Please provide a breakdown of anticipated direct expenses, including airfare, hotels, mileage, meals, photocopying costs, etc. Direct expenses shall be reimbursed at cost, and travel expenses shall be reimbursed in accordance with the per diem/mileage rates located at <http://www.gsa.gov/portal/category/100120>

***NOTE: Markup on direct costs, including sub-consultant expenses, shall be prohibited.***

5. **Subcontracts**. Describe the cost or price estimates for each subcontract. There is no mark-up allowed on sub-consultant costs. Firms are encouraged to use certified Disadvantaged Business Enterprise (DBE) firms as sub-consultants. Current DBE requirements may be found at the MaineDOT website, "Certified Disadvantaged and Women Business Enterprise" directory available at: <http://maine.gov/mdot/civilrights/dbe/> All DBE's must be registered with MaineDOT or be able to have another states certification accepted by MaineDOT.

## VII. CONTRACT TERM, TYPE AND PAYMENT METHOD

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The initial contract term shall be for a period of three years. At Casco Bay Lines discretion, the contract may be extended as appropriate. The contract type used for this project shall be an adjustable fully burdened hourly rate, and the method of payment shall be monthly. Casco Bay Lines intends to use a contract agreement similar to that used by MaineDOT as well as Consultant General Conditions similar to those used by MaineDOT, but adapted to Casco Bay Lines for contracting of design services. Those forms can be found on the

MaineDOT website and will be provided to the selected firm. Should a firm desire to see these forms prior to submitting a proposal, please request a copy from the Casco Bay Lines representative for this project.

#### VIII. GENERAL INFORMATION

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1. This RFP does not commit **Casco Bay Lines** to pay any of the costs you incur in submitting your proposal, preparing the proposal, or in procuring or sub-contracting for services or supplies related to the proposal.
2. The Proposer needs to understand and comply with the flow down provisions outlined in each of the applicable FTA clauses as they relate to sub-consultants and service firms that may perform services during the evaluation and design phases of the work. When selecting design elements, the Proposer and their subs will need to give consideration to how the FTA requirements such as Buy America impact that selection.
3. Requests for Clarification/RFP Amendments. During the proposal preparation period, all requests for clarification or for additional information shall be submitted in writing (by e-mail to [paulp@cascobaylines.com](mailto:paulp@cascobaylines.com) : Clarification to RFP # 3- 2017; to the individual referenced by "Attention" on the cover page of this RFP no later than 3:00 PM on November 21, 2017. Late requests for clarification will not be accepted. When appropriate, responses to requests, as well as any changes initiated by Casco Bay Lines, will be provided to all prospective proposers in writing as amendments to the RFP. It will be the Proposer's responsibility to register with Casco Bay Lines via e-mail of intent to submit in order for responses to the Requests for Clarifications and/or RFP amendments to be provided to them.

# **EXHIBIT A**

## **Work Elements To Be Considered**

### **Organizational Background:**

**Casco Bay Island Transit District (CBITD)**, also known as Casco Bay Lines, operates passenger, vehicle and freight service year-round. Casco Bay Lines ensures that passengers have safe, dependable and reliable transportation, and is considered the “lifeline” for the residents of the islands. Casco Bay Lines’ ferries transport over one million passengers, 35,000 vehicles and large volumes of hand freight annually. Casco Bay Lines also delivers the U.S. mail and transports island students to and from Portland. A wide range of scenic cruises and charter trips for celebrations, meetings and sightseeing are available as well.

Casco Bay Lines is a quasi-municipality created by special legislation in 1981 to serve the islands in Casco Bay. Casco Bay Lines is regulated by the Maine Public Utilities Commission and has oversight by the United States Coast Guard. Casco Bay Lines is governed by a 12 member Board of Directors; 10 of whom are elected by the islands, 1 appointed from the City of Portland and 1 appointed from MaineDOT. Casco Bay Lines provides service 365 days a year to the residents and visitors of six Casco Bay islands at Peaks Island, Little Diamond Island, Great Diamond Island and Cliff Island (which are within the City of Portland), and the Towns of Long Island and Chebeague Island, with seasonal service to Bailey Island.

### **Introduction:**

Casco Bay Lines wishes to advance the evaluation work currently being performed under a schedule and fleet analysis contract. An outcome of that process will be recommendations on what the future fleet should be for Casco Bay Lines as well as identify what the next vessel should be. Based on what is accepted by the Board of Directors, Casco Bay Lines will contract with a vessel designer for the design of a U.S. Coast Guard sub-chapter K vessel that will be operated year round in the coastal waters of Casco Bay, Maine. The number of passengers, vehicles and amount of freight to be carried has yet to be determined; however for the purposes of this proposal the proposer can assume a minimum of 400 passengers and 15 vehicles for a car ferry, along with separate space for freight and bicycles that will not be co-mingled with the passenger or vehicle space. It is expected that at the time of finalization of the scope of work and actual fee proposal, that the type of vessel will have been identified. The vessel will need to be designed such that it is able to operate at the current pier facilities on both the mainland and the islands served by Casco Bay Lines. The consultant will be expected to work closely with Casco Bay Lines staff as well as our customers to design a vessel that meets the various needs and minimizes operational costs.



## **Timeline:**

Casco Bay Lines intends to review proposals and make a selection within 2 weeks of receiving proposals. Should interviews be necessary, an additional 2 weeks may be added to that schedule. Once a firm is selected, the intention is to negotiate a fee for the work and have the firm under contract within 3 weeks. Once under contract, we envision a kick-off meeting with Casco Bay Lines Vessel Advisory Committee (VAC) and other interested stakeholders for introductions and sharing of concerns and desires. The desire will be to advance preliminary design steps as quickly as possible and have the PDR available before the end of March 2018. From the acceptance of the PDR, Casco Bay Lines would expect to advance the design in order to advertise the vessel for construction by November of 2018. The design team will need to work closely with Casco Bay Lines in developing schedules and ensuring adherence to them to meet the proposed advertising date.

## **Work Elements:**

1. Preliminary Design;
  - a) Finalize requirements for the new ferry with input from meetings or discussions with various stakeholders associated with this project:
    - 1) Kick-off meeting with Vessel Advisory Committee
    - 2) Meetings/discussions with identified staff members
    - 3) Meetings/discussions with Captains and crew members
    - 4) Meetings with USCG (as necessary)
    - 5) Actual ride along on current ferries to observe operations and landing facilities
  - b) Develop the following concept level sketches:
    - 1) Outboard profile
    - 2) General Arrangements – all decks
    - 3) Hull design
    - 4) Midship section
    - 5) Propulsion systems
  - c) Meet with staff and the Vessel Advisory Committee to review concepts and discuss desired features to be included in the Preliminary Design Report.
  - d) Develop Preliminary Design Report to include the following:
    - 1) Concept level estimate of expected construction costs
    - 2) General arrangements for all decks
    - 3) Hull design
    - 4) Outboard Profiles
    - 5) Draft and Freeboard of key areas such as gates, all decks
    - 6) Vessel speed estimate
    - 7) Alternatives on Propulsion
    - 8) Expected noise levels throughout the vessel
    - 9) Expected vibration issues associated with vessel type and propulsion system.
    - 10) Powering and speed estimates
    - 11) Fuel consumption estimates
    - 12) Crewing requirements based on discussions with the USCG
    - 13) Weight and Stability estimates
    - 14) Vessel amenities to enhance day to day operations

## 2. Final Design;

- a) Consultant will provide a complete set of contract documents, stamped and signed by a Professional Engineer that allows for CBL to advertise the package for construction. The package will have been reviewed with the U.S. Coast Guard and preliminary approvals received that meet the vessel usage and ratings desired by CBL. During the final design phase, consultant should be prepared to do the following:

- 1) Meet with the Vessel Advisory Committee at key milestones in the development of the final design.
- 2) Meet with staff to review options as the design progresses.
- 3) Provide regular updates on the progress of the design.
- 4) Meet with the U.S. Coast Guard as necessary to review plan development and seek approval of the design.
- 5) Look at design elements to ensure compliance with the FTA "Buy America" provisions for rolling stock.
- 6) Provide a design that allows for full ADA access on all public decks, to restrooms and any other public use features.
- 7) Regular communications with the assigned Project Manager.

- b) Final design plans and specifications shall be developed in accordance with U.S. Coast Guard standards and regulations and when there is no clear standard, Consultant will use American Bureau of Shipping (ABS) standards or other industry standards acceptable to CBL. As a minimum, the final design package shall be stamped and signed by a Professional Engineer and shall include the following:

- 1) Lines and Offsets
- 2) Trim and Stability Data
- 3) Finite Element Analysis
- 4) Tank Capacities
- 5) Structure
- 6) Final Outboard Profile and General Arrangements
- 7) Inboard Profile
- 8) Structural Fire Protection
- 9) Noise and Vibration Control
- 10) Thermal, Acoustic and Structural Fire Insulation
- 11) Emergency Evacuation Plan
- 12) Machinery Arrangements
- 13) Shafting and Rudders
- 14) Propellers
- 15) Main and Auxiliary Engines, Reduction Gears
- 16) Main and Auxiliary Engine Systems including:
  - a. Fuel
  - b. Cooling
  - c. Exhaust
  - d. Ventilation and Combustion Air Supply
  - e. Mounting
- 17) Miscellaneous Piping Systems including:
  - a. Bilge
  - b. Fire
  - c. Hydraulic
  - d. Sanitary
- 18) Vents, Fills and Soundings

- 19) HVAC System
  - 20) Electrical Load Analysis
  - 21) AC and DC one line diagrams
  - 22) Lighting
  - 23) Outfitting
    - a. Seating
    - b. Interior/Ceiling
    - c. Wi-Fi
    - d. Security System
    - e. Automatic Vehicle Location (AVL) system
    - f. Access Systems
    - g. Intercoms and Public Address System
    - h. Wheelhouse Electronics
  - 24) Accessibility/ADA/Stair/Elevator Analysis and Design
  - 25) Tonnage Drawings
  - 26) Specifications
  - 27) Weight Estimate
- c) Consultant will work with CBL to make both electronic and paper plans and specifications available to prospective bidders; be available to respond to any request for information (RFI'S) during bidding; issue any design document modifications during bidding; assist in the evaluations of bids received; and make recommendations on the award.
- d) Consultant will be available to supply engineering support during construction and if required, will assist CBL in securing monitoring and documentation services during construction or be available to provide, if desired. These services will be scoped and negotiated at the time of the bid award. Consultant needs to identify whether they have the capability to provide these services, if requested to do so.

# **EXHIBIT B**

## **PROTEST PROCEDURES**

### **1 Introduction**

1. These procedures apply to Invitation for Bid (IFB) and Request for Proposals (RFP).
2. The procedures cover pre-award, award and post award phases of procurement.
3. Casco Bay Lines reserves the right to postpone bid opening for its own convenience, to reject any or all bids and to waive any irregularities.
4. Casco Bay Lines will establish a formal record of the dispute resolution process.

### **2 Pre-Award**

1. Protest of specifications or scope of services must be received by Casco Bay Lines in writing not less than 10 business days before the date of scheduled bid opening. Any protest must be fully supported with technical data, test results, or other pertinent information as evidence that the substitute offered is equal to or better than the specification requirement.
2. Casco Bay Lines replies to protests under paragraph 2.1 above will be postmarked at least 5 business days before the scheduled date of bid opening. Casco Bay Lines will respond specifically to each material issue in its reply.

### **3 Award**

1. A bidder may protest the proposed award of contract to the General Manager of Casco Bay Lines in writing no later than 5 business days prior to the proposed effective date of contract. Any contract award protest must be fully supported with technical data, test results, or other pertinent information as evidence that the accepted bid or proposal does not meet the specifications or scope of services. The General Manager will attempt to resolve the issues raised by protesters prior to the effective date of contract. The General Manager will issue a final decision in the matter and the procurement process will continue. Bidders may appeal this decision to the Federal Transit Administration (FTA) and no award will be made until FTA has issued a ruling.

### **4 Post-Award**

1. Post-award protests will only be accepted concerning the alleged failure of the successful bidder to deliver the procured goods and/or services pursuant to the specifications or scope of services.
2. Casco Bay Lines will respond in writing to protesters. If Casco Bay Lines cannot resolve a legitimate issue with the successful bidder, then legal recourse may be pursued. Should the procurement contract with the successful bidder be terminated as a result of legal action, a re-bid of the procurement may occur.

## **5 Appeals to FTA**

1. Under the provisions of Circular 4220.1F, FTA will only review protests regarding the alleged failure of Casco Bay Lines to have written protest procedures or an alleged failure to follow those procedures. An appeal to FTA must be in writing and received by the FTA no later than 5 business days following the final decision rendered by Casco Bay Lines or Casco Bay Lines has failed to render a final decision of the protest. Appeals shall be filed with the FTA Region 1 Office Kendall Square, 55 Broadway Suite 920, Cambridge, MA 02142-1093, with a copy to Casco Bay Lines. Appeals must include the name and address of the protester; cite Casco Bay Lines as the grantee, contain the project number, a statement of the grounds for appeal and any supporting documentation; and include a copy of the protest filed with Casco Bay Lines and a copy of Casco Bay Lines decision, if any.
2. Upon notice that an appeal has been submitted to the FTA, Casco Bay Lines will contact the appropriate FTA official to determine if the bid opening should be postponed. If the bid opening is postponed, Casco Bay Lines will notify all prime contractors and subcontractors who have been furnished a copy of the specifications that an appeal has been filed and that bid opening is postponed until FTA has issued a decision. Appropriate addenda will be issued rescheduling bid opening.
3. Any appeal to FTA may be withdrawn at any time.
4. The FTA decision on any appeal will be final, and no further appeals will be considered by FTA or Casco Bay Lines.

# EXHIBIT C

## Table of Contents - FTA Governing Documents

### A.1 - Federally Required and Other Model Contract Clauses

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  4. [Cargo Preference Requirements](#) (Not Applicable to this Contract)
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## 1. Fly America Requirements

49 U.S.C. §40118

41 CFR Part 301-10

### Applicability to Contracts

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

## Flow Down Requirements

The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

## Model Clause/Language

The relevant statutes and regulations do not mandate any specified clause or language. FTA proposes the following language.

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

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## 6. Energy Conservation Requirements

**42 U.S.C. 6321 et seq.**  
**49 CFR Part 18**

## Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

## Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

## Flow Down

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

## Model Clause/Language

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA.

*Energy Conservation - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.*

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## 7. Clean Water Requirements

33 U.S.C. 1251

### Applicability to Contracts

The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

### Flow Down

The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

### Model Clause/Language

While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended, the following language developed by FTA contains all the mandatory requirements.

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

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

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## 10. Lobbying

31 U.S.C. 1352  
49 CFR Part 19  
49 CFR Part 20

### Applicability to Contracts

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

### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### Flow Down



The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

## Mandatory Clause/Language

- Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)
- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

### APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

#### *Certification for Contracts, Grants, Loans, and Cooperative Agreements*

*(To be submitted with each bid or offer exceeding \$100,000)*

*The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:*

1. *No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.*
2. *If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)]. Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)*

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

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

*[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]*

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

\_\_\_\_\_  
*Signature of Contractor's Authorized Official*

\_\_\_\_\_  
*Name and Title of Contractor's Authorized Official*

\_\_\_\_\_  
*Date*

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## 11. Access to Records and Reports

**49 U.S.C. 5325**  
**18 CFR 18.36 (i)**  
**49 CFR 633.17**

### Applicability to Contracts

Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### Flow Down

FTA does not require the inclusion of these requirements in subcontracts.

### Model Clause/Language

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
7. FTA does not require the inclusion of these requirements in subcontracts.

#### Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Contract	Operational Service Contract	Turn key	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
I. State Grantees	a. Contracts below SAT (\$100,000)	None	Those imposed on state pass thru to Contractor	None	None	None	None
	b. Contracts	None	Those	Yes, if non-	None	None	None

	above \$100,000/ Capital Projects	unless <sup>1</sup> no n-competitiv e award	impose d on state pass thru to Contractor	competitive award or if funded thru <sup>2</sup> 5307/5309/5311	unless non- competitive award	unless non- compet itive award	unless non- competit ive award
II. Non State Grantees	a. Contracts below SAT (\$100,000)	Yes <sup>3</sup>	Those impose d on non- state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
	b. Contracts above \$100,000/C apital Projects	Yes <sup>3</sup>	Those impose d on non- state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes

### Sources of Authority

1. 49 USC 5325 (a)
2. 49 CFR 633.17
3. 18 CFR 18.36 (i)

## 12. Federal Changes

### 49 CFR Part 18

### Applicability to Contracts

The Federal Changes requirement applies to all contracts.

### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

## Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

## Model Clause/Language

No specific language is mandated. The following language has been developed by FTA.

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the [Master Agreement](#) between 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.

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## 14. CLEAN AIR

42 U.S.C. 7401 *et seq*

40 CFR 15.61

49 CFR Part 18

## Applicability to Contracts

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

## Flow Down

The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

## Model Clauses/Language

No specific language is required. FTA has proposed the following language.

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

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

## 19. No Government Obligation to Third Parties

### Applicability to Contracts

Applicable to all contracts.

### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### Flow Down

Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

### Model Clause/Language

While no specific language is required, FTA has developed the following language.

#### ***No Obligation by the Federal Government.***

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

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## 20. Program Fraud and False or Fraudulent Statements and Related Acts

31 U.S.C. 3801 et seq.  
49 CFR Part 31 18 U.S.C. 1001  
49 U.S.C. 5307

### Applicability to Contracts

These requirements are applicable to all contracts.

### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

## Flow Down

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

## Model Clause/Language

These requirements have no specified language, so FTA proffers the following language.

### ***Program Fraud and False or Fraudulent Statements or Related Acts.***

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

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## 21. Termination

**49 U.S.C. Part 18**  
**FTA Circular 4220.1E**

## Applicability to Contracts

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

## Flow Down

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

## Model Clause/Language

FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

1. **Termination for Convenience (General Provision)** The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.
2. **Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

3. **Opportunity to Cure (General Provision)** The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

4. **Waiver of Remedies for any Breach** In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
5. **Termination for Convenience (Professional or Transit Service Contracts)** The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
6. **Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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



7. **Termination for Default (Transportation Services)** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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

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

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

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

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

9. **Termination for Convenience or Default (Architect and Engineering)** The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

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

10. **Termination for Convenience of Default (Cost-Type Contracts)** The (Recipient) may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the (Recipient) or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

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

If, after serving a notice of termination for default, the (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

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## 22. Government-Wide Debarment and Suspension (Nonprocurement)

**49 CFR Part 29**  
**Executive Order 12549**

### Background and Applicability

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as "covered transactions."

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

## Clause Language

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

### ***Suspension and Debarment***

*This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.*

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

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

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

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## 24. Civil Rights Requirements

29 U.S.C. § 623, 42 U.S.C. § 2000  
42 U.S.C. § 6102, 42 U.S.C. § 12112  
42 U.S.C. § 12132, 49 U.S.C. § 5332  
29 CFR Part 1630, 41 CFR Parts 60 et seq.

## Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

## Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

## Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

## Model Clause/Language

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shorten the lengthy text.

**Civil Rights - The following requirements apply to the underlying contract:**

1. *Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.*
2. *Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:*
  1. *Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.*
  2. *Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.*
  3. *Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.*
3. *The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.*

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## 25. Breaches and Dispute Resolution

49 CFR Part 18  
FTA Circular 4220.1E

### Applicability to Contracts

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

### Flow Down

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

## Model Clauses/Language

FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

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

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

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

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

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

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## 28. Disadvantaged Business Enterprise (DBE)

### 49 CFR Part 26

## Background and Applicability

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (see section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

## Clause Language

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

### Disadvantaged Business Enterprises

1. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 1.9 %. A separate contract goal has not been established for this procurement.
2. The contractor 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 this DOT-assisted contract. 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 **Casco Bay Lines** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
3. ***{If a separate contract goal has been established, use the following}*** Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:
  1. The names and addresses of DBE firms that will participate in this contract;
  2. A description of the work each DBE will perform;
  3. The dollar amount of the participation of each DBE firm participating;
  4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
  5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
  6. If the contract goal is not met, evidence of good faith efforts to do so.

**[Bidders][Offerors]** must present the information required above **[as a matter of responsiveness] [with initial proposals] [prior to contract award]** (see 49 CFR 26.53(3)).

***{If no separate contract goal has been established, use the following}*** The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

4. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the **{insert agency name}**. In addition, **[the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the**

subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the {insert agency name} and contractor's receipt of the partial retainage payment related to the subcontractor's work.]

5. The contractor must promptly notify {insert agency name}, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of {insert agency name}.

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## 30. Incorporation of Federal Transit Administration (FTA) Terms

FTA Circular 4220.1E

### Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### Flow Down

The incorporation of FTA terms has unlimited flow down.

### Model Clause/Language

FTA has developed the following incorporation of terms language:

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

**CASCO BAY ISLAND TRANSIT DISTRICT  
FTA REQUIRED PROCUREMENT PROVISIONS/CLAUSES  
(Submit Signed Sheet with Proposal)**

The following FTA required procurement provisions and clauses will apply to this project. This form must be submitted with the Proposal as documentation that you have read and agreed to the attached FTA provisions and clauses.

1. [Fly America Requirements](#)
2. [Buy America Requirements](#) (Not applicable to project)
3. [Charter Bus and School Bus Requirements](#) (Not applicable to project)
4. [Cargo Preference Requirements](#) (Not applicable to project)
5. [Seismic Safety Requirements](#) (Not applicable to project)
6. [Energy Conservation Requirements](#)
7. [Clean Water Requirements](#)
8. [Bus Testing](#) (Not applicable to project)
9. [Pre-Award and Post Delivery Audit Requirements](#) (Not applicable to project)
10. [Lobbying](#)
11. [Access to Records and Reports](#)
12. [Federal Changes](#)
13. [Bonding Requirements](#) (Not applicable to project)
14. [Clean Air](#)
15. [Recycled Products](#) (Not Applicable to project)
16. [Davis-Bacon and Copeland Anti-Kickback Acts](#) (Not applicable to project)
17. [Contract Work Hours and Safety Standards Act](#) (Not applicable to project)
18. [\[Reserved\]](#) (Not applicable to project)
19. [No Government Obligation to Third Parties](#)
20. [Program Fraud and False or Fraudulent Statements and Related Acts](#)
21. [Termination](#)
22. [Government-wide Debarment and Suspension \(Non-procurement\)](#)
23. [Privacy Act](#) (Not applicable to project)
24. [Civil Rights Requirements](#)
25. [Breaches and Dispute Resolution](#)
26. [Patent and Rights in Data](#) (Not applicable to project)
27. [Transit Employee Protective Agreements](#) (Not applicable to project)
28. [Disadvantaged Business Enterprises \(DBE\)](#)
29. [\[Reserved\]](#) (Not applicable to project)
30. [Incorporation of Federal Transit Administration \(FTA\) Terms](#)
31. [Drug and Alcohol Testing](#) (Not applicable to project)

Please sign and date below certifying that you have read and agreed to the attached FTA provisions. This form must be submitted with proposal.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(Authorized Representative)

Printed Name: \_\_\_\_\_

Company: \_\_\_\_\_



**CASCO BAY ISLAND TRANSIT DISTRICT  
FTA REQUIRED PROCUREMENT PROVISIONS - Lobbying  
(Submit Signed Sheet with Proposal)**

The undersigned [Consultant] certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

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

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name and Title of Contractor's Authorized Official

\_\_\_\_\_ Date

This form must be submitted with proposal.