

SOUTHWEST OHIO REGIONAL TRANSIT AUTHORITY

1. GENERAL SPECIFICATIONS

- 1.1 The Southwest Ohio Regional Transit Authority ("SORTA") is a political subdivision of the State of Ohio organized pursuant to Ohio Revised Code Sections 306.30 et seq and funded in part by grants from the Federal Transit Administration ("FTA") of the United States Department of Transportation. (Unless otherwise specified in the Special and/or Technical Specifications, this contract is funded with SORTA's operating budget, of which approximately 10% or \$4.5 million is federal grant money.) SORTA's purchasing procedures are governed by the foregoing Ohio statutes, by various federal statutes and regulations, by Office of Management and Budget Circular A-102, and by FTA Circular C-4220.1D. These require, among other things, that purchases be made according to approved plans and specifications, which become a part of the Contract between SORTA and a successful bidder.
- 1.2 Pursuant thereto, SORTA solicits bids for its supplies, materials, equipment and/or services according to the following general specifications, and all special specifications and technical specifications accompanying the Invitation for Bid.

2. DISADVANTAGED BUSINESS ENTERPRISE

The Southwest Ohio Regional Transit Authority, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

2.1 Policy

- 2.1.1 It is the policy of the Department of Transportation and SORTA that Disadvantaged Business Enterprises, as defined in 49 CFR Part 26, 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 26 apply to this Contract.

2.1.2 The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 26 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.

2.1.3 It is further the policy of SORTA to promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of SORTA's procurement activities are encouraged. SEE SPECIAL CONDITIONS (attached).

2.2 Goals

Calendar year goals have been set in an attempt to match projected procurements with available qualified disadvantaged businesses. SORTA's goals for budgeted service contracts, bus parts, and other materials and supplies for Disadvantaged Business Enterprises have been established by SORTA (Please refer to project specific goals in Special Conditions, Section 16).

2.3 DBE Obligation

2.3.1 SORTA will provide guidance and assistance as may be necessary to assist the Contractor to ensure that DBE's as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that DBE's have the maximum opportunity to compete for and perform subcontracts. Contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT assisted contracts.

2.3.2 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, SORTA may declare the Contractor noncompliant 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.

3. BIDDING AND CONTRACT PROCEDURE

- 3.1 SORTA reserves the right to postpone the times at which bids must be received and will be opened, and to amend the specifications. Prompt notice of such postponement or amendment shall be given by SORTA to all prospective bidders who have received copies of the specifications. If the specifications are amended, any bidder from whom a bid has been received prior to the giving of such notice will be entitled to withdraw and resubmit its bid.
- 3.2 Where manufacturers, brand names, model numbers, processes, or other specific items are mentioned in the special or technical specifications, the words "or approved equal" shall be deemed to follow. All items must be furnished as specified unless a bidder requests and receives permission to substitute an approved equal. Each request must be made in writing and received in SORTA's Purchasing Department during normal business hours, not less than five full days before the date upon which bids are to be opened. Each request should be accompanied by such samples, technical data, test results, or other information as are believed to demonstrate that the substitute proposed is equal to or better than the specification requirement. SORTA shall give prompt written notice of its response to each request to all prospective bidders known to have received the Invitation for Bid. Notice shall be deemed given when mailed. Failure to receive such notice shall not affect any bid or any contract award. SORTA's decision shall be in its sole and uncontrolled discretion and shall be final.
- 3.3 Bids should be put into the BID ENVELOPE provided with the Invitation for Bid. Bids must be received at the office of SORTA's Procurement Department, 1401-B Bank Street, Cincinnati, Ohio 45214, by the date and time specified on the Invitation for Bid. (Bids received will be dated and time stamped. Any bid envelopes received after the time specified on the Invitation for Bid will be returned to the bidder and will not be considered in the bidding process.) No bids may be withdrawn after bids are opened. SORTA may reject any and all bids.
- 3.4 A bid shall be submitted only upon the official bid form and shall be signed on behalf of the bidder. The bid must be unconditional. Any attachments required by the special specifications or the technical specifications must be attached to each bid form. When accepted by and signed on behalf of SORTA, the submitted Bid Form and any required attachments thereto; including the General Specifications, the Special Specifications, and the Technical Specifications, shall become the contract of the parties. A signed copy shall promptly be returned to the successful bidder, hereafter referred to as "Contractor". Bids which

do not meet the terms of the Invitation for Bid or the specifications, will be non-responsive and will be rejected.

- 3.5 The bidder shall not add to, delete, or change any specifications within the bid package unless a SORTA "amendment to bid" has been authorized. In addition, bidders shall only bid in the spaces provided upon the bid form, except where the bid form states to the contrary.
- 3.6 Alternate bids shall not be submitted unless the special specifications or technical specifications provide for that option.
- 3.7 Prices shall be stated in units of quantity as well as in total where so required. In case of discrepancy, unit prices shall prevail. Where escalation in prices is provided for in bids, in comparing bids SORTA may assume that prices will increase in the maximum amount permissible.
- 3.8 SORTA is exempt from payment of federal excise taxes and Ohio sales and use taxes. These taxes shall not be included in bids.

4. BONDS

- 4.1 **Bid Bond**: All bids must be accompanied by a bid bond of a surety company licensed in the State of Ohio, or a certified or cashiers check drawn on a solvent bank, conditioned that, if the bid is accepted, a contract will be entered into and its performance security properly secured. The amount of the bond or check shall be in the amount specified on the Invitation for Bid cover letter, and shall be payable to the SOUTHWEST OHIO REGIONAL TRANSIT AUTHORITY. The checks of unsuccessful bidders will be returned within one week after the award of the contract.
- 4.2 **Performance Bond**: The successful bidder, or each successful bidder in the event that more than one contract is being awarded, shall furnish, within ten (10) days after notification of the contract award by SORTA, and at its own expense, a PERFORMANCE BOND with a surety company licensed in the State of Ohio, or a certified or cashiers check drawn on a solvent bank, conditioned upon the carrying out of the contract. The amount of the bond or check shall be in the amount specified on the Invitation for Bid cover letter, and shall be payable to the SOUTHWEST OHIO REGIONAL TRANSIT AUTHORITY.

5. THE SUPPLIES, MATERIAL, EQUIPMENT, AND/OR SERVICES AND THE SPECIFICATIONS

General Specifications

- 5.1 Contractor shall provide the supplies, materials, equipment, and/or service(s) (hereafter referred to as "requirements") in conformance with these General Specifications, all Special and Technical Specifications, and the Bid Form.
- 5.2 SORTA wishes to acquire and intends special and technical specifications to describe the "requirements" which are complete and ready for use and/or the results of which are ready for use. All procedures, steps, or other details necessary for completeness and readiness shall be deemed included in the specifications even if not expressly set forth, and no advantage shall be taken of any omission thereof. In case of conflict with these General Specifications, the Special, and Technical Specifications and the Bid Form shall govern.

6. PRICE

- 6.1 SORTA shall pay to Contractor the price(s) set forth in Contractor's bid; or where alternative bids are requested, the price(s) for the alternative(s) in Contractor's bid accepted by SORTA.
- 6.2 The price(s) shall include delivery to SORTA at the specified times and places set forth in the special specifications; all packaging, crating, and containers shall be the responsibility of the Contractor.

7. PAYMENT

- 7.1 **Payment to Contractor:** The payment terms of this contract shall be NET 30 DAYS, except when a CASH DISCOUNT is indicated in the space provided on the bid form. (Only a cash discount payment term of 10 days or more will be considered.) SORTA shall pay Contractor for the "requirements" within thirty (30) days (or, if elected by SORTA, within the cash discount payment term) of delivery/completion of service, receipt of invoice, and after receipt of any other items needed from Contractor (e.g. affidavits, prevailing wage certification, etc.) to make payment, WHICHEVER OF THE ABOVE EVENTS OCCURS LAST. (All of these events shall occur before payment will be made.)
- 7.2 **Prompt Payment to Consultants, Subcontractors, or Material Suppliers:** Within ten (10) calendar days after receiving payment from the SORTA, Contractor shall pay each consultant, subcontractor, and material supplier all amounts due and invoiced by each consultant, subcontractor, and material supplier.

If this Contract specifies that SORTA will withhold from Contractor a specific percentage or specific dollar amount of the work as a retainage, and/or if Contractor withholds, through agreement with subcontractor(s)

and/or material supplier(s), a specific percentage or specific dollar amount of the subcontracted work or materials from subcontractor(s) and/or material supplier(s), Contractor shall release any and all retainage due to each subcontractor or material supplier within ten (10) calendar days following the completion of the respective subcontractor's or material supplier's work hereunder.

- 7.3 Invoices shall be sent to: Southwest Ohio Regional Transit Authority, Accounts Payable Department, 1014 Vine Street, Suite 2000, Cincinnati, Ohio 45202-1122.

8. TIME AND TERMINATION

- 8.1 The receipt of timely and specific "requirements" is essential in order that SORTA's public mass transportation system be efficiently maintained. If the "requirements" are not received on time, SORTA may cancel the unfilled portion of the contract for cause; purchase substitute "requirements" elsewhere, and recover from Contractor any increased costs thereby incurred together with all resulting incidental and consequential damages. SORTA may also terminate for cause, purchase substitute "requirements" elsewhere, and recover such costs and damages for any other breach of Contractor's obligations, or if Contractor becomes bankrupt or insolvent or suffers an assignment for benefit of creditors.
- 8.2 The Contractor shall be entitled to a reasonable extension of time from SORTA for the delays caused by damage to Contractor's and/or SORTA's property caused by fire, lightning, earthquakes, tornadoes, and other extreme weather conditions, power failures, riots, acts of war and strikes and lockouts beyond the control of the Contractor and his subcontractors. Any delay other than one mentioned above shall constitute a breach of the Contractor's contractual obligation.
- 8.3 Termination for Convenience
- 8.3.1 SORTA may terminate this agreement in whole, or in part, whenever SORTA shall determine that such termination is in the best interest of SORTA. Any such termination shall be effected by delivery to the Contractor of a notice of termination specifying the extent to which performance under the contract is terminated, and the date upon which such termination becomes effective.
- 8.3.2 After receipt of a notice of termination, and except as otherwise directed by SORTA, the Contractor shall: stop work under the contract on the date and to the extent specified in the notice of

termination; place no further orders or subcontracts for equipment, materials, supplies, and/or services, except as may be necessary for completion of such portion of the work under the contract as is not terminated; terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination; assign to SORTA in the manner, at the times, and to the extent directed by SORTA, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case SORTA shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts; settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts to the extent SORTA may require; transfer title to SORTA and deliver in the manner, at the times, and to the extent, if any, directed by SORTA the fabricated or unfabricated parts, work in process, completed work, supplies, and other materials produced as a part of, or acquired in connection with their performance of, the work terminated, and the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to SORTA; use its best efforts to sell, in the manner, at the times, to the extent, and at the price(s) directed or authorized by SORTA, any property of the types referred to above, provided, however, that the Contractor shall not be required to extend credit to any purchaser, and may acquire any such property under the conditions prescribed by and at a price(s) approved by SORTA, and provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by SORTA to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as SORTA may direct; complete performance of such part of the work as shall not have been terminated by the notice of termination; and take such action as may be necessary, or as SORTA may direct, for the protection or preservation of the property related to this contract which is in the possession of the Contractor and in which SORTA has or may acquire an interest.

- 8.3.3 Settlement of claims by the Contractor or recoveries by SORTA under this termination for convenience clause shall be in accordance with the legal rights and liabilities of the parties to this agreement.

9. WARRANTIES

Contractor shall make the following warranties concerning the "requirements":

- 9.1 They shall conform to the specifications.
- 9.2 They shall be of good material and workmanship and free from defects and functionally acceptable.
- 9.3 They shall be suitable for their intended uses.
- 9.4 They shall not infringe any United States or foreign patent.
- 9.5 In providing them Contractor shall have complied with all applicable federal, state, and local laws and regulations.

10. INDEMNITY

Contractor shall indemnify SORTA and SORTA's trustees, and all of its employees or agents against and hold them harmless from all losses, damages, costs, expenses, claims, suits, and judgments in law and equity, that may at any time arise, or may be set up, by any breach of any express or implied warranties arising out of the furnishing of the equipment, materials, and/or supplies; or any infringement of the patent rights of any person or persons in consequence of the use by SORTA or by any of its employees or agents of the equipment, materials, and/or supplies under this agreement; or arising out of any other failure of Contractor to meet the obligations of the contract. SORTA will give Contractor prompt notice in writing of the institution of any suit or proceeding and permit the Contractor, through his counsel, to defend same and will give all needed information, assistance and authority to enable the Contractor to do so.

11. COMPARISON, TESTING, AND EVALUATION

SORTA may during the term of the contract and without liability to Contractor, purchase reasonable amounts of any other similar "requirements" from competitive suppliers for purpose of comparison, testing, and evaluation.

12. REFERENCES

SORTA may require the lowest bidder(s) to furnish a list of at least two (2) references of whom are or within the past year have been customers of the bidder and who have been provided similar amounts of the "requirements" being bid upon. The list shall include the following:

- a. Name of Customer
- b. Name of Purchasing Manager

- c. Complete address of operation
- d. Telephone number

If such references are requested, the list must be communicated verbally or mailed to and received by the SORTA Purchasing Department within three (3) days (Monday through Friday) from the date the request is made by SORTA. Failure to comply with this requirement will eliminate the bid from further consideration.

13. SAMPLES

SORTA may require samples of the "requirements" which will be provided (at no charge to SORTA, and which will be returned to the bidder) from the lowest bidder(s) after a review of the bids received. If samples are provided as requested by SORTA, the materials delivered shall conform to the samples provided to SORTA. Such samples must be delivered to the location specified within three (3) days (Monday through Friday) from the date the request is made by SORTA. Failure to comply with this requirement will eliminate the bid from further consideration.

14. GENERAL

14.1 The contract between SORTA and Contractor pursuant to these specifications shall be the entire agreement of the parties and may not be modified except in writing signed by SORTA and Contractor. No waiver by SORTA or Contractor of any breach thereunder shall be interpreted as a waiver of any other breach thereunder. This contract shall be interpreted under the laws of the State of Ohio. All rights and remedies are cumulative and in addition to all other rights and remedies in law or equity. Each provision hereof is severable from every other provision. The contract may not be assigned by Contractor without SORTA's written permission.

14.2 This contract shall be governed by the law of the State of Ohio, and in particular to Section 1302.73 (UCC 2-615), "Excuse by Failure of Presupposed Conditions" (Force Majeure); and Section 1302.89 (UCC 2-715), "Buyers Incidental and Consequential Damages."

15. TITLE VI, CIVIL RIGHTS ACTS OF 1964, COMPLIANCE

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

15.1 Compliance with Regulations: The Contractor shall comply with the Regulations relative to Nondiscrimination in federally-assisted

programs of the Department of Transportation in (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter, referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

- 15.2 Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 15.3 Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation, made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.
- 15.4 Information and reports: The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by SORTA or the FTA to be pertinent to ascertain compliance with such Regulations, orders, and instruction. Where any information is required or a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to SORTA, or the FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- 15.5 Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, SORTA shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:
- (a) Withholding of payments to the Contractor under the contract until the Contractor complies, and/or,
 - (b) Cancellation, termination, or suspension of the contract, in whole or in part.

15.6 Incorporation of Provisions: The Contractor shall include the provisions of Sections 15.1 through 15.6 in every subcontract, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontractor or procurement as SORTA or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request SORTA to enter into such litigation to protect the interests of SORTA, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

16. CONSERVATION

Contractor shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

17. BUY AMERICA

This procurement is NOT subject to the FTA "Buy America" requirements in 49 CFR 661.

18. ENVIRONMENTAL VIOLATIONS

Contractor and all subcontractors agree to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act [42 USC 1857 (h)], Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency Regulations (40 CFR, Part 15) which prohibit the use under nonexempt Federal contracts, grants, or loans of facilities included on the EPA List of Violating Facilities. Contractor shall report violations to FTA and to the USEPA Assistant Administrator for Enforcement (ENO329).

19. USE OF UNITED STATES FLAG VESSELS

19.1 Contractor agrees to utilize 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, materials, or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels, and

19.2 Contractor agrees to furnish within 20 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading of shipments originating outside the United States, a legible copy of a rate, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 19.1 above to SORTA (through the prime Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington D.C., 20230, marked with appropriate identification of the Project.

20. INTEREST OF MEMBERS OF CONGRESS

No member of or delegate to the Congress of the United States shall be admitted to any benefit arising herefrom.

21. INTEREST OF PUBLIC OFFICIALS

No member, officer, employee, or agent of SORTA during his tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in this contract or the proceeds thereof.

22. COVENANT AGAINST GRATUITIES

The Contractor shall not offer or provide gifts, favors, entertainment, or any other gratuities of monetary value to any official, employee, or agent of SORTA during the period of this contract or for a period of one year thereafter.

23. EQUAL EMPLOYMENT OPPORTUNITY

Contractor shall take affirmative action to insure that persons employed by or seeking employment from Contractor's firm are treated without bias regarding their race, religion, color, sex, or national origin. (Federal EEO requirements require Contractors to post notice to this effect in conspicuous locations within the plant or work site). The Contractor and all Subcontractors will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended; and of the rules, regulations, and relevant orders of the Secretary of Labor or any other Federal agencies responsible for enforcement of equal opportunity laws and regulations where applicable; and will likewise comply with the provisions of Sections 4112.02, 4112.07, and 153.59 of the Ohio Revised Code, and any other applicable laws or regulatory orders of the State of Ohio. Failure of Contractor to comply with these laws and regulations can result in the cancellation of this

contract; moreover, Contractor may become ineligible for additional SORTA contracts.

24. FEDERAL PARTICIPATION

24.1 The contract for the purchase of the "requirements" specified herein is subject to the applicable terms and conditions of SORTA's financial assistance grant contract with the FTA, United States Department of Transportation. The Contractor understands that Federal laws, regulations, policies, and related administrative practices applicable to this contract may be modified from time to time, and the changed requirements will apply to the project as required.

24.2 Review and approval by FTA is a condition precedent to the award of a contract to a sole bidder or to a bidder other than the apparent low bidder. Any bidder to which such an award is proposed by SORTA shall be notified. The bid of such bidder shall remain open for acceptance and award for thirty (30) days after approval by the FTA.

25. STATE, FEDERAL, AND OSHA REQUIREMENTS

All work called for in the Special and/or Technical Specifications shall conform to the latest Federal and State safety requirements and shall meet all applicable requirements of the Occupational Safety and Health Administration.

26. STATEMENT OF NON-COLLUSION

In submitting a bid, the bidder affirms that the bid is genuine and not collusive or sham; that said bidder is not financially interested in, or otherwise affiliated in a business way with any other bidder on the same contract; that said bidder has not colluded, conspired, connived, or agreed, directly or indirectly, with any bidder or person, to put in a sham bid, or that such another person shall refrain from bidding, and has not in any manner, directly or indirectly sought by agreement or collusion, or communication or conference, with any person, to fix the bid price of this or any other bid, or to fix any overhead, profit or cost element of said bid price, or of that of any other bidder, or to secure any advantage against SORTA or any person or persons interested in the proposed contract; and that all statements contained in said proposal or bid are true; and, further, that such bidder has not, directly or indirectly submitted this bid, or the contents thereof, or divulged information or data relative thereto any association or to any member or agent thereof.

27. INSURANCE

When the Technical Specifications include the installation and/or operational testing of the equipment by the Contractor, the Contractor agrees during the term of this agreement to: (a) maintain at Contractor's expense comprehensive general liability insurance covering all operations required to complete the work of the Contractor; (b) maintain at Contractor's expense all necessary insurance for its employees, including but not limited to Workers' Compensation, disability and unemployment insurance; and (c) provide SORTA with certification of same upon request.

28. PATENT INFRINGEMENT

SORTA will advise the Contractor of any impending patent suit and provide all information available. The Contractor shall defend any suit or proceeding brought against SORTA based on a claim that any equipment, or any part thereof, furnished under this contract constitutes an infringement of any patent, and the Contractor shall pay all damages and costs awarded therein, excluding incidental consequential damages, against SORTA. In case said equipment, or any part thereof, is in such suit held to constitute infringement and use of said equipment or parts is enjoined, the Contractor shall, at its own expense and at its option, either procure for SORTA the right to continue using said equipment, or part, or replace same with noninfringing equipment, or modify it so it becomes noninfringing.

29. COMMUNICATIONS

Communications in connection with this contract shall be in writing and, unless otherwise stated, shall be effective on receipt. However, communications by registered mail addressed to the officer(s) or employee(s) of SORTA and of the Contractor designated to receive communications shall be effective on mailing. Telephone calls may be used to expedite communications but shall not be official communication unless confirmed in writing. Communications by facsimile are acceptable so long as the party sending and receiving the facsimile retains adequate records to show the date and time for sending and receipt of the fax.

30. SINGLE BID, IF RECEIVED

If only a single bid is received, SORTA may require that the bidder provide a cost analysis or a price comparison between the bid price and that of similar equipment, materials, supplies, and/or services to assure that the bid price is fair and reasonable. If requested, the bidder shall provide the cost analysis or price comparison within ten (10) days of the date requested. SORTA reserves the right to reject or accept the bid on the basis of the cost analysis or price comparison.

31. LABOR PROVISIONS

- 31.1 Over-time 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 work week in which he or she is employed on such work to work in excess of forty hours in such work week 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 work week.
- 31.2 Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in subparagraph (b) (1) of 29 CFR Section 5.5, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such district or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchman and guards, employed in violation of the clause set forth in subparagraph (b) (1) of 29 CFR Section 5.5 in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty hours without payment of the overtime wages required by the clause, set forth in subparagraph (b) (1) of 29 CFR Section 5.5.
- 31.3 Withholding for Unpaid Wages and Liquidated Damages. DOT, FTA, or SORTA shall upon their 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 subparagraph (b) (2) of 29 CFR Section 5.5.
- 31.4 The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications,

hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be copying, or transcription by authorized representatives of DOT, Department of Labor, FTA, and/or SORTA. The Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

- 31.5 Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in subsections 31.1 through 31.5 of 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 subsections 31.1 through 31.5 of this section.

32. BID PROTEST PROCEDURE

- 32.1 General. Protests will only be accepted by SORTA's Procurement Department from prospective bidders or offerers whose direct economic interest would be affected by the award of a contract or refusal to award a contract. The Manager of Procurement will consider all such protests, whether submitted before or after the award of a contract. If oral objections are raised and the matter cannot be resolved to the satisfaction of the objector, a written Protest shall be required before any further consideration is given. Protest submissions should be concise, logically arranged and clearly state the grounds for the protest. Protests must include at least the following information:

- Name, address, and telephone number of protester.
- Identification of the solicitation or contract number.
- A detailed statement of the legal and factual grounds of protest including copies or relevant documents.
- A statement as to what relief is requested.

All protest documents received by SORTA's Procurement Department shall be stamped with date and time received and logged into a protest file folder.

- 32.2 Protests Before Award. Protests before award must be submitted within the time frame as specified below. If the written protest is not received by the time specified, the evaluation process shall continue in

the normal manner, unless the Manager of Procurement, upon investigation, finds that remedial action is desirable, in which event such action shall be taken.

The protests addressing the adequacy of Invitation for Bids, RFPs, including, without limitation, the pre-award procedure, the Instructions to Bidders, General Terms and Conditions, specifications and scope of work, must be filed at SORTA's Procurement Department no later than three (3) days before bid opening date. Thereafter, such issues are deemed waived by all interested parties.

Notice of a protest and the basis therefore shall be given to all bidders or offerers. In addition, when a protest against the making of an award is received, and the Manager of Procurement 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 consent of sureties, if any) to avoid the need for re-advertising.

A written protest against the making of an award must be received by SORTA's Procurement Department at least ten (10) days prior to the scheduled contract award date.

Where a written protest against the making of an award is received, award shall not be made until five (5) days after the matter is resolved, unless the Manager of Procurement determines that:

- The items to be procured are urgently required; or
- Delivery or performance will be unduly delayed by failure to make the award promptly; or
- Failure to make prompt award will otherwise cause undue harm to SORTA or the State or the Federal Government.

In the event the Manager of Procurement determines that the award is to be made during the five day period or during the pendency of a protest, he shall notify FTA prior to making such award. FTA reserves the right not to participate in such procurements.

If award is made, the Manager of Procurement shall document the file to explain the need for an award and shall give written notice of the decision to proceed with the award to the protester and, as appropriate, to others concerned.

32.3 Protests After SORTA's Award. Protest against award must be filed at SORTA's Procurement Department within five (5) days immediately following the award. The protest shall be received by the Manager of Procurement. However, although the number of persons involved in or affected by the filing of a protest may be limited in instances where an award has been made, the Contractor shall in any event be furnished with the notice of protest and the basis therefore. Also, when it appears likely that an award may be invalidated and a delay in receiving the supplies or service is not prejudicial to SORTA's interest, the Manager of Procurement shall consider a mutual agreement with the Contractor to suspend performance on a no-cost basis.

32.4 SORTA's Decision On The Protest. The Manager of Procurement shall render his decision in writing within fourteen (14) days from the receipt of the written protest and shall provide notice of such decision to all interested parties.

Following an adverse decision by the Manager of Procurement, the protester may file a protest with the FTA.

32.5 FTA's Review of Protests. FTA will only review protests regarding the alleged failure of SORTA to have written protest procedures or alleged failure to follow such procedures.

Alleged violations on other grounds are under the jurisdiction of the appropriate State or local administrative or judicial authorities. Alleged violations of a specific Federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with that Federal regulation. See, e.g., Buy America Requirements, 49 CFR Part 661 (Section 661.15); Participation by Minority Business Enterprise in Department of Transportation Programs, 49 CFR Section 23.73.

FTA will only review protests submitted by an interested party as defined in paragraph 32.7, below.

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

32.7 Definitions. For the purposes of this Section (the entire Section 32), 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 SORTA or FTA, as the case may be.
- c. "Interested party" means an actual or prospective bidder or offeror whose direct economic risk 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.

32.8 Time For Filing With FTA. Protesters shall file a protest with FTA not later than five (5) days after a final decision is rendered under SORTA's protest procedure. In instances where the protester alleges that SORTA failed to make a final determination on the protest, protesters shall file a protest with FTA not later than five (5) days after the protester knew or should have known of SORTA's failure to render a final determination on the protest.

SORTA shall not award a contract for five (5) days following its decision on a bid protest except in accordance with the provisions and limitations of subparagraph 32.12. After five (5) days, SORTA shall confirm with FTA that FTA has not received a protest on the contract in question.

32.9 Submission of Protest to FTA.

- a. Protests should be filed with the appropriate FTA Regional Office with a concurrent copy to SORTA.
- b. The protest filed with FTA shall:
 - (1) Include the name and address of the protester;
 - (2) Identify SORTA (the FTA grantee), project number (if applicable), 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; and

- (4) Include a copy of the local protest filed with SORTA and a copy of SORTA's decision, if any.

32.10 SORTA's Response.

- a. FTA shall notify SORTA in a timely manner of the receipt of a protest. FTA shall instruct SORTA to notify the contractor of the protest if an award has been made or, if no award has been made, to notify all interested parties. SORTA shall instruct all who receive such notice that they may communicate further directly with FTA.
- b. SORTA's Procurement Department shall submit the following information to FTA not later than ten (10) days after receipt of notification by FTA of the protest:
 - (1) a copy of SORTA's protest procedure;
 - (2) a description of the process followed concerning the protesters protest; and
 - (3) any supporting documentation.
- c. SORTA shall provide the protester with a copy of the above submission to FTA.

32.11 Protesters Comments. The protester must submit any comments on SORTA's submission not later than ten (10) days after the protesters receipt of submission.

32.12 Withholding of Award. When a protest has been timely filed with SORTA before award, SORTA 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 pendency of that protest, unless SORTA 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 SORTA or the Federal Government.

In the event that SORTA determines that the award is to be made during the five day period following the local protest decision or the pendency of a protest, SORTA shall notify FTA prior to making such award. FTA will not review the sufficiency of SORTA's determination to award during the pendency 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 pendency of a protest.

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

33. DEBARRED BIDDERS PROVISION

The Contractor, including any of its officers or holders of a controlling interest, is obligated to inform SORTA whether or not it is or has been on any debarred bidders' list maintained by the United States Government. Should the Contractor be included on such a list during the performance of this project, it shall so inform SORTA.

34. NEW RESTRICTIONS ON LOBBYING

(A) Definitions. As used in this clause.

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal action" means any of the following Federal actions:

- (1) The awarding of any Federal contract;
- (2) The making of any Federal grant;
- (3) The making of any Federal loan;
- (4) The entering into of any cooperative agreement; and,
- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an office or employee of a Member of Congress in connection with any covered Federal Action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State or the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee or any agency" includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under Title 5, U.S. Code, including a position under a temporary appointment;
- (2) A member of the uniformed services as defined in Section 101(3) Title 37, U.S. Code;
- (3) A special Government employee as defined in Section 202, Title 18, U.S. Code; and,
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee act, Title 5, U.S. Code, Appendix 2.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Recipient" includes all contractors and subcontractors at any time in connection with a Federal contract. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed" means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency

consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

(B) Prohibition.

(1) Section 1352 of Title 31, U.S. Code, provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The prohibition does not apply as follows:

(i) Agency and legislative liaison by Own Employees.

(a) The prohibition on the use of appropriated funds, in Paragraph (B)(1) of this Section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of Paragraph (B)(2)(i)(a) of this Section, the providing any information specifically requested by an agency or Congress is allowable at any time.

(c) For purposes of Paragraph (B)(2)(i)(a) of this Section, the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

1. Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

2. Technical discussions and other activities regarding the application or adaptation of the person's product or services for any agency's use.
- (d) For purposes of Paragraph (B)(2)(i)(a) of this Section, the following agency and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:
 - (1) Providing any information not specifically requested by necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - (2) Technical discussion regarding the preparation of an unsolicited proposal prior to its official submission; and
 - (3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small business Act, as amended by public Law 95-507 and other subsequent amendments.
 - (e) Only those activities expressly authorized by Paragraph (B)(2)(i) of this Section are allowable under Paragraph (B)(2)(i).
- (ii) Professional and technical services by Own Employees.
 - (a) The prohibition on the use of the appropriated funds, in Paragraph (b)(1) of this Section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or an extension, continuation, renewal, amendment, or modification of a Federal contract if a payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.
 - (b) For purposes of Paragraph (B)(2)(ii)(a) of this Section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the

performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this Section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal Action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspect or his or her client's proposal, but generally advocate one proposal over another are not allowable under this Section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this Section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of covered federal action.

- (c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, and any other requirements in the actual award documents.
- (d) Only those services expressly authorized by Paragraph (B)(2)(ii) of this Section are allowable under Paragraph (B)(2)(ii).

(iii) Reporting for Own Employees.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(iv) Professional and technical services by other than Own Employees.

- (a) The prohibition on the use of appropriated funds, in Paragraph (B)(1) of this Section, does not apply in the case of an reasonable payment to a person, other than officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any

bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.

- (b) For purposes of Paragraph (B)(2)(ii)(a) of this Section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this Section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal Action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspect or his or her client's proposal, but generally advocate one proposal over another are not allowable under this Section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this Section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of covered Federal action.
- (c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, and any other requirements in the actual award documents.
- (d) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (e) Only those services expressly authorized by paragraph (B)(2)(iv) of this Section are allowable under Paragraph (B)(2)(iv).

(C) Disclosure.

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- (1) Each person who requests or receive from an agency a Federal contract shall file with that agency a certification that the person has not made, and will not make, any payment prohibited by Paragraph (B) of this clause.
- (2) Each person who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, Standard Form-LLL, "Disclosure of Lobbying Activities", if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under Paragraph (B) of this clause if paid for with appropriated funds.
- (3) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under Paragraph (C)(2) of this Section. An event that materially affects the accuracy of the information reported includes:
 - (i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or,
 - (ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
 - (iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- (4) Any person who requests or receives from a person referred to in Paragraph (C)(1) of this Section a subcontract exceeding \$100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.
- (5) All disclosure forms, but certifications, shall be forwarded from tier to tier until received by the person referred to in Paragraph (C)(2) of this Section. That person shall forward all disclosure forms to the agency.

(D) Agreement

In accepting any contract resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

(E) Penalties

- (1) Any person who makes expenditure prohibited under Paragraph (B) of this clause shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
- (2) Any person who fails to file or amend the disclosure form to be filed or amended if required by this clause, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- (3) Contractors may rely without liability on the representations made by their subcontractors in the certification and disclosure form.

(F) Cost Allowability

Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of Part 31 of the Federal Acquisition Regulation.

35. PRIVACY

In the event the Contractor or its employees administers any system of records on behalf of the Federal government pursuant to the Contract, the Contractor agrees:

- (a) to comply with the Privacy Act of 1974, 5 U.S.C. S552A (the Act) and rules and regulations issued pursuant to the Act when performance under the Contract involves the design, development or operation of any system of records on individuals to be operated by SORTA, its other contractors or employees to accomplish the government function;
- (b) to notify DOT when the Contractor anticipates operating a system of records on behalf of the government in order to accomplish the requirements of the Contract, where such system contains information about individuals which will be retrieved by the individual's name or otherwise identified or assigned to the individual. A system of records subject to the Act may not be employed in the performance of the Contract unless the necessary approval and publication requirements applicable to the system have been carried out. The Contractor agrees to correct, maintain, disseminate and use such records in accordance with the requirements of the Act, and to comply with all applicable requirements of the Act; and

- (c) to include the foregoing provisions in all contracts with subcontracts which in any way relate to the administering of systems of record on behalf of the Federal Government.

36. AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)

The Contractor agrees to comply with, and assure that any subcontractor under this Project complies with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. Sections 12101 et seq. and 49 U.S.C. Section 322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. app. Section 1612; and the following regulations and any amendments thereto:

1. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
2. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
3. U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 38;
4. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
5. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
6. General Services Administration regulations, "Construction and Alteration of Public Buildings," "Accommodations for the Physically Handicapped," 41 C.F.R. Part 101-19;
7. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
8. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Sub part F; and
9. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609.

37. AUDITS AND INSPECTION/RECORD RETENTION

The Contractor shall permit, and require its subcontractors to permit, the Secretary and Comptroller General of the United States, SORTA, or any of their duly authorized representatives to have access to all work, materials, payrolls, books, documents, papers, and other data and records directly pertinent to these contract, for the purpose of making audit, examination, excerpts, and transcriptions. The Contractor shall maintain all required records for three (3) years after final payment and other pending matters are closed under this contract.

38. DISPUTES AND REMEDIES

Except as otherwise provided in the Contract, the Contractor must notify SORTA in writing within thirty (30) days of any dispute arising under the contract which is not disposed of by agreement. All disputes shall be decided by the General Manager of SORTA who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decisions of the General Manager shall be final and conclusive, unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard within thirty (30) days of the decision, and to offer evidence in support of their appeal. Pending final decisions of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract in accord with the General Manager's decision and such continued performance does not in any manner imply acceptance of or agreement with that decision be the Contractor nor does it infringe upon the Contractor's right to appeal that decision. This clause does not preclude consideration of law questions in connection with decisions provided for in the above paragraph, provided, that nothing in this Contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

39. INCORPORATION OF FTA TERM

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding. All contractual provisions required by DOT, as set forth in FTA Circular C4220.1D dated April 15, 1996, 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 SORTA

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requests which would cause SORTA to be in violation of the FTA terms and conditions.