

STATE & FEDERAL CERTIFICATIONS/CLAUSES

COMMONWEALTH OF PENNSYLVANIA SPECIFIC REQUIREMENTS

PENNSYLVANIA OPEN RECORD CLAUSE: In Compliance with Pennsylvania's Right to Know Law, all information within this proposal/bid, including financial information of a bidder/proposer may be provided as a public record, if appropriate pursuant to the discretion of the MMVTA's Open Records Officer, after a bid is awarded.

STEEL PRODUCTS PROCUREMENT ACT OF 1978: All steel and cast iron products used or supplied in the performance of this Contract shall be products produced from steel made in the United States in conformity with the Commonwealth of Pennsylvania's Steel Products Procurement Act of 1978 (Act No. 3 of 1978, P.L. 6 [73 P.S. ¶ 1881 *et seq.*]) and in full conformity with the Buy America provisions of 49 U.S.C. ¶ 5323(j) and the applicable regulations in 49 CFR Part 661 unless the Bidder specifically sets forth any exceptions on its Bid Form.

PROJECT SIGNS: All reports, and other documents completed as part of this Contract, other than documents prepared exclusively for internal use, shall contain an appropriate notice of financial assistance provided by PennDOT.

NON-COLLUSION STATEMENT: The Antbid-Rigging Act of 1983, 73 P.S. ¶ 1611 *et seq.*, makes it a crime for two or more persons, by concerted activity, to influence the results of a competitive bidding process. The following Affidavit must be signed:

Affidavit of Non-Collusion

I hereby swear (or affirm) under the penalty of perjury:

- (1) That I am the Proposer (if the Proposer is an individual), a partner in the proposing (if the Proposer is a partnership) or an officer or employee of the proposing corporation having authority to sign on its behalf (if the Proposer is a corporation);
- (2) That the attached Proposal or Proposals have been arrived at by the Proposer independently and have been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the Request for Proposal designed to limit independent Proposing or competition;
- (3) That the contents of the Proposal or Proposals have not been communicated by the Proposer or its employees or agents to any person not an employee or agent of the Proposer or its surety on any bond furnished with the Proposal or Proposals and will not be communicated to any such person prior to the official opening of the Proposal or Proposals; and
- (4) That I have fully informed myself regarding the accuracy of the statements made in this affidavit.

Signed: _____

Firm Name: _____

COMMONWEALTH NON-DISCRIMINATION CLAUSE: Each bidder/proposer is requested to certify its compliance with the Commonwealth of Pennsylvania's Non-Discrimination Clause as follows:

Commonwealth Non-Discrimination Clause

- (1) Contractor shall not discriminate against any employee, applicant for employment, independent contractor or any other person because of race, color, religious creed, ancestry, national origin, age or sex.
- (2) Contractor shall take affirmative action to ensure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, age or sex. Such affirmative action shall include, but is not 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.
- (3) Contractor shall post in conspicuous places, available to employees, agents, applicants for employment and other persons, a notice to be provided by the contracting agency setting forth the provisions of this non-discrimination clause.
- (4) Contractor shall in advertisements or requests for employment placed by it or on its behalf state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age or sex.
- (5) Contractor shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this non-discrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Contractor.
- (6) It shall be no defense to a finding of noncompliance with the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission or this non-discrimination clause that Contractor has delegated some of its employment practices to any union, training program or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Contractor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.
- (7) Where the practices of a union or of any training program or other source of recruitment will result in the exclusion of minority group persons, so that Contractor will be unable to meet its obligations under the Contractor Compliance Regulations issued by Pennsylvania Human Relations Commission, or this non-discrimination clause. Contractor shall then employ and fill vacancies through other non-discriminatory employment procedures.
- (8) Contractor shall comply with the Contract Compliance Regulations of the Pennsylvania Human Relations Commission, 16 PA Code Chapter 49 and with all laws prohibiting discrimination in hiring or employment opportunities. In the event of Contractor's non-compliance with the non-discrimination clause of this contract or with any such laws, this contract may, after hearing and adjudication, be terminated or suspended, in whole or in part, and Contractor may be declared temporarily ineligible for further Commonwealth contracts, and such other sanctions may be imposed and remedies invoked as provided by the Contract Compliance Regulations.
- (9) Contractor shall furnish all necessary employment documents and records to, and permit access to its books, records and accounts by, the contracting agency and the Human Relations Commission, for purposes of investigation to ascertain compliance with the provisions of the Contract Compliance Regulations, pursuant to PA Code Chapter 49.35 of these Regulations. If Contractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms

supplied by the contracting agency or the Commission.

- (10) Contractor shall actively recruit minority subcontractors or subcontractors with substantial minority representation among their employees.
- (11) Contractor shall include the provisions of this non-discrimination clause in every subcontract, so that such provisions will be binding upon each subcontractor.
- (12) The terms used in this non-discrimination clause shall have the same meaning as in the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission, 16 PA Code Chapter 49.
- (13) Contractor obligations under this clause are limited to the Contractor's facilities within Pennsylvania or where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

Wherever hereinabove the word Contractor is used it shall also include the word Engineer, Consultant, Researcher, or other Contracting Party as may be appropriate.

Signed: _____

Firm Name: _____

CONTRACTOR INTEGRITY: Each bidder/proposer is requested to certify to its compliance with the Commonwealth of Pennsylvania's Contractor Integrity clause as follows:

Contractor Integrity

_____, hereinafter referred to as the Contractor, agrees to and certifies that:

1 DEFINITIONS

- (a) "Confidential information" means information that is not public knowledge, or available to the public on request, disclosure of which would provide an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth of Pennsylvania or MMVTA.
- (b) "Consent" means written permission signed by a duly authorized officer or employee of the Commonwealth or MMVTA, provided that where the material facts have been disclosed, in writing, by pre-qualification, bid, proposal, or contractual terms, MMVTA shall be deemed to have consented by virtue of execution of this agreement.
- (c) "Contractor" means the individual or entity that has entered into this agreement with the Owner, including directors, officers, partners, managers, key employees, and owners of more than five percent (5%) interest.
- (d) "Financial Interest" means:
 - Ownership of more than five (5%) percent interest in any business; or
 - Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
- (e) "Gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans., subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

2 The Contractor shall maintain the highest standards of integrity in the performance of this agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth of Pennsylvania and/or MMVTA.

3 The Contractor shall not disclose to others any confidential information gained by virtue of this agreement.

4 The Contractor shall not, in connection with this or any other agreement with the Owner or the Commonwealth of Pennsylvania, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Owner or the Commonwealth of Pennsylvania.

5 The Contractor shall not, in connection with this or any other agreement with the Owner or the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of MMVTA or the Commonwealth.

6 Except with the consent of MMVTA and the Commonwealth, neither the Contractor nor anyone in privity with the Contractor shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this agreement except as provided therein.

7 Except with the consent of MMVTA and Commonwealth, the Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.

8 The Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify MMVTA in writing.

9 The Contractor, by execution of this agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that the Contractor has not violated any of these provisions.

10 The Contractor shall, upon request of the Office of State Inspector General or County Controller, reasonably and promptly make available to that office and its representatives, for inspection and copying, all business and financial records of the Contractor of, concerning, and referring to this agreement with MMVTA or which are otherwise relevant to the enforcement of these provisions.

11 For violation of any of the above provisions, MMVTA (or Commonwealth, if applicable) may terminate this and any other agreement with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim liquidated damages for all expenses incurred in obtaining another contractor to complete performance hereunder, and debar and suspend the Contractor from doing business with MMVTA or Commonwealth. These rights and remedies are in addition to those the Commonwealth or MMVTA may have under law, statute, regulations, otherwise.

12 The Contractor is not currently and/or has not been debarred or suspended from doing business with the Commonwealth, the Federal Government, or MMVTA except in the following instances (*if none, write "NONE"*):

(1) _____

(2) _____

Signed: _____

Firm Name: _____

FEDERAL DEPARTMENT OF TRANSPORTATION SPECIFIC REQUIREMENTS

NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES:

(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.

FALSE STATEMENTS OR CLAIMS – CIVIL AND CRIMINAL FRAUD:

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

ACCESS TO RECORDS: MMVTA is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

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.

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).

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

FEDERAL CHANGES: Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

TERMINATION:

a. **Termination for Convenience:** The MMVTA, 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.

b. **Termination for Default:** 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 MMVTA may terminate this contract for default. The MMVTA 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 MMVTA, protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and MMVTA 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 MMVTA.

c. **Opportunity to Cure:** The MMVTA 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 MMVTA's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from MMVTA setting forth the nature of said breach or default, MMVTA 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 MMVTA 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 MMVTA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by MMVTA shall not limit MMVTA's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

CIVIL RIGHTS:

(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 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project.

The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(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 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

DISADVANTAGED BUSINESS ENTERPRISE (DBE):

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 4%. A separate contract goal has not been established for this procurement.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as MMVTA deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

c. The successful bidder/offeror will be required to report any DBE participation obtained through race-neutral means throughout the period of performance.

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the MMVTA. In addition, it is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

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

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

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

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

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

Buy America

The Contractor agrees to comply with 49 U.S.C. § 5323(j), with FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661, and with implementing guidance FTA may issue, 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 C.F.R. 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)© and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content. A Buy America Certificate must be completed and submitted with a bid for any contract exceeding \$100,000 for the acquisition of goods or rolling stock and construction contracts. Bids that are not accompanied by a completed Buy America certification must be rejected as nonresponsive

RESOLUTION OF DISPUTES:

A. **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 MMVTA. 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 Board of Directors. 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 Board of Directors shall be binding upon the Contractor and the Contractor shall abide by the decision.

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

C. **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 any of his employees, agents or others for those acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

D. **Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between MMVTA 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 Commonwealth of Pennsylvania.

E. **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 MMVTA or its representative 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.

LOBBYING

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, an employee of a Member of Congress or a member or employee of a State legislature 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. The Contractor and its subcontractors shall certify that no federal appropriated funds have been expended for the lobbying activities described in Section 1352 of Title 31, U.S. Code. The Contractor and its subcontractors 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 the covered Federal actions as described by 31 U.S.C. 1352. For any contract and subcontract exceeding \$100,000, the Contractor and subcontractor(s) will submit a Lobbying Certificate. Contractors who engage in lobbying activities are required to file Standard Form—LLL, "Disclosure of Lobbying Activities" in accordance with Section 1352 of Title 31, U.S. Code.

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.

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.

CONTRACT WORK HOURS AND SAFETY STANDARDS

(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 therefor 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*) 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 paragraphs (1) through (4) 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 paragraphs (1) through (4) of this section.

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 C.F.R. 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 nonurbanized 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 subrecipient 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 C.F.R. 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 Nonurbanized 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 Nonurbanized 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.

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 subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 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.

SCHOOL BUS OPERATIONS

Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

DRUG AND ALCOHOL TESTING

The Contractor agrees to comply with the following Federal substance abuse regulations: a. Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 C.F.R. Part 32, that implements the Drug-Free Workplace Act of 1988, 41 U.S.C. §§ 701 et seq. b. Alcohol Misuse and Prohibited Drug Use. FTA Regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655, to the extent applicable. The contractor agrees further to certify annually its compliance and to submit the Management Information System (MIS) reports before March 15 to the MMVTA.

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.

RECYCLED PRODUCTS

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

ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES: Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

FIGURE 3

MID MON VALLEY TRANSIT AUTHORITY PROTEST PROCEDURES

- A. The following bid protest procedures have been written in compliance with the Federal Transit Administration (FTA) Third Party Contracting Guidelines (Circular 4220.1F). For purposes of these procedures the term "bids" includes proposals in response to a RFP and responses to an IFB, and the term "bidders" includes proposers.

Parties that wish to file a bid protest should review these procedures in conjunction with FTA's Circular 4220.1F. Mid Mon Valley Transit Authority protest procedures will be referenced in the bid documents in order that interested parties will know their rights under these protest procedures.

The following procedures and time requirements shall be applied uniformly in processing all protests. Protests may be made by active or prospective bidders whose direct economic interest would be affected by a solicitation, proposed award, or award of a contract.

- B. Mid Mon Valley Transit Authority will consider all **written protests transmitted to the address above via registered mail** made within the timelines stated in this document.
- C. Protest submissions should be concise, logically arranged, clearly state the grounds for the protest, and must include at least the following information:
1. Name, address, and telephone number of protestor.
 2. Solicitation or contract name and/or number.
 3. The date of the Mid Mon Valley Transit Authority action(s) being protested;
 4. A detailed statement of the legal and factual grounds for the protest, including copies of all relevant documents or information.
 5. The issue which is being protested and why it is being protested
 6. A statement of relief requested.

Only written protests received within the timelines stated in these procedures will be considered.

- D. Protests before Proposal/Bid Opening or Due Date
Bid protests alleging restrictive specifications or improprieties, which are apparent prior to bid or proposal opening, must be submitted in writing to Mid Mon Valley Transit Authority and must be received at least five (5) working days prior to bid/proposal opening.
- E. Protests after Opening of Proposal Solicitation and Prior to Award
Protests against the making of an award may be made after bid opening and prior to award. Such protests must be submitted in writing to Mid Mon Valley Transit Authority and must be received by Mid Mon Valley Transit Authority within five (5) working days of the bid opening. If Mid Mon Valley Transit Authority decides to withhold the award pending resolution of the protest, Mid Mon Valley Transit Authority will notify all bidders whose bids or proposals might become eligible for award, and offer them the option to extend or withdraw the bid or proposal beyond the 120-day validity period. Awards will not be made until at least five (5) working days after resolution of the protest.
- F. Protests after Award
Protests received after announcement of an award or after a contract has been executed will only be considered if Mid Mon Valley Transit Authority determines that the matter is in

the public interest or the protest presents clear and convincing evidence of fraud, misrepresentation, other illegality, or gross impropriety in the selection of a bid/proposal. If a protest is under consideration, Mid Mon Valley Transit Authority shall evaluate the bid/proposal a second time in its entirety and use the same evaluation criteria and rating factors applied in the initial review of the bid/proposal. The bid/proposal will be evaluated by a panel designated by the Mid Mon Valley Transit Authority.

If a protest involving an executed contract is under consideration, Mid Mon Valley Transit Authority will notify the selected contractor of the protest and its basis and may, at its discretion, order the contractor to suspend all Mid Mon Valley Transit Authority work activities. If the awarded contractor has not executed the contract as of the date the protest is received by Mid Mon Valley Transit Authority, the contract will not be executed until five (5) working days.

G. Protest Filing Steps

1. Protests must first be addressed to the Executive Director:
MMVTA Executive Director
1300 McKean Ave.
Charleroi, PA 15022

Upon receipt of a written protest containing the above outlined data, the Executive Director shall consider the protested issue and will respond to the Protestor, in writing, via registered mail, giving his/her decision on the protested issue and outlining the basis for such decision within ten (10) working days from the date of receipt of the written protest.

The Mid Mon Valley Transit Authority Executive Director will also immediately notify FTA Region III counsel of protest notice received and then inform Region III of decision from this stage.

2. Appeal of Decision to the Board of Directors: If the Protestor is not satisfied with the decision of the Executive Director of the Mid Mon Valley Transit Authority in the matter being protested, the Protestor may then appeal the decision of the Executive Director of the Mid Mon Valley Transit Authority to the Board of Directors of the Mid Mon Valley Transit Authority within five (5) working days of the receipt of the decision of the Executive Director on the resolution of the matter being protested. The letter of appeal to the full Board of Directors of the Mid Mon Valley Transit Authority must be in writing and clearly contain the information required in paragraph C above and must clearly contain:
 - a. The Executive Director's decision in the matter being protested; and
 - b. Why the decision of the Executive Director is unsatisfactory.

Upon receipt of a written protest containing the above outlined data, the Board of Directors shall consider the issue being protested and the Secretary of the Board of Directors will respond to the Protestor, in writing, via registered mail, giving their decision on the protested issue and outlining the basis for such decision within thirty (30) working days from the date of receipt of the written protest.

THE DECISION OF THE BOARD OF DIRECTORS OF THE MID MON VALLEY TRANSIT AUTHORITY SHALL BE CONSIDERED FINAL.

The Executive Director will also immediately notify FTA Region III counsel of

protest notice received and then inform Region III of decision from this stage.

3. **Appeal to the Federal Transit Administration:** Under certain limited circumstances, and after the Protester has exhausted all administrative protest remedies made available to him/her at the Mid Mon Valley Transit Authority level, an interested party may then protest to the Federal Transit Administration (FTA) (FTA Circular 4220.1F). FTA's review of any protest will be limited to those circumstances in which the Mid Mon Valley Transit Authority action(s) being protested involves the failure of the Mid Mon Valley Transit Authority to have written Protest Procedures in place, and/or the failure of the Mid Mon Valley Transit Authority to adhere to its written Protest Procedures, and/or violation of Federal Law or Regulation.

The protest filed with FTA shall:

- a. Be in writing and include the name and address of the Protester;
- b. Identify the Mid Mon Valley Transit Authority as the entity whose policy, procedures and/or operations are being protested;
- c. Contain a statement of the grounds for protest and supporting documentation. (The grounds for protest to the FTA must be fully supported to the extent feasible. Additional materials in support of a protest will only be considered if authorized by FTA regulations);
- d. Be filed with the FTA not later than five (5) days after a final decision is received by the Protestor via First Class, U.S. Mail with Notice, under the Mid Mon Valley Transit Authority's Protest Procedures or, should a final decision not be rendered by the Mid Mon Valley Transit Authority not later than five (5) days after the Protestor knew or should have known of the grantee's failure to render a final decision on the matter protested;
- e. Include a copy of the protest filed with the Mid Mon Valley Transit Authority and a copy of the Mid Mon Valley Transit Authority's decision(s), if any; and
- f. Indicate the ruling or relief desired from FTA.

Such protest should be sent to:

Regional Administrator
FTA, Region III
1760 Market Street, Suite 500
Philadelphia, PA 19103

A copy of such protests should also be sent to
MMVTA's Executive Director and MMVTA's
Solicitor at:

Mid Mon Valley Transit Authority
1300 McKean Avenue
Charleroi, PA 15022