

Town of Brattleboro

Default Procurement Manual



Adopted April 15, 2008
Amended May 20, 2008

TABLE OF CONTENTS

Chapter One - General Procurements Policy

- I. Purpose.....2
- II. Application.....2
- III. Organization and Responsibilities.....2
- IV. Procedures Re: Ethical Responsibilities.....4
- V. Definitions.....5
- VI. Procedures.....6
- VII. Implementation and Systems of Control.....8
- VIII. Disposal of Surplus Goods.....11
- IX. Forms.....12

Chapter Two - Third Party Contracting Requirements Policy.....13

- I. Purpose.....13
- II. Overview.....13
- III. Incorporation of General Procurement Policy.....13
- IV. Disadvantaged Business Enterprise Policy.....13
- V. Definitions.....14
- VI. General Procurement Standards Applicable to Third-Party Procurements.....15
- VII. Competition.....18
- VIII. Methods of Procurement.....19
- IX. Contract Cost and Price Analysis for Every Procurement Action.....23
- X. Bonding Requirements.....23
- XI. Payment Provisions in Third Party Contracts.....24
- XII. Liquidated Damages Provisions.....24
- XIII. Contract Award Announcement.....25
- XIV. Contract Provisions.....25
- XV. Contract Administration.....25
- XVI. General Guidelines.....30

APPENDICES

- Appendix A Town of Brattleboro Protest Procedures.....37
- Appendix B FTA Required Clauses for Third Party Contractors and Subagreements.....44
- Appendix C Disadvantaged Business Enterprise Requirements.....101
- Appendix D Property Management & Disposal Procedures.....104
- Appendix E Forms.....107

CHAPTER ONE

GENERAL PROCUREMENT POLICY

I. PURPOSE.

The purpose of this policy is to create a process for purchasing goods and services that will increase efficiency, promote fairness, accountability and confidence, and provide necessary supplies and services in a timely and cost-effective manner.

The purchasing procedures set forth in this Chapter are designed to ensure that the Town is aware, at all times, of its financial commitments. It is of utmost importance, therefore, that the Finance Department is informed of each department's intention to purchase a good or service. This process is accomplished through the issuance of purchase orders on all purchases over \$250.00, and the timely transmittal of invoices on purchases less than \$250.00.

The Finance Department tracks the purchasing of all departments as well as the availability of cash reserves. It is impossible to do this if the Finance Department is not informed IN ADVANCE of all purchases of more than \$250.00, and in a timely manner of all purchases less than \$250.00.

The cooperation of all Town Employees and Departments in this effort is requested and appreciated.

II. APPLICATION.

This General Procurement Policy shall apply to all purchases of goods and services by the Town of Brattleboro except where conditions of state or federal funds, or conditions of a grant, gift or bequest mandate otherwise, in which case the "Third Party Contracting Requirements Policy" set forth in Chapter Two shall apply.

It is the policy of the Town that the purchase of all goods and services be accomplished in a manner providing full and open competition and equitable treatment of all potential vendors and sources. The Town shall apply sound procurement policies and procedures throughout the entire procurement cycle.

III. ORGANIZATION AND RESPONSIBILITIES.

The authority to award contracts rests with the Town Selectboard. This authority is delegated, in part, to the Town Manager who oversees all Town activities and may delegate certain day-to-day purchasing activity to others. The Town Manager may delegate certain authority to project managers made responsible for specific projects carried out by their respective departments. Project managers are generally responsible for initiating the procurements for their departments and to work closely with the executive director in award and administration of contracts.

The responsibilities of persons involved in the procurement process are described in following paragraphs.

Selectboard

The Selectboard:

- a. Approves procurement policy.
- b. Holds sole contracting authority.
- c. May delegate approval authority to the Town Manager, and may delegate authority to the Town Manager to delegate to staff.
- d. May disapprove purchases submitted for approval if for a valid business reason. The board will not change a recommended award to one that is not consistent with evaluation criteria and requirements set forth in the solicitation.
- e. Authorizes Town Manager to dispose of surplus materials, supplies, equipment and property, subject to its policies.
- f. Sets annual Disadvantaged Business Enterprises (DBE) goals based upon recommendation of Town staff.

Town Manager

The Town Manager:

- a. Under the authority delegated by the Selectboard, may approve purchases.
- b. May delegate approval of purchases as allowed by the Selectboard.
- c. Ensures that no contract will be entered into unless all requirements of law, regulations, and all applicable procedures, including proper clearances and approvals, have been met and that sufficient funds are available for the obligation.
- d. May sign any contract on behalf of Town upon Selectboard approval, or as otherwise authorized by the Selectboard.
- e. Authorizes payments to vendors upon verification of receipt.
- f. Closes out the contract when its performance is completed.
- g. Leads annual procurement planning effort.
- h. Approves disposal of surplus materials, supplies, and equipment.
- i. Approves any changes to internal purchasing procedures and assures compliance with Town purchasing policies.
- j. Submits annual DBE goals to Selectboard.

Finance Director

The Finance Director:

- a. Serves as the contracting officer.
- b. Under the authority delegated by the Selectboard and Town Manager, may approve purchases.
- c. In Town Manager's absence may execute documents on behalf of the Town for which documented signature authority exists (such as the recorded Minutes of a Selectboard meeting, or written instruction signed by the Town Manager).
- d. Ensures that funds are available for proposed purchases.
- e. Ensures that procurement policies and procedures are followed.
- f. Issues purchase orders.
- g. Serves as DBE officer; prepares annual goals and progress reports.
- h. Reports to the Selectboard regarding DBE efforts.

Department Director

The department director:

- a. Ensures that funds are available for proposed purchases.
- b. Ensures that procurement policies and procedures are followed.
- c. Ensures that departmental purchases are necessary.

Project Manager

The project manager:

- a. Monitors contract compliance.
- b. Enforces contract provisions.
- c. Requests timely performance and payment requests.
- d. Recommends modifications to the contract as necessary.
- e. Recommends the closing of a contract.

IV. PROCEDURES RE: ETHICAL RESPONSIBILITIES.

A. Policy Statement. It is the policy of the Town of Brattleboro that its Selectboard members and employees observe the highest standards of ethics and that where an actual or seemingly apparent conflict of interest or breach of fiduciary duty or abuse of official position may arise or has arisen they proceed as described below.

B. Statement on Organizational Conflicts of Interest. In the event that a Town of Brattleboro Selectboard member or employee has a direct or indirect financial interest (for purposes hereof, indirect financial interest shall include the direct financial interest of an immediate family member) in any contract with the Town of Brattleboro or when any such Selectboard member or employee furnishes any material or provides any labor to the Town of Brattleboro for compensation except in the discharge of his/her official duties, the person involved shall:

1. State on the record the nature of his/her conflict of interest;
2. Shall not communicate either formally or informally with any Town of Brattleboro Board member or employee with respect to the awarding of such contract.

In the event that a Selectboard member or employee has a fiduciary relationship (a position of trust) with an individual, partnership, firm or corporation seeking to contract with the Town of Brattleboro or provide materials or labor thereto, such person shall, regardless of the contract amount:

1. State on the record the nature of his/her interest;
2. Avoid all formal or informal discussion with any Town of Brattleboro Board member or employee with respect to the award of such contract.

In the event that a Selectboard member or employee has a special or unique interest where personal loyalty to a particular interest group or individual may have a bearing on a subject of discussion or vote by the Board, it shall be appropriate for that person to:

1. State on the record, the nature of his/her special interest so that the full Board may understand the nature of that interest during discussion; and
2. State on the record if he/she feels that the nature of the interest is such that it would be difficult to render unfettered judgment on the subject.

Whereas Selectboard members and employees are considered to have a fiduciary duty to the Town of Brattleboro, it is proper that:

1. When in a position to know or obtain information of a confidential nature in the possession of the Town of Brattleboro, those persons shall not disclose such information;
2. When in a position to speak to the public on Town of Brattleboro matters, those persons shall not misstate the position of the Board, nor take any action or make any statement as that of the Board, unless the Board has given authorization to do so.
3. When in a position to take unfair advantage of an employee or the Town of Brattleboro due to their position or rank as an official of the Town of Brattleboro, those persons shall not misuse the position for personal gain or satisfaction. Employees shall respect the line of command and channels of communications as set forth in the Town of Brattleboro's current organizational chart and personnel policy.

C. Statement on Gifts and Gratuities. All gifts or other gratuities from any party having or seeking to establish a business relationship with Town of Brattleboro are discouraged and contrary to this declared policy. Proper personal conduct requires:

- ✓ Gifts or other gratuities that might adversely affect the exercise of a Selectboard member's or employee's judgment in matters pertaining to Town of Brattleboro or tend to impair public confidence in Town of Brattleboro must never be accepted.
- ✓ Entertainment in any form must not be accepted if either party might feel an obligation or if a third party might infer that an obligation exists.
- ✓ The Selectboard members and employees of Town of Brattleboro shall neither solicit nor accept gratuities, discounts, favors, or anything of monetary value from contractors or potential contractors.

D. Disciplinary Action. It shall be incumbent upon each Board member and employee to police him/herself with respect to these guidelines. In the event this does not occur: The Board (or, if designated by the Board, the Town Manager) may take appropriate disciplinary action.

V. **DEFINITIONS.**

- A. Major Purchases are those purchases of goods or services in an amount of \$10,000.00 or more. Major purchases also include items that are purchased repetitively throughout the year which exceed the \$10,000.00 figure on an annual basis, such as

gasoline and fuel oil.

- B. Regular purchases are those purchases of goods or services in an amount of at least \$250.00 but less than \$10,000.00.
- C. Incidental purchases are those purchases of goods and services in an amount of \$250.00 or less.
- D. Sole source vendor is a vendor approved by the Selectboard to provide certain goods and services for the Town.

A sole source vendor is a vendor who sells a product or service that meets the unique needs of the purchaser; generally, sole source means the one and only source for the product or service. Sole source vendors must be approved by the Selectboard.

- E. Emergency purchases are those urgent purchases of goods and services, which are required to protect the public health, safety and welfare.
- F. Best Price and Buy Local/Buy Fair Policy. The Town of Brattleboro became the second Fair Trade Town in the United States by Resolution passed June 26, 2007. It is the Town's policy to maximize the purchase of Fair Trade Certified and locally produced products in the process of procuring necessary goods for the Town Offices when those products are available and reasonably priced. It is the intention of the Town to gain a greater understanding of what is and what is not Fair Trade in order to make educated purchasing decisions. For purposes of this General Procurement Policy, "Best Price" shall take into consideration the availability of reasonably priced, locally produced and/or Fair Trade Certified products.

VI. PROCEDURES.

- A. Major purchases require a formal bid process, which shall include:
 - 1. Advertisement of the invitation to bid or request for proposal (RFP) for at least one week in a newspaper of general circulation in the Town of Brattleboro;
 - 2. Advertisement of the invitation to bid or RFP in other newspapers at the discretion of the Town Manager;
 - 3. Direct notice of the bid or RFP to specific providers at the discretion of the Town Manager;
 - 4. Notice of the place and deadline for receipt of the sealed bids or RFPs;
 - 5. A description of the supplies, materials, equipment or services required and information on how and where to obtain more detailed specifications and bid or RFP forms;
 - 6. Information on insurance requirements for the bidder or proposer;
 - 7. A statement of the right of the Town of Brattleboro to reject any and all bids or RFPs if doing so is deemed by the Selectboard to be in the best interests of

- 8. the Town; and
 - 8. Public opening of the bids or RFPs by the Town Manager at a time not less than 10 business days after the deadline for receipt.
- B. Regular purchases require competitive solicitation of bids or RFPs but may be done by the formal bid process. Competitive solicitation includes:
 - 1. Soliciting bids or quotations from at least three vendors, unless a sole source vendor has been approved by the Selectboard; and
 - 2. Selection of vendor based on quality of the goods and services offered, cost, ability of the vendor to provide future maintenance, and the ability, capacity and skill of the vendor demonstrated under prior contracts with the Town.
 - 3. Departments will be expected to obtain the “best” price for all regular purchases. Departments will be required to document their efforts to do so (unless specifically relieved of that obligation on certain items with the written approval of the Finance Director).
 - C. Incidental purchases may be made without a formal bid or competitive solicitation. Such purchases may be made by department heads or their designated representative. Incidental purchasing choices shall be made based on cost, quality of goods and services, and the best interests of the Municipality. Departments will be expected to obtain the “best” price for all incidental purchases, but will not be required to document their efforts to do so (unless specifically requested on certain items by the Finance Director).
 - D. Sole Source Vendor. The Selectboard may approve a sole source vendor for regular or incidental purchases.
 - E. Leasing Equipment. The Selectboard shall approve all leasing of major purchases. The Town Manager shall approve all other leases.
 - F. Purchase of Professional Services. The purchase of professional services for the Town shall be exempt from the formal bid process. Such services include, but are not limited to, legal counsel, auditors, accountants, insurance, engineering/architectural services and consulting services. The Selectboard shall purchase such services according to the best interests of the Town. In purchasing such services, the Selectboard may utilize a formal bid process in its discretion.
 - G. Cooperative Purchasing. The Town may enter into cooperative lease or purchase agreements with other municipalities, state or federal agencies, at the discretion of the Selectboard.

- H. Emergency Purchases. When an emergency threatens the health, lives or property of the residents of the Town, or threatens the property of the Town or the delivery of necessary services to the residents of the Town, the town manager, health officer, fire chief, police chief, and/or emergency management chairperson, shall have the authority to purchase emergency supplies and services while acting in the best interests of the town.

VII. IMPLEMENTATION and SYSTEMS OF CONTROL.

- A. PURCHASE ORDERS. Purchase orders must be issued for all Major and Regular purchases. The purchase order is to be approved by the Finance Director AND signed by the Department Head PRIOR to the order being placed.

Prior to any order being placed or purchase made, a Department Head must remit a Requisition to the Finance Director for approval and issuance of the Purchase Order. The purchase order is to be issued before the purchase.

EXCEPTIONS:

Several exceptions to the above rule are listed below for which NO purchase orders need to be issued:

1. CASH ADVANCES FOR TRAVEL AND MILEAGE. Employees anticipating travel to a conference or seminar may submit a request for a cash advance to cover the expenses. There is a "Cash Advance Request" form at the end of this manual on which to submit such a request. ALL cash advances must be followed up with a "Travel Reimbursement Form" and/or Mileage Reimbursement Form, which details the expenses, actually incurred and reconciles the advance to the actual expenses. Any overpayment of an advance is to be paid immediately to the Town. Any balance due to the employee will be paid on the warrant following the submission of a "Travel Reimbursement Form."

IMPORTANT NOTE: Mileage must be detailed and expenses must be documented by receipts. Travel expenses not documented by appropriate receipts will not be reimbursed. Receipts must reflect the name of the vendor, details of the items purchased, date of purchase and value of purchase. If receipt is for goods or services for one or more individuals, the name of all individuals should be noted on the receipt.

2. SUBSCRIPTIONS, CONFERENCES, MEMBERSHIPS OR ORDERS FOR WHICH A CHECK MUST ACCOMPANY THE ORDER FORM. In these cases, submit the order or registration or subscription form to be mailed along with a "Payment Request Form" (attached at the back of this manual). A copy of the registration form must also be attached to the payment request form for the Finance Department's permanent records.

IMPORTANT NOTE: The “Payment Request Form” is to be transmitted to the Finance Department prior to the order not after the order is placed – the check is to accompany the order form. If there are not sufficient funds to cover the payment request, it will be denied.

3. **UTILITY PAYMENTS:** Electric, water & sewer and telephone charges do not need a purchase order for basic service. These bills are to be forwarded immediately to the Finance Department for payment. If you are ordering work to be performed by a utility company or a new service, then you must submit a purchase order.
4. **GENERAL LEDGER ACCOUNTS EXCLUSIVELY RESERVED FOR ONE VENDOR WITH ONE PURPOSE OR CONTRACT:** Examples of this are Occupational Health, Computer Land Records, Tax Map Maintenance, Tipping Fees, and the like. These invoices should be submitted with a “Payment Request Form” (attached at the back of this manual). Before submitting bills in this manner, be sure to check with the Finance Department for approval that the account fits in this category.
5. **PETTY CASH REIMBURSEMENTS:** Send a “Petty Cash Reimbursement Form” (attached at the back of this manual) with a copy of all the petty cash slips documenting the reimbursement.
6. **EMERGENCY ORDERS:** Only in a true emergency when there is no time for a prior approved purchase order will this be allowed. The work may be ordered or performed in these rare cases without a signed purchase order. The first business day following an emergency purchase, a purchase order should be sent to the Finance Department with either the actual cost of the work performed or an estimate of the total costs. It must state on the Purchase Order “Emergency Purchase” and in such case an invoice may be submitted with the Purchase Order. Do not abuse this privilege – you must be able to justify the emergency.
7. **RECURRING, STANDARDIZED, MONTHLY PAYMENTS INDIVIDUALLY APPROVED AS PART OF THE BUDGET PROCESS:** Examples of this are transportation allowances, human service allocations, trash removal contracts and various independent contractors (Listers, Selectmen, etc.). These payments are to be individually arranged with the Finance Department.
8. **PAYMENTS FOR BENEFITS APPROVED IN BUDGET:** These payments are those made by the Finance Department on behalf of all departments for social security, hospitalization, workers’ compensation, health and dependent flex, etc.
9. **PAYROLL:** This is paid as a result of time sheets filed by individuals and departments and personnel actions signed by the Town Manager. See the separate manual on payroll procedures.

General Guidelines for Filling out Purchase Orders

Blanket Purchase Orders may be issued by a department to cover regular, multiple purchases to a single vendor.

Purchase order numbers are automatically assigned in consecutive order by the purchase order software.

B. INCIDENTAL PURCHASES (Purchases under \$250.00)

Each department may establish its own system of control over the method of authorizing incidental purchases (purchases fewer than Two Hundred Fifty (\$250.00) Dollars). This system shall be put in writing and transmitted to the Finance Department for filing.

Each department will be required to verify that the account from which it is making a purchase has sufficient funds to pay for the purchase (checking totals for each account in the computer and taking into consideration any purchases not yet posted).

Invoices must be transmitted as quickly as possible to the Finance Department on all incidental purchases. On vendors who offer a discount on a total monthly statement amount, the department may submit the invoices monthly. Such statements should be forwarded to the Finance Department along with the invoices within one business day of receipt in order to guarantee the discount.

Invoices should be transmitted to the Finance Department as they are received. Payments should be made from original invoices, not copies or statements.

C. PAYMENT PROCESSING

Bills are processed for payment on a bi-weekly basis on the weeks opposite the issuance of payroll checks. For example if payroll checks are issued on the fourteenth of the month, payables would be processed for payment on the twenty first of the month.

Invoices to be included in the regular bi-weekly warrant must be received in the Finance Department **NO LATER THAN NOON** on the **MONDAY** of a warrant week. Checks will be issued by Friday of that same week.

If an invoice is time sensitive – it has a discount potential or a penalty for late payment – highlight the terms on the invoice or note it prominently on a post-it note so that the Finance Department will see it.

Any special circumstances involved with the payment of an invoice must be noted and highlighted for the Finance Department.

The Finance Department does run a **LIMITED EMERGENCY WARRANT** on Fridays following running payroll for bills where a discount would be lost if it was held for another week.

This is to be used when an invoice is received within only a few days of its due date. It is NOT to be used because a department failed to process the invoice in a timely manner. Invoices must be received in Finance by the date of payroll to be considered for this warrant.

Departments are responsible for planning their financial needs and requesting checks far enough in advance to meet those needs. Checks for pre-scheduled events, advances for travel, reimbursements and conferences will be done only on the regular bi-weekly warrant. There should almost never be a need for an emergency check for this type of expenditure.

Manual checks will be issued only under the most rare and urgent circumstances and must be justified to the satisfaction of the Finance Director.

All checks will be distributed by the Finance Department after the Selectboard has approved the warrant. If there are forms to be mailed with a check, attach them to the transmittal and note it on the invoice. Be sure a copy of the invoice is attached to the transmittal for the Finance Department's permanent record.

NO VARIATIONS FROM THIS POLICY ARE PERMITTED UNLESS PRIOR WRITTEN APPROVAL OF THE FINANCE DIRECTOR HAS BEEN OBTAINED.

VIII. DISPOSAL OF SURPLUS GOODS

A. Definition: Surplus goods are defined as those items for which a Town Department has no reasonably foreseeable need, which are no longer suitable for the intended purpose by the Department, or for which the Department does not have storage capacity to maintain in inventory.

B. Policy: The Town encourages reduction in waste, re-use and recycling efforts. The Town is also committed to the full utilization of its resources in a reasonable manner.

C. Procedure: In the event a Department Head identifies surplus goods, the Head of that Department shall give notice to the Town Manager and all other Department Heads of the surplus goods, including description, quantity and quality and any other information which might be appropriate. Reassignment of the surplus goods will be reviewed and approved by the Town Manager. If no other Department Head makes a claim within ten calendar days, and with the Town Manager's written approval, the Department Head shall then offer those surplus goods to all employees for an informal, closed bid auction with a deadline for bids of not less than 48 hours, nor more than 7 calendar days. If the Town Manager has determined that the surplus goods are more appropriately put out for formal, public bid, then they shall not be offered to employees. All bids received (under either bidding process) shall be opened by the Department Head, Director of Finance and Town Manager, who shall have the right to reject any and all bids based on price. In the event there is no successful bidder, then appropriate arrangements shall be made for the disposal of the goods, in an environmentally appropriate manner. This may include donation of the surplus goods to any local charitable organization, not-for-profit or by recycling or disposal in conjunction with the solid waste management district.

IX. FORMS

See Appendix E

Requisition/Purchase Order

Cash Advance Request

Travel Reimbursement

Mileage Reimbursement

Payment Request

Petty Cash Reimbursement

CHAPTER TWO

THIRD PARTY CONTRACTING REQUIREMENTS POLICY

I. PURPOSE.

This chapter sets forth the requirements which the Town of Brattleboro [Town], must adhere to in the solicitation, award and administration of its third party contracts where conditions of state or federal funds, or grant, gift or bequest mandate otherwise. These requirements are based on the common grant rules, Federal statutes, Executive Orders and their implementing regulations, and FTA policy, as well as FTA Circular 4220.1E, and Vermont law.

II. OVERVIEW.

This chapter defines the basic policies and procedures for the procurement and disposal of materials, equipment, buses, other vehicles, and facilities, and the procurement and administration of professional services and other services required by the Town. The manual specifies the policies and procedures for all Town employees involved in the procurement process.

III. INCORPORATION OF GENERAL PROCUREMENT POLICY.

The provisions of Chapter One of this Procurement Manual are incorporated herein and shall be followed, unless this Chapter contains a more specific or stringent requirement. Additionally, the Finance Director or designee shall verify the third party contracting requirements for each project to ensure that if a more stringent policy is required, that the Town complies.

IV. DISADVANTAGED BUSINESS ENTERPRISE POLICY.

It is the Town policy to actively encourage and assist disadvantaged business enterprises (DBE) to participate competitively in Town procurement actions. The DBE officer reports directly to the Selectboard on all matters pertaining to the DBE program. The DBE officer is responsible for DBE program coordination and enforcement. The DBE officer is the Finance Director.

The DBE officer will annually review procurement plans and recommend appropriate organizational DBE contracting goals based on anticipated procurement actions and available certified DBE suppliers or contractors. DBE goals are established annually based on projected expenditures for construction, professional services, materials and supplies, and equipment, and anticipated opportunities to use DBE vendors to fulfill those requirements.

TOWN shall take affirmative steps to establish maximum participation of DBE vendors such as:

- a. Placing qualified DBEs on vendor solicitation lists.
- b. Assuring DBEs are solicited when they are potential sources.
- c. When economically feasible, dividing total requirements into smaller tasks or quantities to permit maximum participation.

- d. When opportunity permits, establishing delivery schedules to encourage DBE participation.
- e. If subcontracts shall be let, requiring the prime contractor to take the same affirmative steps as listed above in (a) through (d) of this paragraph.

V. DEFINITIONS.

All definitions in 49 U.S.C. §5302 are applicable. The following definitions are provided:

a. "Grantee" includes the Town, insofar as it is a public entity to which a grant or cooperative agreement is awarded by any Federal or State agency. Grantee means any other public or private entity to which a grant or cooperative agreement has been awarded by the Federal or State agency. The grantee is the entire legal entity even if only a particular component of the entity is designated in the assistance award document.

For the purposes of this manual, "grantee" also includes any subgrantee of the Town as grantee. Furthermore, the Town is responsible for assuring that its subgrantees comply with the requirements and standards of this circular, and that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

b. "State" means the State of Vermont, or any agency or instrumentality of Vermont exclusive of local governments. "State" does not include any public and Indian housing agency under the United States Housing Act of 1937.

c. "Third party contract" refers to any purchase order or contract awarded by the Town as a grantee to a vendor or contractor using Federal financial assistance awarded by the Federal or State agency.

d. "Piggybacking" is an assignment of existing contract rights to purchase supplies, equipment, or services.

e. "Tag-on" is defined as the addition of work (supplies, equipment or services) that is beyond the scope of the original contract that amounts to a cardinal change as generally interpreted in Federal practice by the various Boards of Contract Appeals. "In scope" changes are not tag-ons.

f. "Best Value" is a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine {or derive} the offer deemed most advantageous and of the greatest value to the procuring agency.

g. "Design-Bid-Build" refers to the project delivery approach where the grantee commissions an architect or engineer to prepare drawings and specifications under a design

services contract, and separately contracts for at-risk construction, by engaging the services of a contractor through sealed bidding or competitive negotiations.

h. “Design-Build” refers to a system of contracting under which one entity performs both architectural/engineering and construction under one contract.

VI. GENERAL PROCUREMENT STANDARDS APPLICABLE TO THIRD-PARTY PROCUREMENTS.

a. Conformance with State and Local Law. The Town and subgrantees shall use their own procurement procedures that reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law. If there is no State law on a particular aspect of procurement, then Federal contract law principles will apply.

b. Contract Administration System. The Town shall maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

c. Written Standards of Conduct. The Town shall maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, agent, immediate family member, or Board member of the Town shall participate in the selection, award, or administration of a contract supported by Federal or State agency funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when any of the following has a financial or other interest in the firm selected for award:

- (1) The employee, officer, agent, or Board member,
- (2) Any member of his/her immediate family,
- (3) His or her partner, or
- (4) An organization that employs, or is about to employ, any of the above.

The Town's officers, employees, agents, or Board members will neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. The Town may set minimum rules when the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by state or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary action for violation of such standards by the Town's officers, employees, or agents, or by contractors or their agents.

d. Ensuring Most Efficient and Economic Purchase. The Town's procedures shall provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.

Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach.

e. Intergovernmental Procurement Agreements.

1. The Town may utilize available state and local intergovernmental agreements for procurement or use of common goods and services. When obtaining goods or services in this manner, the Town shall ensure all federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental contract or in the Town's purchase document.

2. The Town may jointly procure goods and services with other grantees. When obtaining goods or services in this manner, grantees must ensure all federal requirements, required clauses, and certifications are properly followed and included in the resulting joint solicitation and contract documents.

3. The Town may assign contractual rights to purchase goods and services to other grantees if the original contract contains appropriate assignability provisions. Grantees who obtain these contractual rights (commonly known as 'piggybacking') may exercise them after first determining the contract price remains fair and reasonable.

f. Use of Excess Or Surplus Federal Property. The Town may use Federal excess and surplus property in lieu of purchasing new equipment and property, whenever such use is feasible and reduces project costs.

g. Use of Value Engineering in Construction Contracts. The Town may use value engineering clauses in contracts for construction projects.

h. Awards to Responsible Contractors. The Town shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

i. Written Record of Procurement History. The Town shall maintain records detailing the history of each procurement. At a minimum, these records shall include:

1. the rationale for the method of procurement,

2. selection of contract type,
 3. reasons for contractor selection or rejection, and
 4. the basis for the contract price.
- j. Use of Time and Materials Type Contracts. The Town shall use time and material type contracts only:
1. After a determination that no other type of contract is suitable; and
 2. If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.
- k. Responsibility for Settlement of Contract Issues/Disputes. The Town shall be responsible in accordance with good administrative practice and sound business judgment for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims.
- l. Written Protest Procedures. The Town shall maintain written protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding protests to the Federal or State agency. All protest decisions shall be in writing and shall contain a notice that a protester must exhaust all administrative remedies with the TOWN before pursuing a protest with the Federal or State agency. See APPENDIX A.
- m. Contract Term Limitation. The Town shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options. All other types of contracts (supply, service, leases of real property, revenue and construction, etcetera) should be based on sound business judgment. The Town shall be judicious in establishing and extending contract terms no longer than minimally necessary to accomplish the purpose of the contract. Additional factors to be considered include competition, pricing, fairness and public perception. Once a contract has been awarded, an extension of the contract term length that amounts to an out of scope change will require a sole source justification.
- n. Revenue Contracts. Revenue contracts are those third party contracts whose primary purpose is to either generate revenues in connection with a Federal or State funded related activity, or to create business opportunities utilizing a Federal or State agency funded asset. Revenue contracts shall be awarded pursuant to this policy.
- o. Tag-ons. The use of tag-ons is prohibited and applies to the original buyer as well as to others as defined in paragraph V.e.
- p. Piggybacking. Piggybacking is permissible when the solicitation document and resultant contract contain an assignability clause that provides for the assignment of all or a portion of the specified deliverables as originally advertised, competed, evaluated, and awarded. If the supplies were solicited, competed and awarded through the use of an

indefinite-delivery-indefinite-quantity (IDIQ) contract, then both the solicitation and contract award must contain both a minimum and maximum quantity that represent the reasonably foreseeable needs of the party(s) to the solicitation and contract. If two or more parties jointly solicit and award an IDIQ contract, then there must be a total minimum and maximum.

q. E-Commerce. E-Commerce is an allowable means to conduct procurements. If the Town chooses to utilize E-Commerce, written procedures shall be developed and in place prior to solicitation and all requirements for full and open competition must be met as set forth in this manual.

VII. COMPETITION.

a. Full and Open Competition. All procurement transactions will be conducted in a manner providing full and open competition. Some situations considered to be restrictive of competition include, but are not limited to:

1. Unreasonable requirements placed on firms in order for them to qualify to do business;
2. Unnecessary experience and excessive bonding requirements;
3. Noncompetitive pricing practices between firms or between affiliated companies;
4. Noncompetitive awards to any person or firm on retainer contracts;
5. Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the Town; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;
6. Specifying only a "brand name" product instead of allowing "an equal" product to be offered without listing its salient characteristics.

The Town may define the salient characteristics in language similar to the following:

- (a) Original Equipment Manufacturer (OEM) part #123 or approved equal that complies with the original equipment manufacturer's requirements or specifications and will not compromise any OEM warranties; or
- (b) Original Equipment Manufacturer part #123 or approved equal that is appropriate for use with and fits properly in [describe the bus, engine, or other component the part must be compatible with] and will not compromise any OEM warranties; and
- (c) Any arbitrary action in the procurement process.

b. Prohibition Against Geographic Preferences. The Town shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State

licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

c. Local Purchasing Preferences

Purchases of supplies, materials, equipment or services – when competitive bidding or quotations are required.

Local Bidder Preference Award

Unless contrary to federal or state law or regulation, when contracting or purchasing for supplies, materials, equipment or contractual services, preference may be given to a local bidder where the bid by the local bidder is in all material respects comparable to the lowest responsible non-local bid.

Local Bidder

For the purposes of this policy, “local bidder” is an entity that a) holds a current Vermont business license; b) submits a bid for goods or services under the name appearing on the entity’s current Vermont business license; c) maintains a place of business within the boundaries of the Town of Brattleboro; and d) is not delinquent in the payment of any taxes, charges or assessments owing to the Town of Brattleboro.

Verification of Local Bidder Status

The Town Manager or Finance Director may require such documentation or verification by the entity claiming to be a local bidder as is deemed necessary to establish the requirements as stated above.

d. **Written Procurement Selection Procedures.** The Town shall have written selection procedures for procurement transactions. All solicitations shall:

1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description may be used as a means to define the performance or other salient characteristics of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.
2. Identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.

e. **Prequalification Criteria.** The Town shall ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough qualified

sources to ensure maximum full and open competition. Also, the Town shall not preclude potential bidders from qualifying during the solicitation period, which is from the issuance of the solicitation to its closing date.

VIII. METHODS OF PROCUREMENT.

The following methods of procurement may be used as appropriate:

- a. Procurement by Micro-Purchases. Micro-purchases are those purchases under \$2,500. Purchases below this threshold may be made without obtaining competitive quotations. Such purchases are exempt from Buy America requirements. There should be equitable distribution among qualified suppliers and no splitting of procurements to avoid competition. The Davis-Bacon Act applies to construction contracts between \$2,000 and \$2,500. Minimum documentation is required: A determination that the price is fair and reasonable and how this determination was derived. The other requirements of paragraph VI.i of this manual do not apply to micro-purchases.
- b. Procurement by Small Purchase Procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that cost more than \$2,500 but do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. § 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.
- c. Procurement By Sealed Bids/Invitation For Bid (IFB). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.
 1. In order for sealed bidding to be feasible, the following conditions should be present:
 - a. A complete, adequate, and realistic specification or purchase description is available;
 - b. Two or more responsible bidders are willing and able to compete effectively for the business;
 - c. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price; and
 - d. No discussion with bidders is needed.
 2. If this procurement method is used, the following requirements apply:
 - a. The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids;
 - b. The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services sought in order for the bidder to

properly respond;

c. All bids will be publicly opened at the time and place prescribed in the invitation for bids;

d. A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest; Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

e. Any or all bids may be rejected if there is a sound documented business reason.

3. The sealed bid method is the preferred method for procuring construction if the conditions in paragraph VIII.c.1. above apply.

d. Procurement By Competitive Proposal/Request for Proposals (RFP). The competitive proposal method of procurement is normally conducted with more than one source submitting an offer, i.e., proposal. Either a fixed price or cost reimbursement type contract is awarded. This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. If this procurement method is used the following requirements apply:

1. Requests for proposals will be publicized. All evaluation factors will be identified along with their relative importance;
2. Proposals will be solicited from an adequate number of qualified sources;
3. The Town shall have a method in place for conducting technical evaluations of the proposals received and for selecting awardees;
4. Awards will be made to the responsible firm whose proposal is most advantageous to the Town's program with price and other factors considered; and
5. In determining which proposal is most advantageous, the Town may award (if consistent with State law) to the proposer whose proposal offers the greatest business value based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposal represents the "best value" to the Procuring Agency. If the Town elects to use the best value selection method as the basis for award, however, the solicitation must contain language which establishes that an award will be made on a "best value" basis.

e. Procurement Of Architectural and Engineering Services (A&E). The Town shall use qualifications-based competitive proposal procedures (i.e., Brooks Act procedures) when contracting for A&E services as defined in 40 U.S.C. §541 and 49 U.S.C. §5325(d). Services subject to this requirement are program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services. Qualifications-based competitive proposal procedures require that:

1. An offeror's qualifications be evaluated;
2. Price be excluded as an evaluation factor;
3. Negotiations be conducted with only the most qualified offeror; and
4. Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the Town.

These qualifications-based competitive proposal procedures can only be used for the procurement of the services listed above. This method of procurement cannot be used to obtain other types of services even though a firm that provides A&E services is also a potential source to perform other types of services.

These requirements apply except to the extent the State adopts or has adopted by statute a formal procedure for the procurement of these services.

f. Procurement of Design-Bid-Build. The Town may procure design-bid-build services through means of sealed bidding or competitive negotiations. These services must be procured in a manner that conforms to applicable state and local law, and all applicable federal requirements.

g. Procurement of Design-Build. The Town shall procure design-build services through means of qualifications-based competitive proposal procedures based on the Brooks Act as set forth in Section VIII.e. of this manual when the preponderance of the work to be performed is considered to be for architectural and engineering (A&E) services as defined in Section VIII.e., Qualifications-based competitive proposal procedures should not be used to procure design-build services when the preponderance of the work to be performed is not of an A&E nature as defined in Section VIII.e., unless required by State law.

h. Procurement By Noncompetitive Proposals (Sole Source). Sole Source procurements are accomplished through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. A contract change that is not within the scope of the original contract is considered a sole source procurement that must comply with this subparagraph.

1. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:
 - a. The item is available only from a single source;
 - b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - c. The Federal or State agency authorizes noncompetitive negotiations—e.g., if the Federal or State agency provides a joint procurement grant or a research project grant with a particular firm or combination of firms, the grant agreement is the sole source approval;
 - d. After solicitation of a number of sources, competition is determined inadequate; or

- e. The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced. The Town shall first certify in writing to the Federal or State agency:
 - i. That such manufacturer or supplier is the only source for such item; and
 - ii. That the price of such item is no higher than the price paid for such item by like customers.
- 2. A cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.
- i. Options. The Town may include options in contracts. An option is a unilateral right in a contract by which, for a specified time, the Town may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. If the Town chooses to use options, the requirements below apply:
 - 1. Evaluation of Options. The option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.
 - 2. Exercise of Options.
 - a. The Town shall ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.
 - b. An option may not be exercised unless the Town has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.

IX. CONTRACT COST AND PRICE ANALYSIS FOR EVERY PROCUREMENT ACTION.

The Town shall perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the Town shall make independent estimates before receiving bids or proposals.

- a. Cost Analysis. A cost analysis shall be performed when the offeror is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost (e.g., under professional consulting and architectural and engineering services contracts, etc.). A cost analysis will be necessary when adequate price competition is lacking and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.
- b. Price Analysis. A price analysis may be used in all other instances to determine the

reasonableness of the proposed contract price.

c. Profit. The Town will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

d. Federal Cost Principles. Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles. The Town may reference its own cost principles that comply with applicable Federal cost principles.

e. Cost Plus Percentage of Cost Prohibited. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

X. BONDING REQUIREMENTS.

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, the bonding policy and requirements of the Town shall adequately protect the Federal and or state agency interest. Grantee policies and requirements that meet the following minimum criteria adequately protect the Federal interest:

a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified;

b. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract; and

c. A payment bond on the part of the contractor. A payment bond is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts determined to protect adequately the federal interest are as follows:

1. Fifty percent of the contract price if the contract price is not more than \$1 million;
2. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
3. Two and a half million dollars if the contract price is more than \$5 million.

d. The Town may seek Federal or State agency approval of its bonding policy and requirements if they do not comply with these criteria.

XI. PAYMENT PROVISIONS IN THIRD PARTY CONTRACTS.

a. Advance Payments. The Town acknowledges that Federal and State agencies do not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from the Federal or State agency. The Town also acknowledges that there is no prohibition on a grant recipient's use of local match funds for advance payments, however, the Town acknowledges that advance payments made with local funds before a grant has been awarded, or before the issuance of a letter of no prejudice or other pre-award authority, are ineligible for reimbursement.

b. Progress Payments. The Town may use progress payments provided the following requirements are followed:

1. Progress payments are only made to the contractor for costs incurred in the performance of the contract.
2. The Town shall obtain adequate security for progress payments. Adequate security may include taking title, letter of credit or equivalent means to protect the Town's interest in the progress payment.

XII. LIQUIDATED DAMAGES PROVISIONS.

The Town may use liquidated damages if it may reasonably expect to suffer damages and the extent or amount of such damages would be difficult or impossible to determine.

The assessment for damages shall be at a specific rate per day for each day of overrun in contract time; and the rate must be specified in the third party contract. Any liquidated damages recovered shall be credited to the project account involved unless the Federal or State agency permits otherwise.

XIII. CONTRACT AWARD ANNOUNCEMENT.

If the Town announces contract awards with respect to any procurement for goods and services (including construction services) having an aggregate value of \$500,000 or more, the Town shall:

- a. Specify the amount of Federal funds that will be used to finance the acquisition in any announcement of the contract award for such goods or services; and
- b. Express the said amount as a percentage of the total costs of the planned acquisition.

XIV. CONTRACT PROVISIONS.

All contracts shall include provisions to define a sound and complete agreement. In addition, contracts and subcontracts shall contain contractual provisions or conditions that allow for:

a. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, including sanctions and penalties as may be appropriate. (All contracts in excess of the small purchase threshold.)

b. Termination for cause and for convenience by the Town or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000.)

XV. CONTRACT ADMINISTRATION

A. Contract Amendments and Change Orders

1. **Definition.** A contract modification is any written change in the terms of a contract.

2. **Bilateral Changes.** A bilateral modification is a contract modification that is signed by Town of Brattleboro and a contractor. This type of modification is used to:

- a. Make negotiated equitable adjustments resulting from the issuance of a change order;
- b. Define a letter contract; or
- c. Reflect other agreements of the parties modifying the terms of a contract.

3. **Unilateral Changes.** A unilateral modification is a contract modification resulting from the exercise of a contract provision that is signed by Town of Brattleboro. This type of modification is used to:

- a. Make administrative changes;
- b. Issue a change order except when final agreement on price for the change order is included;
- c. Make changes authorized by clauses other than the change clause;
- d. Exercise a termination provision.

4. **Cost and/or Price Analysis.** Contract modifications as described above are subject to the requirements of a cost and/or price analysis as appropriate for the modifications under consideration.

B. Contract Documentation: Contract

1. **General Guidelines.** The purpose of this section is to include the requirements for establishing, maintaining and, when necessary, disposing of contract files for all contractual actions. The documentation in the contract files shall be sufficient to constitute a complete history of the transaction for the purpose of achieving the following:

- a. Providing a complete background as a basis for informed decisions at each step in the acquisition process;
- b. Supporting actions taken;
- c. Providing information for reviews and investigations; and

- d. Furnishing essential facts in the event of contractual disputes.

2. Definition of Contract Files. There are three types of contract files as defined below, and normally, each file should be kept separately. However, due to organizational size and staffing available, any and all files may be combined.

- a. The contracting office contract file, which shall document the basis for the acquisition and the award, the assignment of contract administration (including payment responsibilities), and any subsequent actions taken by the contracting office.
- b. The contract administration office contract file, which shall document actions reflecting the basis for and the performance of contract administration responsibilities.
- c. The paying office contract file, which shall document actions prerequisite to, substantiating, and reflecting contract payments.

3. Contents of Contract Files. The following are examples of the records normally contained in contract files. The content of the contract files is pertinent as applicable to the type of procurement undertaken and the information required to document the procurement.

- ✓ Purchase request, acquisition planning information and other pre-solicitation documents.
- ✓ Evidence of availability of funds.
- ✓ Rationale for method of procurement (negotiations, formal advertising).
- ✓ List of sources solicited.
- ✓ Independent cost estimate.
- ✓ Statement of work.
- ✓ Copies of published notices of proposed contract action.
- ✓ Copy of the solicitation and all amendments.
- ✓ An abstract of each offer or quote.
- ✓ Contractor's contingent fee representation and other certifications and representations.
- ✓ Source selection documentation if applicable.
- ✓ Contracting officer's determination of the contractor's responsibilities.
- ✓ Records of contractor's compliance with labor policies including EEO policies.
- ✓ Cost or pricing data and certificates of current cost or pricing data if applicable.
- ✓ Required internal approvals of award.
- ✓ Determination that price is fair and reasonable including an analysis of the cost and price data.
- ✓ Notice of award.
- ✓ Notice to unsuccessful bidders and record of any debriefing.
- ✓ Bid, performance, payment or other vendor documents and notices to sureties.
- ✓ Notices to Proceed, stop orders and any overtime premium approvals granted

- at the time of award.
- ✓ Approvals or disapprovals of requests for waivers or deviations from contract requirements.
- ✓ Documentation of termination actions for which the contracting office is responsible.

C. Contract Closeout Procedures

The following are examples of procedures for the closeout of contract files. This content of the closeout procedures is pertinent as applicable to the type of procurement undertaken and the information required to document the procurement.

1. Definition of closeout.

- a. Small purchase files will be considered closed when the contracting officer receives evidence of receipt of property and final payment.
- b. All other contract files shall be closed as soon as practicable after the contracting officer ensures that all contractual actions required have been completed and shall prepare a statement to that effect. This statement is authority to close the contract file and is a part of the official contract file.

2. Definition of physical completion.

- a. Except as provided in paragraph b. below, a contract is considered to be complete when:
 - 1. The contractor has completed the required deliveries and Town of Brattleboro has inspected and accepted the supplies;
 - 2. The contractor has performed all services and Town of Brattleboro has accepted these services; and
 - 3. All option provisions, if any, have expired; or
 - 4. Town of Brattleboro has given the contractor a notice of complete contract termination.
- b. Facilities contracts and rental, use, and storage agreements are considered to be complete when:
 - 1. Town of Brattleboro has given the contractor a notice of complete contract termination, or
 - 2. The contract period has expired.

3. Procedures for closing out contract files.

The Contract Officer is responsible for initiating closeout of the contract after receiving evidence of its physical completion. At the outset of this process, an initial contract funds status review shall be accomplished and, where appropriate, excess funds identified. The contracting officer administering the contract shall ensure that a contract completion statement that all required contract administration actions have been fully and satisfactorily accomplished is prepared.

D. Contract Termination Provisions

- 1. Guidelines.
 - a. The termination clauses authorize Town of Brattleboro to terminate contracts for convenience, or for default, and to enter into settlement agreements.
 - b. Town of Brattleboro will terminate contracts, whether for default or convenience, only when it is in its interest.
 - c. It is noted that contractors should not have the right to terminate a contract.

2. Notice Procedures.

Contracts will only be terminated by written notice to the Contractor. When the notice is mailed, it will be sent by certified mail, return receipt requested. If the written notice is hand delivered, a written acknowledgement will be obtained from the contractor. When possible, Town of Brattleboro will negotiate a fair and prompt settlement with the contractor. When settlement cannot be reached by agreement,

Town of Brattleboro will reserve the right to issue a determination of the amount due consistent with the termination clause, including any cost principles incorporated by reference, subject to appeal under the disputes provisions of the contract.

Note: Termination of a contract, especially for default, is a most serious contract action. Careful consideration of such action will be made before initiation of such action. The right of Town of Brattleboro to terminate a contract does not automatically relieve Town of Brattleboro of financial liability.

E. Liquidated Damages

1. Definition. Liquidated damage is a provision included in a contract that fixes a reasonable compensation for probable actual damages payable to Town of Brattleboro for unsuccessful performance of a contract, generally construction by a contractor. Liquidated damages must not be punitive in nature.

2. Guidelines.

- a. Town of Brattleboro will be responsible for judicious use of the liquidated damages clause and will be used only when appropriate. Liquidated damages provision will not be included in a contract unless:
 - i. The time of delivery or performance is such an important factor that it is reasonable to expect to suffer damage if the delivery or performance is delinquent, and
 - ii. The extent or amount of damages would be difficult or impossible to ascertain or prove.
- b. When using the liquidated damages provision, it must be determined, at the time of award, that the delivery schedule is reasonable.
- c. The rate of liquidated damages must be reasonable to compensate Town of Brattleboro for probable actual damages caused by the breach, but not be so large as to be construed as a penalty or a revenue source.
- d. The contract may also include an overall maximum dollar amount or period of time or both, during which the liquidated damages provision may be assessed, to assure the result is not an unreasonable assessment.
- e. When liquidated damage provisions are included in a contract, Town of Brattleboro may also include performance reward provisions.
- f. When Town of Brattleboro determines a liquidated damages clause is necessary, it will document how the rate of assessment was determined to ensure it is reasonable and proper and not arbitrary. This document should become a part of the contract file.
- g. When a basis for termination for default exists under a contract containing a liquidated damages provision, expeditious action should be taken to terminate. If contract performance is desired after termination of default, effort should be made to obtain it elsewhere. Contracts containing liquidated damages provisions should be administered to prevent undue loss to defaulting contractors and to protect the interests of Town of Brattleboro and the government.

- h. In deciding whether to include the provision in the contract Town of Brattleboro will consider the probable effect on pricing and competition, as well as the cost and difficulties of contract administration.
- i. Absent a finding of excusable delay, Town of Brattleboro may not waive the liquidated damages. When the required tests are met, liquidated damages are assessed even though the Town of Brattleboro suffers no actual damages due to the contractor's breach.

Note: To the extent Federal or State agency funds are involved, the Federal Government has a vested interest in liquidated damages accrued. Only the Administrator of the Federal or State agency may waive liquidated damages after they have accrued.

XVI. GENERAL GUIDELINES.

These additional guidelines should be followed in the procurement process.

A. Required Clauses

To the extent applicable, Federal requirements extend to third party contractors and their subcontracts and sub-agreements at every tier. Accordingly the Contractor will agree to comply with all laws, regulations, orders and statutes of Federal, State, County or municipal authorities who shall impose any obligation or duty upon Town of Brattleboro. In addition the Contractor will agree to include, and to require that its subcontracts and sub-agreements include, appropriate clauses in each subcontract and each sub-agreement financed in whole or in part with financial assistance provided by the Federal or State agency under the Grant Agreement(s) or Cooperative Agreement(s) between Town of Brattleboro and the Federal or State agency as they pertain to this Contract.

Listed below are several major categories of third party contracts and sub-agreements. Note, however, that neither the list of categories nor the list of Federal requirements is all-inclusive. See Appendix B for a more detailed explanation of the requirements.

1. All Federal and/or State agency Assisted Third Party Contracts and Sub-agreements.
 - (a) Adequate Provisions.
 - (b) No Federal Obligations to Third Parties.
 - (c) Program Fraud, and False or Fraudulent Statements and Related Acts.
 - (d) Prohibitions Against Exclusionary or Discriminatory Specifications.
 - (e) Interest of Members of or Delegates to the United States Congress.
 - (f) Geographic Restrictions.
 - (g) Debarment and Suspension.
 - (h) Termination.
2. Awards Exceeding the Small Purchase Threshold (the Simplified Acquisition Threshold Established by 41 U.S.C. § 403 (11), currently, \$100,000).
 - (a) Report, Record, Retention and Access.
 - (b) Buy America.

- (c) Provisions for Resolution of Disputes or Breaches.
- 3. Awards Exceeding \$100,000 (Amount Established by Specific Federal Statute).
 - (a) Restrictions on Lobbying.
 - (b) Bonding.
 - (c) Air Quality.
 - (d) Clean Water.
 - (e) Recycled products.
 - (f) Intelligent Transportation Systems.
- 4. Negotiated Acquisitions.
 - (a) Access to Records.
- 5. Participation by a Specific Source or Delivery of a Specific Product.
 - (a) Disadvantaged Business Enterprise.
 - (b) Buy America.
 - (c) Recycled Products.
- 6. Acquisitions of Property Shipped by Ocean Vessel
 - (a) Cargo Preference.
- 7. Non-construction Activities.
 - (a) Equal Employment Opportunity.
 - (b) Non-construction Employee Protection Requirements.
- 8. Transit Operations.
 - (a) Transit Employee Protective Arrangements.
 - (b) Charter Service Operations.
 - (c) School Bus Operations.
- 9. Safety Sensitive Functions.
 - (a) Drug Abuse and Testing Requirements.
 - (b) Alcohol Testing Requirements.
- 10. Planning, Research, Development and Demonstration Projects.
 - (a) Patent Rights.
 - (b) Rights in Data and Copyrights.
- 11. Turnkey and Other Acquisitions Made by a Third Party Contractor Assuming the Role of the Town of Brattleboro.
 - (a) Federal Requirements Imposed on Town of Brattleboro.
 - (b) Examples of Significant Applicable Requirements.
 - (c) Bus Testing.
 - (d) Pre-award and post delivery audit requirements.

12. Miscellaneous Special Requirements.
 - (a) Environmental Mitigation.
 - (b) Energy Conservation Requirements.
 - (c) Metric Requirements.
 - (d) Privacy Act.
 - (e) Notification of Other Federal Requirements.

B. Options

1. Definition.

An option means a unilateral right in a contract by which, for a specified time, a grantee may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract.

2. Guidelines.

The use of options shall conform to the following requirements:

- a. Options should not be used when a requirement or indefinite-quantity contract is appropriate.
- b. FTA approval should be obtained before issuing a solicitation that contains options exceeding 50% of the initial quantity.
- c. Options should not be exercised without conducting an examination of the market or issuing a new solicitation unless the time between award of the contract and the exercise of the option is so short that it indicates the option price is the lowest price obtainable or the more advantageous offer.
- d. Options may not be exercised when not evaluated as part of the initial competition.
- e. Terms of the options may not be renegotiated without issuing a new solicitation.
- f. The combined contract and option periods cannot exceed five years.

C. Cost and Price Analysis

Town of Brattleboro will perform cost or price analysis in connection with every negotiated procurement including contract modifications. The method and degree of analysis depends on the facts surrounding the particular procurement and pricing situation. The preparation of a cost or price analysis will be performed according to the following general guidelines:

1. Price Analysis.

The Project Manager is responsible for selecting and using whatever price analysis techniques will ensure a fair and reasonable price. At least two of the following techniques must be used in price analysis:

- a. Comparison of proposed prices received in response to the solicitation.
- b. Comparison of proposed prices and contract prices with current proposed prices for the same or similar end items. To provide a suitable basis for comparison, the contracting officer should consider differences in

specifications, quantities ordered, time for delivery, Government-furnished materials, experienced trends of improvement in production efficiency, and when prior acquisitions occurred. Any comparison will not be valid unless the reasonableness of the prior price was established. The comparison may not detect an unreasonable proposed price unless changes in the general level of business in the industry that may impact prices are taken into account.

- c. Application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry.
- d. Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.
- e. Comparison of proposed prices with independent Government cost estimates.

2. Cost Analysis

The contracting officer shall, as appropriate, use the techniques and procedures outlined in paragraphs a. through f. below to perform cost analysis:

- a. Verification of cost or pricing data and evaluation of cost elements, including:
 - i. The necessity for and reasonableness of proposed costs, including allowances for contingencies;
 - ii. Projection of the bidder's cost trends, on the basis of current and historical cost or pricing data;
 - iii. A technical appraisal of the estimated labor, material, tooling, and facilities requirements and of the reasonableness of scrap and spoilage factors; and
 - iv. The application of audited or negotiated indirect cost rates (see Federal Acquisition Regulation, Subpart 42.7), labor rates, and cost of money or other factors.
- b. Evaluating the effect of the bidder's current practices on future costs. In conducting this evaluation, the contracting officer shall ensure that the effects of inefficient or uneconomical past practices are not projected into the future. In pricing production of recently developed, complex equipment, the contracting officer should make a trend analysis of basic labor and materials even in periods of relative price stability.
- c. Comparison of costs proposed by the bidder for individual cost elements with:
 - i. Actual costs previously incurred by the same bidder.
 - ii. Previous cost estimates from the bidder or from other bidders for the same or similar items.
 - iii. Other cost estimates received in response to the Government's request.
 - iv. Independent Government cost estimates by technical personnel.
 - v. Forecasts or planned expenditures.
- d. Verification that the bidder's cost submissions are in accordance with the contract cost principles, and procedures in Part 31 and, when applicable, the requirements and procedures in 48 CFR (Chapter 99).

- e. Review to determine whether any cost or pricing data necessary to make the contractor's proposal accurate, complete, and current have not been either submitted or identified in writing by the contractor. If there are such data, the contracting officer shall attempt to obtain them and negotiate, using them or making satisfactory allowance for the incomplete data.
- f. Analysis of the results of any make-or-buy program reviews, in evaluating subcontract costs.

D. Clarifications/Discussions.

In conducting negotiated procurements, Town of Brattleboro will be aware of the distinction between negotiations and discussions and the requirements for their use. Guidance in these procedures is located in Appendix E, FTA Alert No. 5.

E. Contracting with Disadvantaged Business

- 1. Town of Brattleboro will take all necessary affirmative steps to assure that disadvantaged business enterprises are used when possible.
- 2. Affirmative steps shall include placing qualified disadvantaged business enterprises on solicitation lists.
- 3. Use and place the Disadvantaged Business Requirements presented in Appendix D in all IFB and RFP solicitations.

F. Property Management and Disposal

Town of Brattleboro will follow the procedures presented in Appendix D.

G. General Contract.

The following guidelines will be used in the preparation of a contract for goods or services. These guidelines include the minimum requirements and may be augmented by other contract clauses that are required for the particular procurement:

- 1. Statement of Work (SOW). Refers to that portion of the procurement package that clearly describes the requirements, supplies or services to be procured. It will state only the minimum needs of Town of Brattleboro so that it promotes full and open competition. Requirements that unduly restrict competition should be eliminated. The SOW should include:
 - a. Contract Objectives. The specific objectives (as opposed to the broader program objectives) of the proposed contract are stated here. Contract objectives must be

consistent with each task performed by the contractor as specified later in the statement of work.

b. **Contract Scope.** This part describes the required work in brief form. The scope should outline the various tasks or phases and define the limits of the procurement. It must be consistent with the detailed requirements.

c. **Specification(s)/Purchase Description(s).** One or the other of these will be included in the SOW.

d. **Progress Reports.** Periodic reporting of progress should be a part of all consultant/professional services contracts. Progress reports may also be beneficial in other types of contracts that contain specific special provisions such as progress payments. In consultant/professional services contracts, incremental payments are often made upon receipt of specified progress reports.

2. **Delivery Schedule.** Agreement on the delivery schedule should be clearly established in the contract. When establishing the delivery schedule, the needs of Town of Brattleboro will be considered and then weighted by the capabilities of the supplier(s). Unreasonably short delivery schedules may result in poor quantity and high prices.

3. **Contract Period.** The effective date of the contract through the completion date of the contract will be clearly defined.

4. **Pricing Schedule.** The pricing schedule will contain a description of each line item and state the quantity, unit of measure, unit price and total price for the item. The total dollar value of the contract will also be clearly stated.

5. **Payment Schedule.** The payment schedule should set forth a clear understanding of all payment terms including when payments are due and what each payment is for. When cost type contracts are involved, the fee must be identified separately, by line item. The schedule should also recognize and specify any special payment terms such as progress payments and authorities to withhold payments.

6. **Inspection and Acceptance.** The frequency, types, and methods of inspection required before, during, and after delivery should be stated in the contract. The acceptance criteria should also be specified. (All inspection and acceptance criteria should be set forth in the solicitation document so that vendors can apply proper costs to the requirements in their bids/cost proposals.)

7. **FOB Point and Delivery Instructions.** Specific delivery instructions must include place of delivery, method of transportation, packaging instructions, markings on packages, and who is responsible for payment of freight.

8. **Other Requirements to Consider for a Sound Contract.** The Town of Brattleboro

must ensure that contracts in excess of \$25,000 define a sound and complete agreement, including, to the extent appropriate:

- a. Identification of key personnel and facilities necessary to accomplish the work within the required time.
- b. Extent of subcontracting and consulting agreements.
- c. Provision for changes by the buyer within the general scope of the contract.
- d. Provision for termination for default and for the convenience of the buyer and where appropriate, for suspension of the contractor's performance of work under the contract.
- e. Provision for resolution of protests (required in solicitations), contract claims and disputes.
- f. Sanctions or remedies, such as liquidated damages or performance bonds, for non-performance of the contractor.
- g. Notice of Town of Brattleboro regulations and other Federal requirements applicable to the performance of the contract.
- h. All other provisions considered necessary to ensure contractor conformance with terms, conditions and specifications.

9. Special Procedures for Soliciting Architect or Engineer Contracts. "FTA Circular 4220.1D, incorporates requirements of P.L. 92-582, known as the Brooks Act, which requires selection of architect and engineering firms based upon their technical qualifications. Price cannot be considered an evaluation factor in determining the most qualified bidder. The most qualified competition is selected for award of a contract, subject to negotiation of a fair and reasonable contract price. Negotiation is conducted only with the most qualified bidder, rather than all qualified bidders. These rules apply to related services including construction management, feasibility studies, preliminary engineering, design, mapping, and similar services commonly performed by architect and engineering firms. These services are the only services which may be procured in such a manner by Town of Brattleboro."

APPENDIX A

TOWN OF BRATTLEBORO PROTEST PROCEDURES

TOWN OF BRATTLEBORO PROTEST PROCEDURES

GENERAL

Protests before award must be submitted within the time frame specified below and all protests and related correspondence must be in writing and sent via fax, e-mail or US Mail.. If the written protest is not received by the time specified, the bid or evaluation process shall continue.

The Town of Brattleboro reserves the right to amend this procedure at any time.

PROTEST BEFORE BID OPENING

A protest addressing the adequacy of the Invitation to Bid or Request for Proposal, including the Pre-Award Procedure, the Instruction to Bidders, General Terms and Conditions, Specifications and Scope of Work, must be filed with the Town of Brattleboro not less than fourteen (14) full working days before the bid opening. Thereafter, all issues and appeals are deemed waived by all interested parties.

Upon receipt of the written protest, the Town of Brattleboro will determine if the bid opening should be postponed. If the bid opening is postponed, the Town of Brattleboro will immediately contact prime contractors and subcontractors who have been furnished a copy of the specifications that a protest has been filed and that bid opening is postponed until a final decision is issued. An appropriate addendum will be issued regarding a rescheduling of the bid opening.

Any protest may be withdrawn at any time before Town of Brattleboro has issued its decision.

PROTEST AFTER BID OPENING

A protest of a decision by the Town of Brattleboro to award a contract to a prime contractor or a subcontractor after bid opening must conform to the above and be received by the Town of Brattleboro within fourteen (14) full working days after bid opening. Thereafter, all such issues and appeals are deemed waived by all interested parties.

In addition, when a protest against the making of an award is received and the Town of Brattleboro determines to withhold the award pending disposition of the protest, the bidders (whose bids might become eligible for award) shall be requested, before expiration of the time for acceptance of their bids, to extend the time for acceptance (with the consent of sureties if any) to avoid the need for re-advertising.

When a written protest against the making of an award is received, the award shall not be made until five (5) days after the matter is resolved. The Town of Brattleboro may, however, proceed to make an award if it determines that:

- a. The items to be procured are urgently requested; or

- b. Delivery or performance will be unduly delayed by failure to make the award promptly; or
- c. Failure to make a prompt award otherwise causes undue harm to the Town of Brattleboro, the State of Vermont or the Federal Government.

In the event that the Town of Brattleboro determines that an award is to be made during the five (5) day period or during the pending of a protest, the FTA will be notified prior to the making of the award. The FTA reserves the right not to participate in such procurements.

If an award is made, the appropriate documents will be prepared to explain the need for the award with notice going to the protestor and other concerned parties.

PROTEST AFTER AWARD

Protest against an award must be filed with the Town of Brattleboro within five (5) full working days immediately following the award. This protest shall conform to the above requirements. Thereafter, such issues are deemed waived by all interested parties.

Although the number of persons involved in or affected by the filing of a protest may be limited to instances where an award has been made, the contractor shall be furnished with the notice of protest and related information. Also, if it appears that the award may be invalidated and a delay in receiving the supplies or service is not prejudicial to Town of Brattleboro interest, the TOWN OF BRATTLEBORO shall consider a mutual agreement with the contractor to suspend performance on a no-cost basis.

TOWN OF BRATTLEBORO DECISION ON THE PROTEST

Written protest, detailing the specific complaint(s), must be submitted to the Town of Brattleboro Project Manager on or before the deadlines above.

The Project Manager will evaluate and:

Determine if there is a need for review by the Town of Brattleboro Select Board

Seek attorney guidance if necessary

Take appropriate actions

Advise the Town of Brattleboro Board of complaint(s) and actions and seek approval of action no later than thirty days (30) after receipt of complaint(s).

Should the involvement of the Select Board be determined necessary, the Select Board will review the complaint(s) and take action in accordance with FTA Circular 4220.1D, no later than thirty (30) days after receipt of complaint(s).

Following an adverse decision by Town of Brattleboro the protestor may file a protest with VTrans and/or the Federal Transportation Administration (FTA), or other appropriate granting state or federal agency.

VTRANS PROTEST PROCEDURE

A protestor must exhaust all local administrative remedies available through the grantee before FTA or VTrans will consider a protest. VTrans review of any protest will be limited to:

1. Violations of state laws or regulations. Violations of Federal law or regulations shall be under jurisdiction of Federal authorities.
2. Violation of grantee's protest procedures or failure to review a compliant or protest.

Protests must first be filed with the grantee in accordance with local procedures and requirements. The protestor may file a protest with VTrans, in accordance with paragraph 2 below or if there has been a violation described above, only after the grantee has rendered its decision. Protests must be filed with VTrans Public Transit Administrator, Policy and Planning Division, National Life Building, Drawer 33, Montpelier, VT 05633. The Administrator's decision will be issued after consultation with VTrans' legal counsel.

The protest must:

1. Include the name and address of the protestor;
2. Identify the grantee, project number, and the bid contract number, if applicable;
3. Contain a statement of the grounds for protest and any supporting documentation (additional materials in support of an initial protest will only be considered within the time limits specified in paragraph 4);
4. Include a copy of the protest filed with the grantee, and a copy of the grantee's decision, if any;
5. Indicate the ruling or relief desired from VTrans.

VTrans will not consider any data that was not submitted with the original protest to the grantee. If new data becomes available after the exhaustion of administrative remedies at the grantee level, that data must be filed with the grantee with a request for reconsideration. If the request is denied or if administrative remedies at the grantee level are again exhausted, the protestor may then submit the new data to VTrans. VTrans will consider the time limits specified in paragraph III, or as additional material filed within the limits specified below.

Protests based upon restrictive specifications or alleged improprieties in any type of solicitation, which are apparent; prior to bid opening or the closing date for receipt of initial proposals, shall be filed not later than three (3) days prior to bid opening or the closing date for receipt of initial proposal. In cases other than those mentioned above, bid protests shall be filed with VTrans not later than ten (10) days after the exhaustion of administrative remedies at the grantee level is known or should have been known, whichever is earlier. A protest may be considered, even if the initial filing is late, in the following circumstances:

- a. If lateness of the protest submission is the fault of VTrans, or the grantee handling the protest submission;

- b. VTrans determines that the protest raises significant questions regarding procurement practice or procedure; or
- c. A court of competent jurisdiction requests, expects, or otherwise expresses interest in VTrans decision.

Any additional information requested or required by VTrans from the protestor, the grantee, or interested parties shall be submitted as expeditiously as possible but in no case later than five (5) days after issuance of the request by VTrans, unless more time is specifically allowed by VTrans.

VTrans will acknowledge receipt of protest within five (5) days of receipt. Decisions will be rendered within thirty (30) days after receipt of protest unless additional information from the protestor or grantee is required. If additional information is required, a decision will be rendered within thirty (30) days after receipt of the additional information.

VTrans decision on a protest may be appealed to FTA in accordance with FTA Circular 4220. Ic.

FTA REVIEW OF PROTEST

- a. FTA will only review protests regarding the alleged failure of the Town of Brattleboro to have written protest procedures or alleged failure to follow such procedures.
- b. Alleged violations on other grounds are under the jurisdiction of the appropriate State or local administration 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, e.g., Participation by Minority Business Enterprise in Department of Transportation Programs, 49 CFR Section 23.73.
- c. FTA will only review protests submitted by an interested party as defined below.

DEFINITIONS

For the purposes of this Bid Protest Procedure, the following definitions apply:

- a. "Days" refers to working days of the Federal Government.
- b. "File" or "submit" refers to the date of receipt by the FTA.
- c. "Interested Party" means an actual or prospective bidder or bidder whose direct economic interest would be affected by the award of the contract or by failure to award the contract.
- d. "Bid" includes the term "offer" or "proposal" as used in the context of negotiated procurements.

TIME FOR FILING

- a. Protestors shall file a protest with the FTA not later than five (5) days after a final decision is rendered under Town of Brattleboro protest procedure. In instances where the protestor alleges that the Town of Brattleboro failed to make a final determination on the protest, protestors shall file a protest with FTA not later than five (5) days after the protestor knew or should have known of the

Town of Brattleboro 's failure to render a final determination on the protest.

b. The Town of Brattleboro shall not award a contract for five (5) days following its decision on a bid protest except in accordance with the provisions and limitations above. After five (5) days, the Town of Brattleboro shall confirm with the FTA that FTA has not received a protest on the contract in question.

SUBMISSION OF PROTEST TO FTA

- a. Protests should be filed with the appropriate FTA Regional Office with a concurrent copy to the Town of Brattleboro.
- b. The Protest files with the FTA shall:
 1. Include the name and address of the protestor.
 2. Identify the Town of Brattleboro project number, and the number of the contract solicitation.
 3. 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.
 4. Include a copy of the local protest filed with the Town of Brattleboro and a copy of the Town of Brattleboro 's decision, if any.

TOWN OF BRATTLEBORO RESPONSE

- a. FTA shall notify the Town of Brattleboro in a timely manner of the receipt of a protest. FTA shall instruct the Town of Brattleboro 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 Town of Brattleboro shall instruct all who received such notice that they may communicate further directly with FTA.
- b. The Town of Brattleboro shall submit the following information not later than thirty-days (30) after receipt of notification by FTA of the protest:
 1. A copy of the Town of Brattleboro 's protest procedure;
 2. A description of the process followed concerning the protestor's protest; and
 3. Any supporting documentation.
- c. The Town of Brattleboro shall provide the protestor with a copy of the above submission.

WITHHOLDING OF AWARD

When a protest has been timely filed with the Town of Brattleboro before award, the Town of Brattleboro shall not make an award prior to five (5) days after the resolution of the protest, or if a protest has been filed with FTA, during the pending of that protest, unless the Town of Brattleboro determines that:

- a. The items to be procured are urgently required;
- b. Delivery or performance will be unduly delayed by failure to make the award promptly; or

c. Failure to make prompt award will otherwise cause undue harm to Town of Brattleboro or the Federal Government.

In the event that the Town of Brattleboro determines that the award is to be made during the five (5) day period following the local protest decision or the pending of a protest, the Town of Brattleboro shall notify the FTA prior to making such award. FTA will not review the sufficiency of the Town of Brattleboro 's determination to award during the pending of a protest prior to FTA's bid protest decision. FTA reserves the right not to participate in the funding of any contract awarded during the pending of a protest.

FTA ACTION

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

JUDICIAL AUTHORITY

The Town of Brattleboro advises all contractors the local judicial authorities (i.e. local courts) to review, appeal, or judge are as follows:

Superior Court of Windham County, Newfane, Vermont.

APPENDIX B

FTA REQUIRED CLAUSES FOR THIRD PARTY CONTRACTORS AND SUB- AGREEMENTS

FTA REQUIRED CLAUSES FOR THIRD PARTY CONTRACTORS AND SUB-AGREEMENTS

To the extent applicable, Federal requirements extend to third party contractors and their subcontracts and sub-agreements at every tier. Accordingly the Contractor will agree to meet the following Federal requirements in order to enter into any contracts and agreements arising from this RFP (or IFB). In addition the Contractor will agree to include, and to require that its subcontracts and sub-agreements include, appropriate clauses in each subcontract and each sub-agreement financed in whole or in part with financial assistance provided by the granting agency under the Grant Agreement(s) or Cooperative Agreement(s) between Town of Brattleboro and the granting agency.

Drug and Alcohol Testing
Buy America Requirements
Charter Bus and School Bus Requirements
Cargo Preference
Seismic Safety
Energy Conservation Requirements
Clean Water
Bus Testing
Pre-Award and Post Delivery Audit Requirements
Lobbying
Access to Records and Reports
Federal Changes
Bonding Requirements
Clean Air
Recycled Products
Davis-Bacon Act
Contract Work Hours and Safety Standards Act
Copeland Anti-Kickback Act
No Government Obligation to Third Parties
Program Fraud and False or Fraudulent Statements and Related Acts
Termination
Government-wide Debarment and Suspension (Non-procurement)
Federal Privacy Act Requirements
Civil Rights
Breach of Contract and Dispute Resolution
Patent Rights, Rights in Data, and Copyrights
Transit Employee Protective Agreements
Disadvantaged Business Enterprises
State and Local Law Requirements
Incorporation of Federal Transit Administration (FTA) Terms

1. DRUG AND ALCOHOL TESTING

49 U.S.C. 533149 CFR Part 655

Applicability to Contracts The Drug and Alcohol testing provisions apply to Operational Service Contracts.

Flow Down Requirements Anyone who performs a safety-sensitive function for the recipient or sub-recipient is required to comply with 49 CFR 655, unless the contract is for maintenance services. Maintenance contractors for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance subcontractors.

Introduction: FTA's drug and alcohol rules, 49 CFR 655 respectively, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually sub-recipients and/or contractors) implement a complex drug and alcohol-testing program that complies with Part 655. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its sub-recipients and/or contractors comply with them. How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its sub-recipients and contractors comply with the rules.

Drug and Alcohol Testing

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Parts 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 655 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 655 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). 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.

2. BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j) 49 CFR Part 661

Applicability to Contracts The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000). Flow Down The Buy America requirements flow down from FTA recipients and sub-recipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Mandatory Clause/Language The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA-funded contracts, but does not specify the language to be used. FTA developed the following language which is adopted by the Town of Brattleboro:

Buy America - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

A bidder or bidder must submit to the FTA recipient the appropriate Buy America certification (below) with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or bidder hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or bidder hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 CFR Part 661.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C), but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

3.a. CHARTER BUS REQUIREMENTS

49 U.S.C. 5323(d) 49 CFR Part 604

Applicability to Contracts The Charter Bus requirements apply to the following type of contract:
Operational Service Contracts.

Flow Down Requirements The Charter Bus requirements flow down from FTA recipients and sub-recipients to first tier service contractors.

The relevant statutes and regulations do not mandate any specific clause or language. FTA has developed the following clause which is adopted by the Town of Brattleboro:

Charter Service Operations - The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and sub-recipients 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 CFR 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.

3.b. SCHOOL BUS REQUIREMENTS

49 U.S.C. 5323(F) 49 CFR Part 605

Applicability to Contracts The School Bus requirements apply to the following type of contract:
Operational Service Contracts.

Flow Down Requirements The School Bus requirements flow down from FTA recipients and sub-recipients to first tier service contractors.

The relevant statutes and regulations do not mandate any specific clause or language. FTA has developed the following clause which is adopted by the Town of Brattleboro:

School Bus Operations - Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients and sub-recipients 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 sub-recipients may not use federally funded equipment, vehicles, or facilities.

4. CARGO PREFERENCE REQUIREMENTS

46 U.S.C. 1241 46 CFR Part 381

Applicability to Contracts The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities that may be transported by ocean vessels.

Flow Down The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

The MARAD regulations at 46 CFR 381.7 contain suggested contract clauses. FTA proffers the following language which is adopted by the Town of Brattleboro:

Cargo Preference - Use of United States-Flag Vessels - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

5. SEISMIC SAFETY REQUIREMENTS

42 U.S.C. 7701 et seq. 49 CFR Part 41

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

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

The regulations do not provide suggested language for third-party contract clauses. FTA has developed the following language which is adopted by the Town of Brattleboro:

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

6. ENERGY CONSERVATION REQUIREMENTS

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

Applicability to Contracts The Energy Conservation requirement is applicable to all contracts.

Flow Down The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and sub-recipients and their sub-agreements at every tier.

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. FTA has developed the following language which is adopted by the Town of Brattleboro:

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.

7. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

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

Flow Down The Clean Water requirements flow down to FTA recipients and sub-recipients at every tier.

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 which language is adopted by the Town of Brattleboro:

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.

8. BUS TESTING

49 U.S.C. 5323(c) 49 CFR Part 665

Applicability to Contracts The Bus Testing requirements pertains only to the acquisition of Rolling Stock/Turnkey.

Flow Down The Bus Testing requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

49 CFR Part 665 does not contain specific language to be included in third party contracts but does contain requirements applicable to sub-recipients and third party contractors. Bus Testing Certification and language therein are merely suggested by the FTA, but which language is adopted by the Town of Brattleboro:

Bus Testing - The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- 4) If the manufacturer represents that the vehicle is "grand-fathered" (has been used in mass transit service in the United States before OcTowner 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

CERTIFICATION OF COMPLIANCE WITH FTA BUS TESTING REQUIREMENTS

The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323 (c) and FTA's implementing regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date: _____

Signature: _____

Company Name: _____

Title: _____

9. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS

49 U.S.C. 5323 49 CFR Part 663

Applicability to Contracts These requirements apply only to the acquisition of Rolling Stock/Turnkey.

Flow Down These requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

49 CFR Part 663 does not contain specific language to be included in third party contracts but does contain requirements applicable to sub-recipients and third party contractors. This language is adopted by the Town of Brattleboro:

- Buy America certification is mandated under FTA regulation, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR 663.13.

-- Specific language for the Buy America certification is mandated by FTA regulation, "Buy America Requirements--Surface Transportation Assistance Act of 1982, as amended," 49 CFR 661.12, but has been modified to include FTA's Buy America requirements codified at 49 U.S.C. A 5323(j).

Pre-Award and Post-Delivery Audit Requirements - The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 CFR Part 663 and to submit the following certifications:

(1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Bidder certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

(3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT

(To be submitted with a bid or offer exceeding the small purchase threshold for Federal assistance programs, currently set at \$100,000.)

Certificate of Compliance

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 CFR 661.11:

Date: _____

Signature: _____

Company Name: _____

Title: _____

Certificate of Non-Compliance

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 CFR 661.7.

Date: _____

Signature: _____

Company Name: _____

Title: _____

10. LOBBYING

31 U.S.C. 135249 CFR Part 1949 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.

Flow Down The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 USC 1352(b)(5) and 49 CFR Part 19, Appendix A, Section 7.

Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A, and are adopted by the Town of Brattleboro:.

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.

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 sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients 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

11. ACCESS TO RECORDS AND REPORTS

49 U.S.C. § 5325, 18 CFR 18.36 49 CFR 633.17

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

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

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language and should be used when appropriate by the Town of Brattleboro:

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 sub-grantee 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 sub-grantee of the FTA Recipient in accordance with 49 CFR 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, an hospital or other non-profit organization and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 CFR 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 sub-grantee 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).

12. FEDERAL CHANGES

49 CFR, Part 18

Applicability to Contracts The Federal Changes requirement applies to all contracts.

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

No specific language is mandated. FTA has developed the following language which is adopted by the Town of Brattleboro:

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 Agreement (Form FTA MA (2) dated OctTowner, 1995) 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.

13. BONDING REQUIREMENTS

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

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
 - (1) 50% of the contract price if the contract price is not more than \$1 million;
 - (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (3) \$2.5 million if the contract price is more than \$5 million.
- d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

Flow Down Bonding requirements flow down to the first tier contractors.

FTA does not prescribe specific wording to be included in third party contracts. FTA has prepared sample clauses as follows which should be used by the Town of Brattleboro, as appropriate:

Bid Bond Requirements (Construction)

(a) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized by 31 CFR, Part 223 as possessing a Certificate of Authority as described there under.

(b) Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of (Recipient).

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of (Recipient), shall

refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense (Recipient) for the damages occasioned by default, then the undersigned bidder agrees to indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:
 - (i) Fifty percent of the contract price if the contract price is not more than \$1 million.
 - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (iii) Two and one half million if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

(a) The following situations may warrant a performance bond:

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless

the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).

2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than \$1 million;

(ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(iii) Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The (recipient) shall determine the amount of the advance payment bond necessary to protect the (Recipient).

Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The (Recipient) shall determine the amount of the patent indemnity to protect the (Recipient).

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

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 that exceed \$100,000.

FTA has proposed the following language which is adopted by the Town of Brattleboro.

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.

15. RECYCLED PRODUCTS

42 U.S.C. 696240 CFR Part 247 Executive Order 12873

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

Flow Down These requirements flow down to all to all contractor and subcontractor tiers.

No specific clause is mandated, but FTA has developed the following language which is adopted by the Town of Brattleboro.

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 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

16. DAVIS-BACON ACT

40 USC§276a -276a-5 (1995) 29 CFR§ 5 (1995)

Applicability to Contract Construction contracts over \$2,000.00

Flow Down Applies to third party contractors and subcontractors

The language in this clause is mandated under the DOL regulations at 29 CFR§5.5 and is adopted by the Town of Brattleboro:

(1) Minimum wages –

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iii) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set

aside in a separate account assets for the meeting of obligations under the plan or program.

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

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

(2) Withholding - The [insert name of grantee] shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages

required by the contract, the [insert name of grantee] may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

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

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

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

- (1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR part 5 and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe

benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

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

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

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

(4) Apprentices and trainees -

(i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does

not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

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

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

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

17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT
40 U.S.C.§327 -333 (1995) 29 CFR§ 5 (1995) 29 C.F.R1926 (1995)

Applicability to Contracts Section 102 of the Act, which deals with overtime requirements, applies to:

- all construction contracts in excess of \$2,000 and;
- all turnkey, rolling stock and operational contracts (excluding contracts for transportation services) in excess of \$2,500.

(The dollar threshold for this requirement is contained in the current regulation 29 CFR§ 5.15.)

Section 107 of the Act that deals with OSHA requirements applies to construction contracts in excess of \$2,000 only. The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

Flow Down Applies to third party contractors and subcontractors.

Pursuant to Section 102 (Overtime):

These clauses are specifically mandated under DOL regulation 29 CFR§ 5.5 and when preparing a construction contract in excess of \$2,000 these clauses should be used in conjunction with the Davis-Bacon Act clauses as discussed previously. For non-construction contracts, this is the only section required along with the payroll section.

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$ 10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - The (write in the name of the grantee or recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid

wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts -The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

(Section 102 non-construction contracts should also have the following provision:)

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

Section 107 (OSHA):

(This section is applicable to construction contracts only)

Contract Work Hours and Safety Standards Act - (i) The Contractor agrees to comply with section 107 of the Contract t Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations, " Safety and Health Regulations for Construction " 29 CFR Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

(ii)Subcontracts - The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials that will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction

project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

18. COPELAND ANTI-KICKBACK ACT

40 U.S.C. 276c (1995) 29 CFR 3 (1995) 29 CFR 5 (1995)

Applicability to Contracts All construction contracts in excess of \$2,000.

Flow Down Applicable to all third party contractors and subcontractors.

3.1 of the Copeland Act makes it clear that the purpose of the Act is to assist in "the enforcement of the minimum wage provisions of the Davis- Bacon Act." In keeping with this intent DOL has included a section on the Copeland Act in the mandatory language of the Davis-Bacon provisions. The language can be found at §5.5(a)(5) of the Davis-Bacon model clauses and reads as follows and is adopted by the Town of Brattleboro:

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

19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts Applicable to all contracts.

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.

While no specific language is required, FTA has developed the following language which is adopted by the Town of Brattleboro:

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.

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.

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

These requirements have no specified language, so FTA proffers the following language which is adopted by the Town of Brattleboro:

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 CFR 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.

21. TERMINATION

49 U.S.C. Part 18 FTA Circular 4220.1D

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.

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:

a. 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.

b. 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.

c. 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 or any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor or 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.

d. 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.

e. 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.

f. 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.

g. 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).

h. 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 compete 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.

i. 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.

j. 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.

22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)
49 CFR Part 29 Executive Order 12549

Applicability to Contracts Executive Order 12549, as implemented by 49 CFR Part 29, prohibits FTA recipients and sub-recipients from contracting for goods and services from organizations that have been suspended or debarred from receiving Federally-assisted contracts. As part of their applications each year, recipients are required to submit a certification to the effect that they will not enter into contracts over \$100,000 with suspended or debarred contractors and that they will require their contractors (and their subcontractors) to make the same certification to them.

Flow Down. Contractors are required to pass this requirement on to subcontractors seeking subcontracts over \$100,000. Thus, the terms "lower tier covered participant" and "lower tier covered transaction" include both contractors and subcontractors and contracts and subcontracts over \$100,000.

The certification and instruction language is contained at 29 CFR Part 29, Appendix B, and must be included in IFB's and RFP's [for inclusion by contractors in their bids or proposals] for all contracts over \$100,000, regardless of the type of contract to be awarded.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Lower Tier Covered Transactions (Third Party Contracts over \$100,000).

Instructions for Certification

1. By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below .
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, (Recipient) may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to (Recipient) if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact (Recipient) for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered

transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by (Recipient).

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.

8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, (Recipient) may pursue available remedies including suspension and/or debarment.

"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction"

(1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 CFR§ 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

23. PRIVACY ACT

5 U.S.C. 552

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

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

The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA and should be used by the Town of Brattleboro when appropriate:

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

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

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

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.

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

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shortened the lengthy text, which is adopted by the Town of Brattleboro:

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:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, 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 CFR 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.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, 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.

(c) 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 CFR 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.

25. BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18FTA Circular 4220.1D

Applicability to Contracts All contracts in excess of \$100,000 shall contain provisions or conditions that 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.

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 and which should be used by the Town of Brattleboro when appropriate:

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 there under 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 there under, except as may be specifically agreed in writing.

26. PATENT AND RIGHTS IN DATA
37 CFR Part 401 49 CFR Parts 18 and 19

Applicability to Contracts Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

Flow Down The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

The FTA patent clause is substantially similar to the text of 49 CFR Part 19, Appendix A, Section 5, but the rights in data clause reflects FTA objectives. For patent rights, Federal law and regulation govern FTA. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding research grants. This model clause, with larger rights as a standard, is proposed with the understanding that this standard could be modified to FTA's needs, and is adopted by the Town of Brattleboro:

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. Rights in Data - This 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 Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or 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 CFR§ 18.34 and 49 CFR§ 19.36, the Federal Government reserves a royalty-free, non-exclusive 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 Purchaser or 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 Purchaser and 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 Purchaser or 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 Purchaser and 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 Purchaser or 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. Neither the Purchaser nor the Contractor shall 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 the Purchaser or 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 Purchaser or 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.), the Purchaser and 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 CFR 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 - This 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 the contract to which this Attachment has been added, and that invention, improvement, or discovery is patent able under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree 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 Purchaser and 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 CFR 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.

27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

49 U.S.C. § 5310 §5311, and § 533329 CFR Part 215

Applicability to Contracts The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

Flow Down. These provisions are applicable to all contracts and subcontracts at every tier.

Since no mandatory language is specified, FTA had developed the following language which is adopted by the Town of Brattleboro:

Transit Employee Protective Provisions

(1) The Contractor agrees to comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 CFR Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.

§5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body sub-recipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. §5333(b), U.S. DOL guidelines at 29 CFR Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the

underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. §5311 in Non-urbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)
49 CFR Part 23

Applicability to Contracts DBE provisions only apply to all DOT-assisted contracts.

Flow Down These requirements only flow to FTA recipients who receive at least \$250,000 in FTA capital and operating funds, exclusive of funds for transit vehicle purchases [reference 49 CFR 23.67], or \$100,000 in FTA planning funds.

No specific language is mandated, but FTA has included language developed by Southwest Ohio Regional Transit Authority (SORTA), which is adopted by the Town of Brattleboro for all DOT assisted contracts:

Disadvantaged Business Enterprise Provision

1. The Federal Fiscal Year goal has been set by (name of grantee) in an attempt to match projected procurements with available qualified disadvantaged businesses. (name of grantee) goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established by (name of grantee) as set forth by the Department of Transportation Regulations 49 CFR Part 23, March 31, 1980, and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this request for proposal.

If a specific DBE goal is assigned to this contract, it will be clearly stated in the Special Specifications, and if the contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBE's in the work provided, (name of grantee) may declare the Contractor non-compliant and in breach of contract. If a goal is not stated in the Special Specifications, it will be understood that no specific goal is assigned to this contract.

(a) Policy - It is the policy of the Department of Transportation and (name of grantee) that Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, and as amended in Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, shall have the maximum opportunity to participate in the performance of Contract financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Section 106(c) of the STURAA of 1987, apply to this Contract.

The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 23 and Section 106(c) of the STURAA of 1987, have the maximum opportunity to participate in the whole or in part with federal funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts.

It is further the policy of (name of grantee) to promote the development and increase the

participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of (name of grantee) procurement activities is encouraged.

(b) DBE obligation - The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

(c) Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, (name of grantee) may declare the contractor non-compliant and in breach of contract.

(d) The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with (name of grantee) DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of (name of grantee) and will be submitted to (name of grantee) upon request.

(e) (Name of grantee) will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:

- * Identification of qualified DBE
- * Available listing of Minority Assistance Agencies
- * Holding bid conferences to emphasize requirements

2. DBE Program Definitions, as used in the contract:

(a) Disadvantaged business "means a small business concern":

- i. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
- ii. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
or
- iii. Which is at least 51 percent owned by one or more women individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women individuals; and
- iv. Whose management and daily business operations are controlled by one or more women individuals who own it.

(b) "Small business concern" means a small business as defined by Section 3 of the Small Business Act and Appendix B - (Section 106(c)) Determinations of Business Size.

(c) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

i. "Black Americans", which includes persons having origins in any of the Black racial groups of Africa;

ii. "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuba, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

iii. "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

iv. "Asian-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of Pacific, and the Northern Marianas;

v. "Asian-Indian Americans", which includes persons whose origins are from India, Pakistan, and Bangladesh.

29. STATE AND LOCAL LAW DISCLAIMER

Applicability to Contracts This disclaimer applies to all contracts.

Flow Down The Disclaimer has unlimited flow down.

FTA has developed the following language which is adopted by the Town of Brattleboro.

State and Local Law Disclaimer - The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the grantees procurement documents, the grantees should consult with their local attorney.

30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS
FTA Circular 4220.1D

Applicability to Contracts The incorporation of FTA terms applies to all contracts.

Flow Down The incorporation of FTA terms has unlimited flow down.

FTA has developed the following incorporation of terms language which is adopted by the Town of Brattleboro:

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 4220.1D, dated April 15, 1996 and as amended May 29, 2002, 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 that would cause (name of grantee) to be in violation of the FTA terms and conditions.

APPENDIX C

DISADVANTAGED BUSINESS ENTERPRISES REQUIREMENTS

DISADVANTAGED BUSINESS ENTERPRISES REQUIREMENTS

It is the policy of the Town of Brattleboro that Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, and as amended in Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, shall have the maximum opportunity to participate in the performance of Contract financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Section 106(c) of the STURAA of 1987, apply to this Contract.

The Town of Brattleboro, its contractors and subcontractors agree to ensure that DBEs as defined in 49 CFR Part 23 and Section 106(c) of the STURAA of 1987, have the maximum opportunity to participate in the whole or in part with federal funds provided under this Agreement. In this regard, the Town of Brattleboro, its contractor and subcontractors shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Town of Brattleboro, its contractors and subcontractors shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts. It is further the policy of the Town of Brattleboro to promote the development and increase the participation of businesses owned and controlled by disadvantaged.

Where the contractor or subcontractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, (name of grantee) may declare the contractor non-compliant and in breach of contract.

The contractor or subcontractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with the Town of Brattleboro's DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of the Town of Brattleboro and will be submitted to the Town of Brattleboro upon request.

The Town of Brattleboro will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:

- * Identification of qualified DBE
- * Available listing of Minority Assistance Agencies
- * Holding bid conferences to emphasize requirements

DBE Program Definitions, as used in the contract:

(a) Disadvantaged business "means a small business concern":

- i. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
- ii. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

or

iii. Which is at least 51 percent owned by one or more women individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women individuals; and

iv. Whose management and daily business operations are controlled by one or more women individuals who own it.

(b) "Small business concern" means a small business as defined by Section 3 of the Small Business Act and Appendix B - (Section 106(c)) Determinations of Business Size.

(c) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

i. "Black Americans", which includes persons having origins in any of the Black racial groups of Africa;

ii. "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuba, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

iii. "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

iv. "Asian-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of Pacific, and the Northern Marianas;

v. "Asian-Indian Americans", which includes persons whose origins are from India, Pakistan, and Bangladesh.

Any Town of Brattleboro Contractor or any subcontractor at any time shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The requirements of 49 CFR Part 23 and the Recipient's U.S. DOT-approved Disadvantaged Business Enterprise (DBE) Program are incorporated in any Town of Brattleboro contract by reference. Failure by any Contractor or subcontractor at any time to carry out these requirements is a material breach of the contract, which may result in the termination of the Project or such other remedy as Town of Brattleboro deems appropriate.

The Town of Brattleboro will insert in each of its subcontracts this Disadvantaged Business Enterprise Policy and also a clause requiring its subcontractors to include this same Policy in any lower tier subcontracts that they may enter into, together with a clause requiring the inclusion of this Policy in any further subcontract that may in turn be made. This Policy shall not be incorporated by reference.

The Town of Brattleboro will periodically compare its list of vendors with that on the VAOT's website listing of DBE's to see if they are on the list. If the Town of Brattleboro knows of any vendors qualified to be on VAOT's list, then we will refer them to the website.

APPENDIX D

PROPERTY MANAGEMENT & DISPOSAL PROCEDURES

PROPERTY MANAGEMENT & DISPOSAL PROCEDURES

Town of Brattleboro equipment management procedures include the following minimum requirements:

- (1) Property records for items costing \$500 or more are maintained by Town of Brattleboro. Records include a description, identification number, procurement source, acquisition date, cost, percentage of State participation in the cost if any, percentage of Federal participation in the cost, the grant project under which it was procured, location, use and condition, and any disposition data, including the date of disposal and sale price, or, where applicable, the method used to determine its fair market value. Town of Brattleboro records also state who holds the title to the equipment.
- (2) A physical inventory of equipment is taken and the results reconciled with equipment records annually. Any differences are investigated to determine the cause of the difference.
- (3) Any loss, damage, or theft is investigated and documented by Town of Brattleboro.
- (4) Adequate maintenance procedures have been implemented to keep the property in good condition. These procedures are consistent with the maintenance plan required of grantees for equipment funded under 49 U.S.C. 5309 Capital Program and 5307 Formula Program of FTA and are documented and available for audit during Triennial Review.
- (5) Equipment contracts include supplier standard warranties that provide for correction of unacceptable material or workmanship. These specify coverage and duration, and meet accepted industry standards. Town of Brattleboro is responsible for identifying and diligently enforcing warranty system for recording warranty claims.

When equipment or supplies are acquired under a grant are no longer needed for FTA supported projects or programs, they may be retained by Town of Brattleboro or disposed of. Disposition shall follow competitive sales procedures to ensure the highest possible return. Service life of equipment is determined by acceptable industry standards for such equipment, and service life of rolling stock such as buses or rail cars is determined in FTA Circular 9030.1A or by contacting the regional FTA office.

- (1) Over \$5,000 value: After the useful life of equipment is reached, equipment with a current market value exceeding \$5,000 per unit, or unused supplies with a total aggregate fair market value of more than \$5,000, may be retained or sold, with reimbursement to FTA of an amount calculated by multiplying the total aggregate fair market value at the time of disposition, or the net sale proceeds, by the percentage of FTA's participation in the original grant. Town of Brattleboro's transmittal letter should state whether the equipment was retained or sold. Sales proceeds must be handled as discussed in paragraph 16 of FTA Circular 5010.1B, page I-33.
- (2) Less than \$5,000 value: Equipment with a unit fair market value of \$5,000 or less, or supplies with a total aggregate fair market value of \$5,000 or less, may be retained, sold or otherwise disposed of with no obligation to reimburse FTA. Records must be retained according to paragraph

18 of FTA Circular 5010.1B, page I-34.

- (3) Before end of service life: Any disposition of equipment (including revenue rolling stock) before the end of its service life is subject to prior FTA concurrence in the method of disposition. The reimbursement amount for revenue rolling stock removed from service before the end of its useful life is the greater of the FTA share of the unamortized value of the remaining service life per unit, based on straight line depreciation of the original purchase price or the Federal share of the sales price, even though the unamortized value is \$5,000 or less.
- (4) Unused Supplies: Disposition of unused supplies before the end of the industry standard life expectancy is determined in total aggregate fair market value and if found to exceed \$5,000, Town of Brattleboro shall compensate the FTA for its share.
- (5) Like-Kind Exchange Option: The "like-kind exchange" policy is a disposition initiative that adds the option of trading a vehicle or selling it and applying the proceeds to replacement vehicles. Town of Brattleboro may elect to use the trade-in value or the sales proceeds from a bus or rail transit vehicle to acquire a replacement vehicle of like kind. If Town of Brattleboro chooses to re-invest the proceeds, 100 percent (100%) of the net proceeds must be applied to acquisition of replacement vehicles. (See 49 CFR, Part 18.32; and Federal Register pp. 39328/39329, dated August 28, 1992.)
- (6) Involuntary Removal: When equipment is involuntarily removed from revenue service, (e.g. loss through fire, accident, earthquake, etc.) prior to the expiration of its useful life, the substitution of capital assets purchased with local funds for those acquired with Federal funds is permissible when:
 - (a) Substituted equipment is of equal or greater value.
 - (b) Substituted equipment was procured in accordance with guidance contained in FTA Circular 4220.1D, Third Party Contracting Guidelines.
 - (c) Useful life criteria are adjusted to coincide with the original.
 - (d) Equipment is to be used in the programs or projects that are consistent with the purpose for which the original equipment was procured, as prescribed in this circular.
 - (e) Town of Brattleboro amends its property records to include the equipment, as appropriate.
- (7) Trade-in: Equipment may be used as a trade-in or be sold and the proceeds used to offset the cost of replacement property, subject to FTA approval. [49 CFR 18.32(c)(4)]

APPENDIX E

FORMS

Vendor
03410

P U R C H A S E O R D E R

PO #
20080064

PLEASE REMIT INVOICE TO:
Town of Brattleboro
230 MAIN ST
SUITE 111
BRATTLEBORO VT 05301
TAX EXEMPT NUMBER - 24024

Vendor: FIRE TECH & SAFETY
PO BOX 435
WINTHROP ME 04364

Ship To: FIRE
103 ELLIOT STREET
BRATTLEBORO VT 05301-

Date : 07/09/07
Request Dept:
F.O.B. :

Ship Via :
Requested By: FIRE
Terms : 0.00% 0 NET 0

Quantity	Item	Description	Unit Cost	Total Cost
0.00	1	bunker coat	1025.00	0.00
0.00	2	bunker pants	720.00	0.00
0.00	3	helmet front	42.00	0.00
2.00	4	helmets	260.00	520.00

TOTAL 520.00

Enc	Account	Amount
Y	01-6-3500-590.00/Clothing	0.00
Y	01-6-3500-590.00/Clothing	0.00
Y	01-6-3500-060.00/Equipment	0.00
Y	01-6-3500-060.00/Equipment	520.00

Signed _____ Date _____
NOT VALID UNTIL SIGNED BY FINANCE DIRECTOR
OR TOWN MANAGER

-----RECEIVED BY-----

Signed _____ Date _____
DEPARTMENT HEAD'S SIGNATURE REQUIRED

|Signed: _____

|Location: _____ Date _____

Sample of form available electronically

TOWN OF BRATTLEBORO
TRAVEL REIMBURSEMENT FORM

PRINT NAME: _____ TRAVEL TO: _____

PURPOSE OF TRAVEL: _____

DATES OF TRAVEL: _____

Expenses- list and attach documentation of expenses. NO REIMBURSEMENT WILL BE ALLOWED WITHOUT A PROPER RECEIPT FOR THE EXPENSE.

MEALS:	DATE	AMOUNT	DATE	AMOUNT
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____

LODGING:	DATE	AMOUNT	DATE	AMOUNT
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____

TRANSPORTATION:

Mileage (attach a mileage reimbursement form with detail)

AMOUNT: _____

OTHER THAN MILEAGE:

DATE	DESCRIPTION	AMOUNT
_____	_____	_____
_____	_____	_____
_____	_____	_____

OTHER EXPENSES (List & Describe) :

DATE	DESCRIPTION	AMOUNT
_____	_____	_____
_____	_____	_____
_____	_____	_____

TOTAL : _____

LESS TRAVEL ADVANCE: _____

NET DUE : _____

NOTE: If Advance exceeds total travel cost, attach check from traveler for the negative amount due.

SIGNATURE: _____ DATE: _____

DEPT HEAD APPROVAL: _____

TOWN OF BRATTLEBORO
TRAVEL ADVANCE REQUEST FORM

PRINT NAME: _____ TRAVEL TO: _____

PURPOSE OF TRAVEL: _____

DATES OF TRAVEL: _____

Expenses- list estimated expenses. Please attach training brochure or advertisement if available.

MEALS*:	DATE	AMOUNT	DATE	AMOUNT
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____

*Itemized receipts will be required for reimbursement

LODGING*:	DATE	AMOUNT	DATE	AMOUNT
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____

*PLEASE NOTE IF PAID DIRECTLY TO HOTEL BY CHECK OR TOWN CREDIT CARD
MILEAGE: ESTIMATED MILES @ _____ CENTS PER MILE _____

*TRANSPORTATION OTHER THAN MILEAGE:

DATE	DESCRIPTION	AMOUNT
_____	_____	_____
_____	_____	_____
_____	_____	_____

*PLEASE NOTE IF PAID DIRECTLY TO PUBLIC TRANSPORTATION CARRIER

OTHER EXPENSES (List & Describe) :

DATE	DESCRIPTION	AMOUNT
_____	_____	_____
_____	_____	_____
_____	_____	_____

TOTAL ESTIMATED TRAVEL: _____
LESS PREPAID LODGING/TRANSPORTATION COSTS: _____
NET TRAVEL ADVANCE: _____

SIGNATURE: _____ DATE: _____

DEPT HEAD APPROVAL: _____

Date: _____

**Payment Request Form
Town of Brattleboro, Vermont**

Vendor #: _____ Vendor Name: _____

General Ledger Account Breakdown:

<u>Account No.</u>	<u>Amount</u>
_____	_____
_____	_____
_____	_____
_____	_____
Total Amount of Payment	\$ _____

Invoice Number and/or Description: _____

Department Head Approval: _____

An invoice must be attached to this request in order for payment to be made. If a copy of the invoice or other material is to be mailed with the check, attach it and note it on this form.

Date: _____

**Payment Request Form
Town of Brattleboro, Vermont**

Vendor #: _____ Vendor Name: _____

General Ledger Account Breakdown:

<u>Account No.</u>	<u>Amount</u>
_____	_____
_____	_____
_____	_____
_____	_____
Total Amount of Payment	\$ _____

Invoice Number and/or Description: _____

Department Head Approval: _____

An invoice must be attached to this request in order for payment to be made. If a copy of the invoice or other material is to be mailed with the check, attach it and note it on this form.

