



US Department  
of Transportation  
**Federal Transit  
Administration**

# **Drug and Alcohol Consortia Manual**

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## **Final Report**

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December 1996

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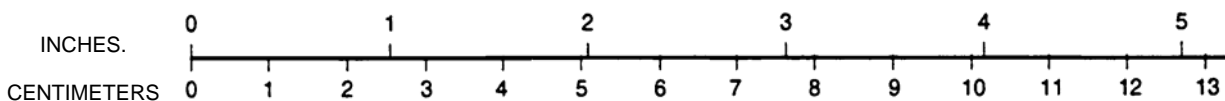
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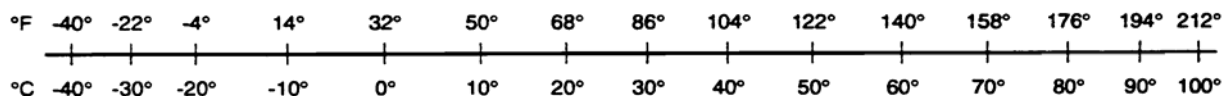
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## *Introduction*



## I. INTRODUCTION

This manual is intended to provide transit managers and other operational personnel with background information regarding drug and alcohol testing consortia, and a step-by-step process for determining whether participating in such a consortium would best meet their needs. This manual also describes how to successfully design, implement, and participate in a drug and alcohol testing consortium.

Recently enacted federal laws and regulations address the important issue of drug and alcohol testing in the workplace. The Omnibus Transportation Employee Testing Act of 1991, as passed by Congress, and regulations published by the U.S. Department of Transportation (USDOT), address the issues of drug use and alcohol misuse by transportation employees. The Federal Transit Administration (FTA) of the USDOT has published regulations requiring transit agencies receiving federal funding to test “safety-sensitive” employees for prohibited drug use and alcohol misuse. The USDOT published standards for the collection and testing of urine and breath specimens for transportation employees. The relevant federal regulations are found in 49 CFR Part 653, 49 CFR Part 654, and 49 CFR Part 40, as amended.

Specifically, 49 CFR Part 653, which is entitled the “Prevention of Prohibited Drug Use in Transit Operations,” contains the FTA requirements for transit drug testing policies and programs. Its companion regulation, 49 CFR Part 654 is entitled the “Prevention of Alcohol Misuse in Transit Operations,” and contains the FTA requirements for transit alcohol testing policies and programs. Both of these regulations pertain only to transit employees performing “safety-sensitive” functions. A related regulation, 49 CFR Part 40 is called “Procedures for Transportation Workplace Drug and Alcohol Testing Programs,” and describes the testing methods and standards which must be adhered to for urine drug testing and breath alcohol testing of transportation employees.

The requirements of 49 CFR Parts 653 and 654 are specific to transit agencies and, therefore, are different from the requirements imposed by the Federal Highway Administration (FHWA) and the Federal Railroad Administration (FRA). Where the jurisdiction of the FTA overlaps the FHWA, the FTA requirements supersede the FHWA requirements. Where the jurisdiction of the FRA overlaps the FTA, the FRA requirements supersede the FTA requirements. The requirements of 49 CFR Part 40 apply to *all* transportation organizations that must comply with federal drug and alcohol testing requirements. These differences and commonalities are of particular importance in the formation of intermodal testing consortia.

*The requirements of 49 CFR Parts 653 and 654 are specific to transit agencies and, therefore, are different from the requirements imposed by the Federal Highway Administration (FHWA) and the Federal Railroad Administration (FRA).*

Chapter II of this manual provides a general overview of consortia, including definitions, advantages and disadvantages, consortia models and guidelines regarding the appropriate role of consortia in USDOT drug and alcohol testing programs. Chapter III provides a summary of various existing drug and alcohol testing consortia, including state-based, regional and other types of consortia. Chapter IV presents the process which agencies should follow in determining whether participating in a consortium would best meet their needs. Chapter V includes a step-by-step planning process for establishing a consortium. Chapter VI describes how to design a consortium and Chapter VII describes the implementation process. Chapter VIII is an overview of required monitoring activities and Chapter IX provides overall conclusions. The Appendix includes a glossary of terms peculiar to the FTA drug and alcohol regulations, a sample RFP, and other useful resources.

In producing this report several sources were utilized. One source was the FTA document, *Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit*. This report, published in April, 1994, provides detailed guidance in implementing the FTA drug and alcohol testing regulations. Other sources include telephone interviews with agencies which have developed drug and alcohol testing consortia. This “real world” experience provides insight for others who are considering either establishing a new consortium or participating in an existing consortium. Another important source of information includes the personal experiences of the authors, who have conducted workshops and programs relating to this subject.

## ***What Is a Consortium?***



## **II. WHAT IS A CONSORTIUM?**

A consortium is an alliance of organizations which work together to address common needs and goals. Consortium members pool their resources in order to address their needs in a more cost effective or efficient way than could be done independently. Organizations required to implement federal drug and alcohol testing programs may find it beneficial to participate in a consortium to reduce the administrative burden associated with these programs.

Many types of organizations are required to comply with federal drug and alcohol testing requirements. These include transit agencies, school districts, trucking companies, cities, counties and other organizations. In general, transit agencies must comply with Federal Transit Administration (FTA) regulations which relate to employees in “safety-sensitive” positions. Other organizations providing transportation that have employees needing a Commercial Driver’s License (CDL) to operate a vehicle must comply with the drug and alcohol testing requirements of the Federal Highway Administration. Any of these organizations may find it useful to participate in a drug and alcohol testing consortium.

Some of the more important advantages and disadvantages of participating in a consortium are presented below.

### **ADVANTAGES OF CONSORTIUM PARTICIPATION**

There are several advantages to being a member of a drug and alcohol testing consortium, including:

#### ***Expertise***

A consortium provides a mechanism for organizations to pool resources and hire a professional manager having specialized knowledge and experience. The consortium manager can devote full attention to the testing requirements and can provide oversight to the drug and alcohol programs of member organizations.

#### ***Cost***

A consortium allows several smaller organizations to combine their service needs and buy in larger quantities for a better, i.e., lower price. The overall cost of drug and alcohol testing may be further reduced by spreading administrative and other costs over additional participating agencies. Actual savings is a function of: 1) the number of consortium members; 2) the total number of covered employees; 3) the frequency of testing; and 4) the extent of services provided. Savings may be used to offset the cost of employing a professional manager.

*Consortium members pool their resources in order to address their needs in a more cost effective or efficient way than could be done independently.*

### **Advantages of Consortium Participation**

## WHAT IS A CONSORTIUM?

### *Time and Effort*

A consortium may perform many of the program-related activities. By pooling administrative functions, a consortium can save its members time and effort in implementing drug and alcohol testing programs which of course, may provide additional cost savings.

### *Confidentiality*

The impartiality, professionalism, and confidentiality of the testing program may be enhanced by having a consortium manage parts of a testing program with its own, separate staff. Employee apprehension regarding the abuse of testing information may be reduced through a consortium.

### *Liability*

Although employers may not legally contract away their responsibility to comply with the U. S. Department of Transportation (USDOT) regulations, a consortium can distance employers from the actual operation of the testing program, thereby limiting an employer's potential exposure to technical liability associated with operating a testing program. For example, a well-managed consortium may reduce liability risks regarding improper disclosure of individual testing results, improper procedures in collecting specimens, and confidentiality and security of testing records.

## DISADVANTAGES OF CONSORTIUM PARTICIPATION

There are also potential disadvantages to being a member of a drug and alcohol testing consortium, including:

### *Control*

By joining a consortium, each member transit agency loses operational autonomy over its testing program. The ability to make changes or to specify procedures different from the consortium's accepted methods may be limited. Likewise, members may be dependent upon consortium personnel for certain aspects of their testing programs. Timely services may be difficult to ensure, such as obtaining records or resolving problems.

## Advantages of Consortium Participation

*Employee apprehension regarding the abuse of testing information may be reduced through a consortium*

## Disadvantages of Consortium Participation

### *Compromise*

A consensus process is usually used to establish the consortium's operating policies and procedures. This process enables the consortium to best achieve the various goals of the consortium while addressing the needs of its individual members, all of which necessarily requires some level of compromise. Some members may find that services important to them individually are not available through the consortium or are available on an unsatisfactorily limited level. Accordingly, they will need to contract for these services on their own, if at all.

### *Financial Risk*

There may be financial risks in joining a consortium. If some members fail to pay their share of consortium costs, other members may be required to pay the difference. It is also common practice to charge a membership fee in addition to fees for each test performed. Membership fees may be increased regularly if adequate controls are not maintained. For example, if membership in the consortium decreases over time the fees for the remaining membership may increase.

### *Administrative Burden*

The amount of time and effort required to administer a consortium depends upon its size, type and available expertise. Generally, consortia require a great deal of time to establish and maintain. Forming and maintaining a consortium requires the dedication and on-going commitment of many people. Problem-solving is a time consuming task and requires significant effort on the part of members to resolve relevant issues. Also, an increasing membership necessarily requires increased investments in administration and problem-solving operations.

## CONSORTIUM MODELS

Drug and alcohol testing consortia are structured and managed in many different ways. To a large extent, the differences relate to the level of management services the consortium provides. In reviewing consortium models, it is useful to distinguish between the **administrative services** the consortium provides and the **testing services** which are procured through the Consortium.

Management services include: organizing the consortium and developing a written agreement among members, developing bids for testing services and

### **Disadvantage of Consortium Participation**

*Some members may find that services important to them individually are not available through the consortium or are available on an unsatisfactorily limited level. Accordingly, they will need to contract for these services on their own, if at all.*

## Consortium Models

## Consortium Models

contracting with selected vendors, monitoring service delivery, and reporting. Testing services include: specimen collection, testing specimens at certified laboratories, Medical Review Officer (MRO) services, providing Evidential Breath Testing devices (EBTs), Substance Abuse Professionals (SAPs) and Breath Alcohol Technicians (BATs).

Three basic Consortium Models for administrative services are presented below. They are: a Purchasing Cooperative model, a Separate Management Entity model and a Managing Partner model.

### ***Purchasing Cooperative***

In a Purchasing Cooperative model, the consortium seeks services at reduced prices, taking advantage of the large-volume buying power of the group. The consortium negotiates terms and conditions with suppliers, but generally provides no other management services. Once a suitable pricing schedule is established, suppliers interface directly with each individual consortium member. Although the purchasing cooperative model should help small agencies obtain needed services at reduced prices, it generally does not help with any of the other services which need to be provided in implementing a complete drug and alcohol testing program, such as monitoring suppliers, employer and employee training, recordkeeping and reporting.

### ***Separate Management Entity***

In the Separate Management Entity model, the consortium provides a broader level of management assistance to member agencies. A more extensive management function is provided. The consortium may assist member agencies in monitoring, providing training and preparing management reports, as well as in procuring direct testing-related services at reduced prices. Through this type of consortium, member agencies sign an agreement which specifies the management responsibilities of the consortium, how management costs will be shared among members, and how testing will be implemented.

Often, under this model a state transit association or a state department of transportation takes the lead in establishing the consortium. The lead agency may then provide additional management services itself, and hire staff, or more commonly, contract with a third-party administrator to perform management functions and procure direct testing services from individual suppliers.

The Separate Management Entity model requires strong leadership and a commitment on the part of participating agencies. Oversight

*The consortium may assist member agencies in monitoring, providing training and preparing management reports, as well as in procuring direct testing-related services at reduced prices.*



will be required by a consortium administrator who is knowledgeable about the testing regulations, contracting and the needs of consortium members. The cost of managing and operating the consortium is in addition to the cost of purchasing drug and alcohol testing services. However, this can be cost effective because it spreads administrative costs over all of the member agencies.

Obtaining testing services can be the responsibility of consortium staff or a third-party administrator. Managing testing services from within requires a staff large enough to oversee each of the individual service contracts, process billing for these contracts, as well as perform all the administrative functions of the consortium. Hiring a third-party administrator allows for a single point of control between the consortium and the vendors providing testing services. The third-party administrator should have demonstrated expertise in the transportation substance abuse field. The third-party administrator is essentially a general contractor, who subcontracts with other vendors to provide the full package of testing services required.

The Separate Management Entity model provides members with management expertise and avoids the costs each member would otherwise be forced to absorb in the hiring or training of its own expert. While this model provides expertise and flexibility in management, this high level of service may come at an unacceptably high price. Thus, the more diverse the needs of the consortium members, the more difficult this model will be to implement effectively.

### **Managing Partner**

In a Managing Partner model, typically smaller transit agencies contract for services with a larger organization which is subject to USDOT testing regulations. This could be a city or county, a regional transit authority or school district. The larger organization utilizes the staff and resources to manage its own testing program, and provides staff time to the other entities in administering the testing program. This is typically done on a fee basis, thereby providing an economic benefit to both the managing partner and the other member entities. The larger organization becomes the managing partner with the responsibility of assuring that the testing needs of its smaller partners are met. The Managing Partner model could be an option for an agency that cannot afford its own professional management of the drug and alcohol testing program. However, the smaller agency must be willing to give up essentially total control and may find that it becomes overly dependent on the managing partner's knowledge and expertise.

## **Consortium Models**

### **Managing Partner**

**Table II-I**  
**Consortium Models Summary**

	<b><u>Form</u></b>	<b><u>Function</u></b>
<b>Purchasing Cooperative</b>	Lead agency negotiates group price for testing	Group purchase only
<b>Separate Management Entity</b>	Non-group member manages and contracts for testing services	Group purchase and other training, monitoring, record keeping
<b>Managing Partner</b>	Group member manages and contracts for testing services	Group purchases and other services training, monitoring, record keeping
	Consortium members contract with managing partner	

**Consortium  
Management of  
Testing Program  
Requirements**

**CONSORTIUM MANAGEMENT OF TESTING PROGRAM REQUIREMENTS**

FTA requirements may be addressed through a consortium. A consortium may contract out these services or it may provide these services itself. Advantages associated with providing or obtaining these services through a consortium are outlined in Table II-2.

**Table II-2  
Advantages of Consortium Participation**

<b><u>FTA Requirement</u></b>	<b><u>Consortium's Advantage</u></b>
<b>Specimen Collection</b>	Greater purchasing power may attract larger suppliers with a broader network of collection sites, longer operating hours, and/or emergency back-up provisions.
<b>Laboratory Analysis</b>	Greater purchasing power may lower the individual cost of urine specimen analysis.
<b>Medical Review Officers</b>	Greater purchasing power may lower the individual cost of the review and verification of test results.
<b>Breath Testing</b>	Economics of scale may provide a stronger network of breath testing sites and/or provide a system of shared use among agencies in the same area. Greater purchasing power may lower the individual cost of evidential breath testing devices.
<b>Substance Abuse Professionals</b>	Greater purchasing power may lower the individual cost of employee evaluations and treatment recommendations.
<b>Employee Assistance Programs</b>	Greater purchasing power may lower the individual cost of providing assistance to employees with drug or alcohol problems.
<b>Training/Education</b>	Economies of scale may provide more opportunities and/or less expensive instruction for both employee education and supervisory reasonable suspicion training.
<b>Recordkeeping</b>	Economies of scale may provide a lower cost of secured record storage. The confidentiality of records may be enhanced by making the consortium responsible for much of the safekeeping of sensitive records.
<b>Reporting</b>	Economies of scale may provide a lower cost of producing quarterly and annual reports. The accuracy of reported data may be enhanced by having the consortium review all testing data and produce uniform report data for its members.

## DOT GUIDELINES ON CONSORTIA

In the July 25, 1995, issue of the Federal Register, the USDOT published a notice entitled “Guidance on the Role of Consortia and Third-Party Administrators in DOT Drug and Alcohol Testing Programs.” The notice responds to questions relating to the proper role of consortia and third-party administrators regarding their use by employers in drug and alcohol testing program management. The following summarizes the main points of the guidance. Further details are included in various chapters throughout this manual. A copy of the guidelines in their entirety is provided in Appendix G of this report.

Consortia and third-party administrators (C/TPAs) can help employers meet the drug and alcohol testing requirements. The USDOT encourages the availability of C/TPAs. The following summarizes its views and interpretations of the general role and function of C/TPAs regarding drug and alcohol testing programs.

- ◆ Employers may not contract away their ultimate responsibility to comply with FTA rules. Employers are responsible for ensuring that the C/TPA performs its services in accordance with the applicable regulations. The employer remains obligated to FTA for compliance. **The employer is subject to enforcement action by the FTA if the C/TPA fails to implement any aspect of the program as required in 49 CFR Part 40 and the FTA regulations.**
- ◆ The consortium acts as the agent of the employer, and “stands in the shoes of the employer, subject to certain limits. The limits on the use of C/TPAs as agents include the following:
  - A C/TPA cannot make reasonable suspicion, post-accident, or refusal-to-test determinations.
  - A C/TPA cannot be made responsible for ensuring that an employee who has tested positive for alcohol or drugs, or otherwise violated the regulations, is removed from safety-sensitive duties.
  - A C/TPA is obliged to transmit quarterly laboratory statistical summaries to each actual employer; the fact that a C/TPA stands in the employer’s shoes does not eliminate this responsibility.

## DOT Guidelines on Consortia

**FTA Guidelines on  
Consortia**

Within these limits, the duties mandated by the regulations and assigned to employers may be carried out by the C/TPAs, acting in an agent capacity.

- ◆ Consortia may combine employees from more than one federally regulated entity or industry in a random pool. For example, FTA and FHWA covered employees may be combined in one pool. However, employees not covered by USDOT regulations may not be part of the same random pool with USDOT covered employees.
- ◆ In their role as agents of the employer, C/TPAs must follow the same regulations as the employer regarding the retention, security, access, confidentiality, disclosure, and transmission of records.
- ◆ Documentation must be forwarded to and be maintained by the actual employer when applicable operating administration rules require it (e.g., final individual test results, documents for reviewing during inspections, etc.).
- ◆ C/TPAs performing concurrently the duties as an agent of an employer and as an agent of a laboratory, MRO, SAP, or EAP must ensure the separation, independence, and confidentiality of these different operations. Such C/TPAs must establish safeguards against these conflicts of interest, including both physical and managerial provisions.

These issues must be seriously evaluated in considering participation in a drug and alcohol testing consortium.

The next chapter presents examples of existing drug and alcohol consortia operating around the country. It provides information about these organizations, their services, their successes and issues they are currently facing.



*Existing Consortia and Multi-Service Providers*





### **III. EXISTING CONSORTIA AND MULTI-SERVICE PROVIDERS**

This chapter presents abbreviated case studies of transportation drug and alcohol testing consortia currently in operation. These include state-based consortia and other types of consortia. Packaged testing services and third-party administrators are also discussed.

#### **STATE-BASED CONSORTIA**

Examples of six state-based drug and alcohol consortia are presented below. They reflect current efforts of transit agencies in Arkansas, Colorado, Connecticut, Florida, Kansas and Tennessee.

##### ***Arkansas***

The Arkansas Transit Association (ATA) is a non-profit trade association for transit agencies. In 1994, ATA entered into an agreement with the Arkansas State Highway and Transportation Department to establish and monitor a program of drug and alcohol testing services for transit authorities in Arkansas that must meet the requirements of the FTA regulations. The applicable FTA sections for purposes of this chapter are 49 U.S.C. 5307 (previously known as Section 9) and 49 U.S.C. 5311 (previously known as Section 18). A separate consortium was established by ATA to meet the needs of private non-profit transit operators and transportation systems funded under 49 U.S.C. 5310 (previously known as Section 16) that must meet the requirements of the FHWA regulations if their drivers are required to have Commercial Drivers' Licenses (CDLs). Each consortium functions independently. These consortia are examples of the separate management entity model, as discussed in Chapter II of this manual. ATA's Executive Director functions as the full time program manager and its board functions as an oversight committee. ATA hired a third-party administrator to provide turn-key drug and alcohol testing services for each member agency. The individual agencies participating in the consortium must agree to maintain ATA membership, which costs \$240 for Section 5307 and Section 5311 operators, and \$75 for Section 5310 operators.

The turn-key vendor provides collection sites, laboratory testing, medical review of test results, alcohol testing, random selection, data reporting, and some record keeping. Alcohol testing is performed at the collection site. The individual agencies are responsible for procuring Substance Abuse Professional (SAP) and Employee Assistance Program (EAP) services. ATA

#### **State-Based Consortia**

*A separate consortium was established by ATA to meet the needs of private non-profit transit operators that must meet the requirements of the FHWA regulations. Each consortium functions independently. These consortia are examples of the separate management entity model, as discussed in Chapter II of this manual*

monitors the vendor's services for regulatory compliance and customer satisfaction. Agency grievances are handled through ATA's Executive Director. ATA provided assistance to consortium members in developing their respective policy statements. ATA subsidizes supervisory training for member agencies.

ATA's consortium membership consists of three Section 5307 operators and nine Section 5311 operators. Forty Section 5310 operators belong to the consortium designed for operators complying with the FHWA regulations. Approximately 600 employees will eventually be included under the ATA program. Although the drug and alcohol testing program is an added responsibility for ATA, the individual transit operators are relieved of much of the contracting and monitoring burdens of testing.

According to ATA's Executive Director, it is important to monitor closely the vendor's services and bills for performance and cost effectiveness. It is also essential to ensure that the program manager is very familiar with the regulations in order to competently support the transit agencies. For training, ATA found it helpful to have a full-time trainer to meet the agencies' needs for initial and on-going training. ATA experienced a contracting process which took longer than initially planned. ATA expects that the increase in supply of vendors will likely result in lower prices.

**Table III-1  
Positive/Negative Experiences in Arkansas**

**Positive Experiences**

- ◆ Interest in joining the consortium has increased ATA's membership.
- ◆ The administrative functions provided by the consortium have reduced the administrative burden of the member agencies.

**Negative Experiences**

- ◆ Some difficulties were experienced in procuring collection services in rural areas.
- ◆ Some difficulties were experienced in finding a sample policy statement that meets the FHWA requirements.
- ◆ The costs of administering the consortium are proving to be relatively expensive.
- ◆ Administering the consortium is time consuming.

## **Colorado**

The Colorado Drug and Alcohol Testing Consortium was created through the Colorado Association of Transit Agencies (CASTA) in November, 1994. The Executive Director of CASTA and its board decided to form a consortium to help member agencies respond to the federal drug and alcohol testing regulations. The Colorado consortium generally fits the purchasing cooperative model discussed in Chapter II of this manual. CASTA, a nonprofit entity, took the lead in selecting a third-party administrator to obtain drug and alcohol testing services for participating agencies. CASTA itself, however, has no contractual relationship or memorandum-of-agreement with the third-party administrator. CASTA members contract directly with the selected third-party administrator for a variety of services identified in the Request for Proposals. Because CASTA has no legal responsibility for the administration of services, it has no liability regarding the services. The third-party administrator and the individual transit agency assume all the liability for compliance with testing regulations.

The CASTA Board of Directors solicited bids from ten potential third-party administrators. The selection was made through formal evaluation and interview processes. The establishment of the consortium took approximately five months from the preparation of the RFP, to implementation of service in January of 1995. The third-party administrator has contracted with fourteen transit agencies. The consortium provides services for both FTA and FHWA regulated agencies, with separate pools for random testing.

CASTA does not provide a single point of contact or control to ensure compliance with federal regulations. CASTA and the Colorado Department of Transportation (CDOT) have, instead, focused on jointly providing training and compliance workshops using Rural Transit Assistance Program (RTAP) funds. It is primarily up to member agencies to develop drug and alcohol policies, provide in-house training and contract with the third-party administrator for services, as needed. The third-party administrator provides a range of assistance, from basic services such as draws for random testing, laboratory tests, Medical Review Officer, and/or record keeping as part of a comprehensive program encompassing all mandated testing program components.

CASTA requires agencies to become CASTA members in order to receive volume pricing it negotiates with the third-party administrator. CASTA membership fees are based upon the operating budget of each individual agency. CASTA memberships dues range from \$25 to \$5,000 per year. The third-party administrator requires a one-time administrative or set-up fee of \$250 to join the consortium. The cost for either a drug or alcohol test

## **State-Based Consortia**

*The Executive Director of CASTA and its board decided to form a consortium to help member agencies respond to the federal drug and alcohol testing regulations. The Colorado consortium generally fits the purchasing cooperative model discussed in Chapter II of this manual.*

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through the consortium is \$34. Included in that fee is a \$2 fee which is paid to CASTA through the third-party administrator. This \$2 fee helps to reimburse CASTA for the cost of conducting the bidding process and providing general technical assistance.

Some agencies contract directly with local collection sites for both drug and alcohol testing. In this case, the third-party administrator simply provides basic administrative and reporting services. It is the transit agency's responsibility to develop and enforce its drug and alcohol testing policies, appoint an in-house program administrator, supply the third-party administrator with employee information in its desired format and ensure that protected files/records are maintained.

CASTA feels that the consortium gives its member agencies an opportunity to obtain services at a lower cost. It is believed that consortium membership should also result in more uniform compliance and recordkeeping, while providing members with more control over the quality of services rendered. The CASTA consortium expects to undertake a formal evaluation of the third-party administrator during the later part of 1996. According to CASTA's Executive Director, the time taken to develop a working relationship between each member agency and the third-party administrator was time well spent. CASTA developed the drug and alcohol consortium as a service to its members and feels that it was worth the effort.

**Table III-2  
Positive/Negative Experiences in Colorado**

**Positive Experiences**

- ◆ Since the time the consortium has been established and CASTA has negotiated pricing for its members, only minimal additional time has been required to maintain the consortium. There is no billing or contractual oversight in this model.
- ◆ Agencies who were not CASTA members previously, have joined in order to contract with CASTA's third-party administrator.
- ◆ It is felt that involving the CASTA board at the initial stages was essential in gaining the board's support.

**Negative Experiences**

- ◆ Establishing the consortium required an extensive investment of the Executive Director's time.
- ◆ Many of the references listed by the proposing third-party administrators did not provide positive feedback.

### ***Connecticut***

In 1989 the Deputy Commissioner of the Bureau of Public Transportation of the Connecticut Department of Transportation (CTDOT) designated the Greater Hartford Transit District as the lead agency and administrator to develop a state-wide substance abuse testing consortium for the implementation of the then Urban Mass Transportation Administration (UMTA) anti-drug program as established in 1988 by 49 CFR Parts 29, 40 and 653. The consortium and the anti-drug program were in full operation when the UMTA regulation was suspended in 1990, so rather than suspend all testing at that time, CTDOT decided to continue the testing under the guidelines of the Connecticut General Statutes. Therefore, Connecticut has been conducting drug testing since 1990, transitioning the larger transit districts to the FTA regulations in 1995 and the smaller districts in 1996.

The Connecticut Consortium resembles both the Separate Entity and the Managing Partner models described in Chapter II of this manual.

The consortium is an administrative entity, with a full-time Program Administrator responsible for the day-to-day operation of the consortium. The consortium is comprised of a total of 69 transit operators throughout Connecticut including all federally funded transit authorities and private contractors providing fixed route service, private contractors, agencies (e.g., American Red Cross, United Cerebral Palsy, etc.) and municipalities providing paratransit service, and all primary maintenance contractors. The consortium has employees covered by regulations of both the FTA and FHWA.

The consortium has engaged a third party administrator to provide specific services such as selection of collection sites for urine and breath samples, laboratory testing facilities, and some management services (i.e., monthly selection of employees for random testing, report generation, and record keeping). The contractor also provides MRO, SAP, BAT and EAP services to assist in the initial screening and counselling of employees who have tested positive or refused to take an alcohol or drug test. The contractor also is responsible for ensuring that each service provider meets all federal requirements.

The Connecticut consortium is unique in that the entire state is covered under one program that is administered by a single administrator. Centralized management under the consortium has resulted in uniform compliance with federal drug and alcohol testing regulations by all operators state-wide with reduced costs and improved efficiency. Through centralized administration and management the Connecticut Drug Consortium serves both transit

### **State-Based Consortia**

*The Connecticut Consortium resembles both the Separate Entity and the Managing Partner models described in Chapter II of this manual.*

*The Connecticut consortium is unique in that the entire state is covered under one program that is administered by a single administrator.*

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employers and safety sensitive employees by providing state-of-the-art testing policies reflecting the most recent changes in applicable federal regulations, centralized drug and alcohol test administration and uniform application of testing regulations to all employees statewide.

A contact person is designated by each operator who is responsible for the in-house management of its program, who reports directly to the consortium's Program Administrator. All contact persons report to the Program Administrator, who serves as the single point of control for all the FTA related testing in Connecticut, thereby enabling the State to readily determine the ongoing status of testing as well as the status of each participant's compliance.

**Table III-3  
Positive/Negative Experiences in Connecticut**

<p><b><u>Positive Experiences</u></b></p> <ul style="list-style-type: none"> <li>◆ Employers have become aware of, and appreciate, the sensitive nature of the testing programs.</li> <li>◆ The administrative functions of the consortium have reduced the management burdens of the transit agencies.</li> </ul> <p><b><u>Negative Experiences</u></b></p> <ul style="list-style-type: none"> <li>◆ Initially, there was some difficulty making sure collection sites were using the correct forms.</li> <li>◆ There has been difficulty in procuring collection services in some rural areas.</li> <li>◆ Initially, there were difficulties in making sure that reasonable suspicion and post accident testing were performed under the proper circumstances.</li> <li>◆ Although union approval is not required, the consortium experienced difficulties gaining union acceptance of drug and alcohol testing policies and procedures.</li> </ul>
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***Florida***

The statewide Substance Abuse Management Services (SAMS) contract was created in 1995 by the Public Transit Office of the Florida Department of Transportation (FDOT). Although SAMS is not a legal entity, it essentially meets the definition of a separate entity model described in Chapter II because SAMS is part of FDOT. Through SAMS, the FDOT engaged a third-party administrator, thereby placing FDOT in an oversight capacity. The third-party administrator provides and manages all the drug and alcohol

## EXISTING CONSORTIA AND MULTI-SERVICE PROVIDERS

### State-Based Consortia

*The statewide Substance Abuse Management Services (SAMS) contract was created in 1995 by the Public Transit Office of the Florida Department of Transportation (FDOT). Although SAMS is not a legal entity, it essentially meets the definition of a separate entity model described in Chapter II because SAMS is part of FDOT.*

*There are no up-front fees for consortium member agencies in Florida. The only cost to the agency are the contractor fees for drug and alcohol tests. The third party administrator training and technical assistance is provided at no additional charge.*

testing services except for substance abuse professional (SAP) services. Member transit agencies must contract for these services on their own.

FDOT began developing this consortium in the Fall of 1994 by establishing a task team of representatives from FDOT's district offices, lead by FDOT's Transit Safety Manager. Although no representatives from transit agencies were members of the task team, FDOT district representatives provided input to local transit providers. Specifically, the task team provided technical assistance, defined needs, helped with RFP development and evaluated the six submitted proposals. In September of 1995, the FDOT, through SAMS, negotiated a joint participation agreement with the third party administrator. The cost of testing is currently \$36.50 for drug tests and \$30 for alcohol tests. These costs will be lowered if there is a substantial increase in the volume of testing.

Currently, FT A recipients participating in the consortium include 49 U.S.C. 5307 and 49 U.S.C. 5311 systems throughout the state, as well as contractors that must comply with the regulations. Member agencies obtain services by signing a purchase agreement or letter of intent with the third-party administrator. A copy of this agreement is also sent to the FDOT. Currently there are approximately 3,000 transit employees. Transit systems have the option of being in the state pool or their own pool for random testing. The consortium is limited to FTA covered agencies and FHWA covered public entities (such as cities and counties). For example, publicly operated 49 U.S.C. 5310 (Section 5310) operators are allowed to join SAMS, but private 49 U.S.C. 5310 (Section 5310) operators are disallowed from joining.

There are no up-front fees for consortium member agencies in Florida. The only costs to the agency are the contractor fees for drug and alcohol tests. The third-party administrator training and technical assistance is provided at no additional charge. It is the responsibility of member agencies to develop drug and alcohol policies, submit a letter of intent or commitment to the consortium, ensure that employees attend training (offered by the third party administrator), provide secure record keeping and appoint an in-house program administrator. The consortium, through SAMS, monitors and evaluates the third party administrator's services. The FDOT will conduct a formal evaluation of these services in the near future. The third-party administrator turn-key program includes: collection site contracts (no more than 25 miles from transit provider), training services (initial and on-going), certified laboratory services, MRO, record keeping, reporting, technical assistance to agencies, expert testimony in the event of litigation, and random program establishment/administration.

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The FDOT has previously expressed satisfaction with the consortium in what has been characterized as consistent statewide compliance with drug and alcohol testing regulations.

**Table III-4  
Positive/Negative Experiences in Florida**

<b><u>Positive Experiences</u></b>	
♦	The consortium has contracted with an all-encompassing third-party administrator which provides all but the SAP services.
♦	The administrative functions of the third-party administrator have reduced the management burdens of the member transit agencies in implementing the testing program.
<b><u>Negative Experiences</u></b>	
♦	The Transit Safety Manager recorded a significant time investment during the first year to establish the consortium, which is expected to drop in ongoing years.

***Kansas***

The Kansas Department of Transportation (KDOT) Drug and Alcohol Testing Program was established in January of 1995. With input received from various sources including the University of Kansas Transportation Center, the FTA guidelines entitled *Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit*; and the federal drug and alcohol testing regulations, KDOT staff defined needed services to be provided by the Testing Program. KDOT management decided to pay for all testing except pre-employment and follow-up for Section 5311 grantees. Also, Section 5307 and Section 5310 grantees will be allowed to purchase testing services through this Program.

The State of Kansas required that the RFP for the testing program be bid using negotiated bid procedures. These bid procedures allowed potential contractors to bid either on the whole package or separate portions of the RFP.

The KDOT Drug and Alcohol Consortium has elements of both a Purchasing Cooperative and a Separate Management Entity model according to the definitions provided in Chapter II. The KDOT program currently contracts with an in-state third-party administrator. It was founded in 1987 by the thirty mental health centers in Kansas. The KDOT program acts as a Separate Management Entity model because KDOT has contracted with a third party

*The KDOT Drug and Alcohol Consortium has elements of both a Purchasing Cooperative and a Separate Management Entity model according to the definitions provided in Chapter II.*



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administrator to provide turn-key testing (except for pre-employment) and support services for all of the Section 5311 agencies in Kansas. The KDOT program acts as a Purchasing Cooperative model because the individual agencies are required to contract directly with the third party administrator for pre-employment testing and testing for any non-safety sensitive employees being tested under the agency's own authority. Some of Kansas Section 5307 and Section 5310 agencies have contracted directly with the third party administrator for turn-key testing services at prices negotiated by KDOT.

All of the costs for testing of the Section 5311 grantees including reasonable suspicion, random, post accident, return-to-duty and follow-up drug and alcohol testing are billed to KDOT and paid with State Transit Funds. Section 5307 and Section 5310 grantees are billed directly. The price for all testing and technical support provided by the third party administrator is based upon the total number of employees that are covered through the KDOT contract and the individual transit agency contracts. There was an initial start-up fee of \$13,000 for the alcohol testing program. Currently, there is a \$47.50 fee per alcohol test and an annual fee of \$55.00 per employee for drug testing. These fees are calculated to include all of the ancillary costs of the turn-key services provided by the third party administrator.

The KDOT contracted with a third party administrator in February of 1995 to provide drug testing services. In August of 1995, the alcohol testing services were awarded to the same third party administrator, with testing to begin in January of 1996. The third party administrator is responsible for administration, collection services, lab analysis, MRO services, breath analysis, technical support, record keeping, reporting, on-site training, policy writing services, SAP services, and providing up to two EAP visits per employee. The third party administrator has also been given the responsibility for monitoring transit agency compliance. Compliance issues are reported directly to KDOT.

The KDOT program serves as the single point of control for the testing of the Kansas Section 5311 grantees. KDOT staff meets monthly with the third party administrator to evaluate, problem-solve and serve as an oversight committee.

Member transit agencies are responsible for appointing a program contact person (which is formally evaluated on a regular basis), adopting an agency policy, and updating employee lists each month. Training and education to the transit agencies is provided by the third party administrator.

The KDOT consortium has expressed satisfaction with having all aspects of the drug and alcohol testing program administered by a single provider. They

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recommend that any state which is considering a state-wide consortium should formulate the relevant RFP to cover all compliance issues and that one vendor be selected for the entire contract, preferably based in-state, thereby fostering open and readily accessible communication between the third party administrator and the State agency, which should enhance the resolution of problems and assure quality service.

**Table III-5  
Positive/Negative Experiences in Kansas**

**Positive Experiences**

- ◆ The third-party administrator for the KDOT consortium is locally located, thereby enhancing accessibility.
- ◆ Ongoing monthly meetings between KDOT and the third-party administrator have been very helpful in overseeing the testing program and resolving related issues.
- ◆ The third-party administrator has arranged for a toll free number for transit agencies to obtain technical assistance.

**Negative Experiences**

- ◆ The state purchasing department reworded to RFP to allow different testing program.
- ◆ Some vendors proposed providing training using consortium felt it was important to have on-site in-person training.
- ◆ Employee and supervisor training required an unexpectedly longer period of time to complete.

***Tennessee***

The Tennessee Drug and Alcohol Consortium was created by the Tennessee Department of Transportation (TNDOT) in 1994 and is administered through the Metropolitan Transit Authority (MTA) in Nashville. This is an example of a Managing Partner model, as described in Chapter II of this manual. A task-team including representatives from the Tennessee State Transit Association and TNDOT developed an implementation plan, created the consortium concept and hired a vendor for consortium services through an RFP process. Ten proposals were received. Of the ten proposals, three comprehensively responded to the RFP. The MTA has high Disadvantaged Business Enterprise (DBE) goals, so a third-party administrator who could specifically meet the DBE standards was difficult to find. The third-party

*The Tennessee Drug and Alcohol Consortium was created by the Tennessee Department of Transportation (TNDOT) in 1994 and is administered through the Metropolitan Transit Authority (MTA) in Nashville. This example of a Managing Partner model, as described in Chapter II of this manual.*

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administrator that was selected defaulted on its contract with MTA. The Consortium has since contracted with a replacement third party administrator. The TNDOT is considering taking over the administrative responsibility from the MTA. In addition to difficulties with MTA's high DBE goals, another consideration is that the MTA may be unfairly positioned between the replacement third-party administrator and TNDOT, which assumes all legal liability.

It took approximately one year to implement the consortium. Currently, the TNDOT contracts with MTA to be the managing partner for administering the consortium. The replacement third-party administrator contracts with MTA to provide the testing services to consortium members. The consortium is limited to FTA funded agencies throughout the state, with a few exceptions. FHWA- regulated entities have their own consortium in Tennessee.

The third-party administrator's services include administration, contracting for collection sites in all 92 counties, record keeping, reporting and MRO services. Training is facilitated through the TNDOT's RTAP grant. All problems and oversight are directed to the MTA as the administrative agency. Local transit agencies must develop their respective drug and alcohol policies, in addition to providing a program administrator, secured record keeping and local SAP services. There are three large transit operators and 13 small transit operators that are currently members of the consortium. Consortium members do not pay an up-front joining fee. However, each drug test cost \$49.50 and each alcohol test costs \$35, which includes all of the costs of third party administration. A fee of about \$2,500 a year is paid to the MTA by TNDOT to act as the managing partner.

The consortium's point of control is jointly held between TNDOT and MTA, with TNDOT having ultimate decision authority. Evaluation of service has been informally communicated. The third-party administrator will be evaluated formally, once full implementation is complete. Even with the so noted difficulties which occurred during its first year, TNDOT feels that a consortium is the best option to address issues of access, consistency and assurance of compliance for FTA funded agencies. It is their view, however that the managing partner model presents some obstacles to flexibility in the selection of the consortium vendor.

**Table III-6  
Positive/Negative Experiences in Tennessee**

**Positive Experiences**

- ◆ MTA had sufficient resources to administer the consortium on behalf of TDOT.

**Negative Experiences**

- ◆ The managing partner's high DBE goals notably limited the number of fully qualified proposals.
- ◆ The original third-party administrator failed to re-qualify for this position.
- ◆ Lines of communication between MTA and the third-party administrator were insufficient.
- ◆ Although the TDOT assumes full liability for the testing program, it does not contractually maintain a minimum desired level of control over the consortium.

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**OTHER TYPES OF CONSORTIA**

**Other Types of  
Consortia**

Cities, counties and associations often form consortia to address federal drug and alcohol regulations. These other types of consortia are discussed below.

***City/County Government Consortia***

Many cities and counties throughout the country have established internal drug and alcohol testing programs. Typically these programs function as consortia by combining employees from several departments under one testing program. By establishing an internal consortium and standardizing testing procedures and administrative functions, administrative burdens to any one department are reduced.

In many cases, city/county programs are oriented to the FHWA drug and alcohol testing regulations, which typically occurs because there are a larger number of city/county employees who operate equipment requiring a CDL such as large trucks, snow plows, and other equipment. If transit services are operated by a city or county, these employees could be included in the testing program. However, it must be made clear that the FTA drug and alcohol testing regulations will apply and take precedence when both FTA and FHWA regulations affect members of the group. The FTA regulations apply to "safety sensitive" employees as opposed to only those employees who require a CDL as a condition of employment. FTA and FHWA covered

employees may be placed in separate testing pools or they may be combined into one pool.

In some cases, cities and counties contract with third-party administrators to provide some or all of the required testing services. In other cases, it is considered to be more cost effective to provide these services using the city's or county's existing resources. An accessible city or county-run hospital may serve as the urine collection site. A staff nurse could also perform the sample collection function. City or county hospitals or clinics could also provide the MRO and/or SAP services or these could be contracted to another entity. In some cases, alcohol testing services are provided by city/county hospitals, clinics, or police departments.

Non-governmental entities could also be included in the drug/alcohol testing program at the local government's discretion, as long as they fall under a USDOT regulation.

### ***Association-Based Consortia***

Trade associations, such as state transit associations and trucking associations, are well suited to developing consortia for drug and alcohol testing. Membership in the respective association is usually a requirement to join this type of consortium. Depending upon the association, membership fees may be substantial. If an organization is not already a member of the association, the membership fee becomes one of the costs to be considered in evaluating the advantages and disadvantages of joining the consortium. In addition to its membership fee, the association may charge a fee to join its testing consortium. On the positive side, association-based consortia are also likely to provide additional administrative and technical support for their members.

An association-based consortium will procure testing services which cater to the specific needs of its members. The type of consortium created, therefore, may or may not meet the needs of a particular agency. Transit agencies need to ascertain that a consortium they wish to join is familiar with FTA regulations and can accommodate those requirements. Trucking associations, for example, may not be familiar with FTA regulations and they would need to agree to make changes to assure that the proposed consortium would respond to the needs of an FTA regulated agency.

### ***Packaged Testing Services Consortia***

Direct services for drug and alcohol testing may be obtained from a variety of vendors who have combined two or more services into a package that can be obtained under one contract. Some companies originally in business to provide one service have expanded to provide several of the other required.

### **Other Types of Consortia**

*In some cases, cities and counties contract with third-party administrators to provide some or all of the required testing services. In other cases, it is considered to be more cost effective to provide their services using the city's or county's existing resources.*

**Other Types of  
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services. Some vendors have teamed with others to offer a package of services. These packaged testing service organizations are generally characterized by the testing service organization that takes the lead role. Following is a discussion of packaged service vendors lead by hospitals, clinics, laboratories and MROs.

***Hospitals/Clinics***

Hospitals and clinics may be a convenient, local means of obtaining several testing services. Many hospitals and clinics provide urine collection services and coordinate the shipment of specimens to a certified laboratory. Other program elements may also be available, such as MRO, SAP and EAP services. Some hospitals and clinics even offer breath alcohol testing services. Hospitals may conveniently offer these services on an around-the-clock-basis, which could provide a distinct competitive advantage over other non-hospital-type vendors. Drug and alcohol testing, however, is not the primary mission of hospitals/clinics and thus may not provide the commitment or responsiveness required.

***Laboratories***

Laboratories must be certified by the U.S. Department of Health and Human Services (DHHS) in order to perform urine analysis for USDOT testing programs. Some of these labs offer other services in addition to urinalysis. They may have a network of collection sites and some provide education and training and other administrative services. Other services may also be offered through a package of services offered by the laboratory. It is important to be aware of potential conflicts of interest regarding MRO, SAP and EAP services. A laboratory offering a package of services that includes any of the medical review, professional assessment or treatment services must ensure that there is sufficient separation, independence and confidentiality in the operation of these different services. Safeguards against conflicts of interest must be established and maintained, including both physical and managerial provisions.

***Medical Review Officer Services***

Some medical review organizations have teamed with other testing service vendors or developed other testing services within their organizations. Typically, MRO services are grouped with collection site services and laboratory services due to strict confidentiality and custody control requirements. However, some medical review organizations also offer assistance with alcohol testing and administration. When a medical review organization offers laboratory, SAP and/or EAP services there exists the same potential for conflicts of interest as described with regard to laboratory-based packaged services. Sufficient safeguards must be in place to ensure the

separation, independence and confidentiality in the operation of these services.

### ***Third-Party Administrators***

Third-party administrators usually provide a complete package of services which include most or all aspects of drug testing, alcohol testing and program administration. These services are provided under one contract and for a set price. Third-party administrators may take different forms and may be referred to by different terms. In general, there are two types of third-party administrators including, “turn-key” vendors and service “brokers.” Each type of third-party administrator provides testing services to clients under one contract and bills clients for a variety of services to be generally included in one invoice.

“Turn-key operators” offer a pre-packaged set of services to the consortium for a set price. The services offered typically include: MRO, laboratory and collection sites as part of the pre-packaged program. “Service brokers,” on the other hand, are typically selected by the consortium and then go out and negotiate rates with various vendors for the desired services (MRO, laboratory services, collection sites, etc.).

The goal of using a third-party administrator is to make service contracting and service monitoring easier. Preferably, all service issues are handled through a single contact person working for the third-party administrator. The third-party administrator should also be accountable for the performance of all services provided. It must be remembered, however, that transit agencies, or others implementing drug and alcohol testing programs, cannot legally contract away their overall responsibility for being in compliance at all times with USDOT’s drug and alcohol regulations.

In the next chapter the question, “Is a consortium right for you?” is addressed.

### **Other Types of Consortia**

*The goal of using a  
third-party  
administrator is to make  
service contracting and  
service monitoring  
easier.*





***Is a Consortium Right for You?***



## **IV. IS A CONSORTIUM RIGHT FOR YOU?**

After reviewing the consortium examples presented in the previous chapter, it is apparent that although consortium membership may offer significant advantages, there are also potential disadvantages which should be considered. This chapter presents issues that should be fully considered prior to making a decision regarding joining a consortium, and relate to specific needs, available resources and the need or desire for specific services.

### **EVALUATING YOUR NEEDS**

An essential first step is to clearly identify the specific needs of your agency related to drug and alcohol testing. It is important to consider the number and types of tests you will be conducting, where the testing will be done, the hours when testing may be required and whether FTA or FHWA administrative requirements must be followed.

#### ***Numbers and Types of Tests***

How many tests do you anticipate conducting over the course of the year? How many pre-employment tests? How many random tests? How many post-accident, reasonable suspicion and follow-up tests? The anticipated total number of tests to be conducted will be an indicator of the amount of time that will be required to oversee the testing process, and relate directly to potential cost savings which may be achieved through consortium membership. Small agencies may achieve significant cost savings through volume discounting. Larger agencies may also be able to achieve reduced prices.

#### ***Random Testing***

There are two primary issues related to random testing which should be considered, including the random selection process and testing confidentiality. It will be essential to have an acceptable random selection process. In small agencies, it may be desirable to be part of a larger pool to ensure the scientific credibility of the test. The issue of confidentiality also may be easier to address by being part of a larger pool and the selection process may be perceived by employees as being more objective.

### **Evaluating Your Need**

### ***Location - Proximity to Services***

The type and size of your service area will affect your needs in terms of implementing a drug and alcohol testing program. If you are based in an urban area, it may be relatively easy to find the services required - a Medical Review Officer (MRO), a Substance Abuse Professional (SAP), evidential breath testing devices (EBTs), collection sites, Employee Assistance Programs (EAPs), etc. However, these services may not be readily available in rural areas, as noted in Chapter III of this manual. A consortium may be helpful in identifying vendors who meet all of your needs in fulfilling the federal drug and alcohol testing requirements.

### ***Service Hours***

An important consideration in evaluating the needs of your agency relates to the hours and days that testing services will be needed. Which days of the week and what hours of the day or night might both drug and alcohol testing need to be available to your organization? Collection sites and EBTs must be available at least during all hours that employees are performing safety-sensitive functions for reasonable suspicion, random, and follow up testing. Due to the urgency of post-accident testing, collection sites and EBTs should also be available after hours, preferably up to eight hours after the end of your regular service hours. These requirements need to be considered for both urban and rural services.

### ***Political or Legal Issues***

For some agencies, there may be a desire to distance the testing procedure as much as possible, to minimize issues concerning confidentiality or the integrity of the testing process. Contracting with a consortium or another entity may be desirable from this perspective.

### ***FTA, FHWA or Both?***

Your drug and alcohol testing needs and your decision to participate in a consortium will be affected by the federal regulatory agency or agencies to which you must respond. While the testing requirements by themselves have essentially parallel components, there are differences in policy orientation. The FTA program relates to “safety

### **Evaluating Your Needs**

***Your drug and alcohol testing needs and your decision to participate in a consortium will be affected by the federal regulatory agency or agencies to which you must respond.***

sensitive” functions being performed at agencies receiving FTA Section 3, 5307 and 5311 funding. The FHWA program focuses on persons required to have a Commercial Drivers License (CDL) as a prerequisite to their job. Your ability to participate in various types of drug and alcohol testing consortia could be affected by the specific regulations with which you must comply.

## **EVALUATING YOUR INTERNAL RESOURCES**

Once you have clearly identified your needs, the next step is to determine available internal resources. These include staffing, financial and legal resources.

### ***Staffing***

Staff will be required to implement a drug and alcohol testing program at your agency. The size and expertise of your staff, and their availability, will determine the degree to which you can implement your drug and alcohol testing program on an in-house basis. Testing programs require a significant amount of administrative time to set up. Time will be needed to train supervisors and employees, develop a Request for Proposal, select and contract with vendors, monitor vendor performance, complete billing oversight and address reporting requirements. While you can contract out much of the responsibility for running a testing program to other entities, you cannot legally contract away your ultimate responsibility for implementing and maintaining a testing program that is in full compliance with all federal laws.

### ***Financial Resources***

The amount and type of financial resources available to your agency is another important consideration. While the cost per test is important, it should not be the overriding consideration. If your agency requires administrative assistance, such assistance may result in higher costs per test. Thus, it may be less expensive in the aggregate for small agencies to purchase administrative services from another entity rather than providing those services on an in-house basis. Is your agency able to purchase its own EBTs or will your state DOT or transit association make this purchase for you? Are there one or more EBTs in your community which can be shared?

## **Evaluating Your Internal Resources**

### ***Legal Capability and Liability Issues***

There are at least two legal issues which should be considered. Does your agency have the legal staff resources (time and expertise) to provide guidance regarding the development and implementation of your drug and alcohol testing policy and procedures? Although the ultimate liability of being in compliance is always your own, how much can you rely on the ability of your staff to correctly interpret and apply the applicable regulations? From a legal (and/or political) point of view, it may be desirable to have an independent, professional third-party procure the needed services (collection, lab, MRO, SAP, etc.), in order to ensure that all components of your program are in compliance.

### **EVALUATING EXTERNAL RESOURCES**

Once you have assessed your agency's internal resources, it will be necessary to determine what services are available in your community or in neighboring communities. It may also be necessary to evaluate the qualifications of those services available in your area. Convenience should not outweigh quality in the selection of services required to meet the regulatory standards. Furthermore, you should investigate specific needs that must be provided within a reasonable distance and time frame, such as collection sites, EBTs, Breath Alcohol Technicians (BATs) and SAPs. There may be other functions and services for which you decide to contract, such as training, some management services and EAP programs.

To assist in providing a clear understanding of the responsibilities that consortia have to their members, checklists have been developed in Tables IV -1-5.

### **DETERMINING WHAT SERVICES TO CONTRACT OUT**

When the evaluation of your internal and external resources is complete, the next decision is to determine which components of your drug and alcohol testing program will be conducted in-house and which will be contracted outside of your organization. As part of this process, it is important to remember that in the final analysis, your agency is responsible for full implementation of your drug and alcohol testing program, regardless of whether or not you contract out individual testing components. The ultimate responsibility is yours - others may be used to assist with administrative

### **Evaluating Your Internal Resources**

### **Evaluating External Resources**

### **Determining What Services to Contract Out**

functions and for specific testing services, but the ultimate responsibility remains with your agency.

Items to consider with regard to retaining in-house services or contracting those services to outside providers:

### ***Administrative Services***

- ◆ Policy development
- ◆ Developing specifications and sending out requests for bids for testing services
- ◆ Evaluating bids and selecting vendors
- ◆ Developing and awarding contracts
- ◆ Monitoring contract compliance
- ◆ Supervisor training
- ◆ Employee training regarding affects of drugs/alcohol
- ◆ Employee training regarding applicable policies of your organization
- ◆ Record keeping
- ◆ Reporting
- ◆ Legal services
- ◆ Employee Assistance Program (EAP)

### ***Testing Services***

- ◆ Urine collection
- ◆ Evidential Breath Testing Device (EBT)
- ◆ Breath Alcohol Technician (BAT)
- ◆ Substance Abuse Professional (SAP)
- ◆ Medical Review Officer (MRO)
- ◆ Laboratory analysis of urine tests

Once you have determined what services you want or need to contract to outside providers, you are then in a position to decide if these services can be more efficiently obtained on your own or through consortium membership.

### **IS A CONSORTIUM THE BEST APPROACH FOR YOUR ORGANIZATION?**

After evaluating your needs and available resources and determining what services will be contracted out, the next fundamental question is to decide if consortium membership is the best way to meet the needs of your organization for services you plan to contract out. There are no uniform criteria for answering this question. Depending upon the circumstances of

### **Determining What Services to Contract Out**

### **Is a Consortium the Best Approach for your Organization?**

your particular situation, it may be obvious whether or not consortium membership is the best approach for your organization. Most likely it will be a difficult decision. To help decide if a consortium would be the best approach, it is suggested that a comprehensive list be developed of potential advantages and disadvantages to your agency in joining a consortium. Be as specific as possible and weigh each potential advantage and disadvantage carefully.

If, after you have weighed these advantages and disadvantages, you determine that consortium membership is the best approach, you then must decide whether or not there is an existing consortium you could join or if you need to work with others to develop a new consortium to meet your specific needs. Chapter V provides guidance for selecting an existing consortium. Chapters VI and VII present information on planning and designing a new consortium.

**TABLE IV - 1**  
**CONSORTIA RESPONSIBILITIES TO MEMBERS –**  
**RANDOM TESTING -**

- ◆ Ensure that each employee in the testing pool has an equal chance of being selected and tested for each random draw.
- ◆ Ensure that the random pool is current (i. e., confirm the inclusion of new hires and the exclusion of employees on extended leave or dismissed).
- ◆ Ensure that random testing is conducted at the required rate whether combined or separate pools are used.
- ◆ Develop a method of notifying members of random selection; indicate in writing the type of test, testing cycle (day, week, month or quarter); and numbers selected.
- ◆ Ensure the list of randomly selected employees reaches the members with adequate time to complete testing within the testing cycle.
- ◆ Establish notification procedures for the covered program manager included in the pool.
- ◆ Develop a procedure to track selection versus random tests completed.
- ◆ Ensure that the random selections are made as frequently as possible, but not less often than quarterly. The larger the pool size, the more frequent the selections (i. e., over 364 in pool select daily; 52-364 in pool select weekly; 12-51 in pool select monthly; less than 12 in pool select quarterly).

*To help decide if a consortium would be the best approach, it is suggested that a comprehensive list be developed of potential advantages and disadvantages to your agency in joining a consortium. Be as specific as possible and weigh each potential advantage and disadvantage carefully.*



**TABLE IV-2**

**CONSORTIA RESPONSIBILITIES TO MEMBERS  
- COLLECTION REQUIREMENTS -**

- ◆ Ensure that specimen collection procedures are followed in accordance with 49 CFR Part 40.
- ◆ Establish quality control methods to ensure that collection sites meet DOT requirements, including:
  - close geographic proximity to company.
  - ability to handle the number of tests required.
  - ability to test employees promptly.
  - availability during the hours that safety-sensitive job functions are being performed.
  - ability to conduct both alcohol and/or drug tests.

**TABLE IV-3**

**CONSORTIUM RESPONSIBILITIES TO MEMBERS  
- MEDICAL REVIEW OFFICER -**

- ◆ Ensure that the MRO is qualified.
- ◆ Ensure that the MRO performs responsibilities and determinations in accordance with 49 CFR Parts 40 and 653.
- ◆ Ensure that the MRO's duties are performed independently of and maintained in confidence from the consortium.
- ◆ Ensure that only those consortium staff members who are under day-to-day supervision of the MRO perform the specific staff functions outlined in 49 CFR Part 40.
- ◆ Ensure that the MRO properly notifies the employee of positive test results.
- ◆ Ensure that there is always an MRO available to receive and review test results.
- ◆ Ensure that the confirmed test results are sent directly from the laboratory to the designated MRO.
- ◆ Ensure that the results are sent from the MRO and/or BAT directly to the employer as soon as available.
- ◆ Arrange for physical examination of individuals with opiate positives.

**TABLE IV-4**

**CONSORTIUM RESPONSIBILITIES TO MEMBERS  
- RECORD KEEPING AND REPORTING -**

- ◆ Provide members with quarterly summaries which include employer specific information within 14 days of receipt from the lab.
- ◆ Store all records in a secure location.
- ◆ Maintain security of records and limit access (consortia are subject to the same confidential provisions as required of their members).

**TABLE IV-5**

**- SPECIAL ISSUES IN CONSORTIA MERGERS AND SALES -**

- ◆ Membership cannot be transferred unilaterally.
- ◆ Consortium must notify members of any changes in structure.
- ◆ Records remain the property of the employer.
- ◆ Consortium must ensure the secure transfer of records which must be maintained in confidence.
- ◆ Consortium should provide evidence of contracts with MROs and other service providers.

## *Joining an Existing Consortium*



## V. JOINING AN EXISTING CONSORTIUM

If you have decided that participating in a consortium would best meet your needs, one option is to join an existing consortium. Other organizations in your area, such as transit agencies, local governments, trucking associations or school districts may have already established drug and alcohol testing consortia. Participating in one of these existing consortia may be an effective alternative for your agency.

Before deciding to participate in an existing consortium, however, several key issues should be addressed in regard to the areas of federal regulatory responsibility (primarily FTA or FHWA), type and level of management and testing services, cost, monitoring and reporting, as follows:

### FEDERAL REGULATORY RESPONSIBILITY

Differences exist among the regulations issued by the various modal administrations within the U.S. Department of Transportation. Although these differences are often minor, they nevertheless need to be considered. The differences between the regulations of the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA) will, in most cases, be the most relevant. Because these differences may be subtle, it is important that the consortium you are considering joining be familiar with the specific regulations with which your organization must comply. Generally, any differences relate to the types of employees who are affected by the testing programs, prohibited behavior, employee training, post-accident test requirements, reporting requirements, and compliance penalties.

Briefly, the **FTA regulations** are oriented to "safety-sensitive" positions within a transit agency. These include drivers, mechanics, dispatchers, some supervisory personnel and others. Identifying specific safety-sensitive positions and developing testing and monitoring procedures for these employees is required. If your program falls under the FTA regulations, the testing program in which you participate must comply specifically with the FTA regulations.

The **FHWA regulations** are oriented to each employee who is required to have a Commercial Drivers License (CDL) as a condition of employment. The FHWA regulations do not address "safety-sensitive" employees, as do the FTA regulations. If your agency is an FTA recipient, the FTA regulations apply.

### Federal Regulatory Responsibility

## **TESTING PROCEDURES**

Another key area that you should investigate relates to the specific testing procedures being followed by the consortium you are considering. The following questions should be posed to that consortium:

- ◆ Who are their contractors and what services do they provide?
- ◆ Where are collection sites located?
- ◆ What are the days and hours of operation of the collection sites?
- ◆ How are emergency/after hour collections conducted?
- ◆ How is notification of random tests accomplished?
- ◆ How is the random pool organized and run?
- ◆ What is the turn-around time for test results?
- ◆ What is the cancelled test rate for the consortium?

You should also gather general information about the membership and the demographics of the consortium members. References should be requested.

## **ADMINISTRATIVE AND TESTING SERVICE COSTS**

Two cost areas are important to consider, and include the areas of administrative costs and costs for the individual testing services.

### ***Administrative Costs***

The administrative costs of joining and participating in the consortium must be considered. Is there a joining fee? Are there other on-going administrative charges, fees and expenses? What controls are in place to keep these costs from increasing dramatically over time?

### ***Testing Service Costs***

An obvious question relates to the cost per test for both drug and alcohol tests. What services are included in the cost per test? Are costs for collection, laboratory analysis and MRO review included? Are there other on-going costs which should be considered? For example, are costs for the Substance Abuse Professional included? If an Employee Assistance

## **Testing Procedures**

## **Administrative and Testing Service Costs**

Program (EAP) is available, what costs are associated with that service and how are they determined and billed?

## **TESTING PROGRAM ADMINISTRATION**

Other questions relate to how the consortium is managed. How is confidentiality handled in terms of test notification, test results, and reporting? Specific procedures regarding record keeping and reporting must fulfill the requirements of the federal regulations and of your agency. You would also want to know how easy it is to join or cancel a membership in the consortium and what requirements must be met for agencies interested in joining the consortium.

After this detailed investigation, ask this question of your own agency: "Would it be better to join an existing consortium or to participate with others to start a new consortium specifically tailored to our needs?" Although considerable effort would be required to develop a new consortium, it may be the best option. The ultimate decision should depend on how you can most cost effectively implement a drug and alcohol testing program which meets the requirements of the federal regulations with which you must comply.

The next chapter addresses how to plan for a new consortium.

## **Testing Program Administration**





## *Planning for a New Consortium*



## **VI. PLANNING FOR A NEW CONSORTIUM**

Several steps are involved in planning for a new drug and alcohol testing consortium. This chapter discusses each of these steps and provides a decision-tree to assist in determining the type of consortium which may be best for your organization.

### **WHO NEEDS TO BE INVOLVED?**

In deciding that the formation of a new consortium is desirable, your organization has taken the first step in the planning process. The next step is to determine what other parties should be involved in planning the consortium. Likely candidates are other transit agencies, the state transit association and the state department of transportation.

Other transit agencies may have needs similar to those of your organization, and may thus, be interested in participating in a consortium. It would be helpful to identify two or three other transit agencies who are so interested. The state transit association could be a key player in that it represents its member agencies and may be interested in taking the lead position in developing a consortium. The state department of transportation is another important player. State DOTs are the managers of Federal Transit Administration (FTA) Section 5311 and Section 5310 funds and are responsible for these recipients' compliance with all federal regulations, including drug and alcohol testing. State DOTs also typically play a significant role in funding transit systems in the state and they may have knowledge of other agencies who are interested in a drug and alcohol consortium.

Initial contact should be made with the specific agencies and organizations you feel may be appropriate to include in the planning process. First, contact other transit agencies, the state transit association and state DOT to determine interest in a consortium. Solicit support where needed. After contacting these organizations and determining their interest in a consortium, set up a meeting to discuss and assign responsibilities regarding the next steps in the planning process.

### **IDENTIFYING POTENTIAL MEMBERS**

The next step in the planning process is to identify potential members of the consortium. The first category of potential members would be other Section 5311 transit agencies. A list of Section 5311 operators should be obtained

### **Who Needs to be Involved**

### **Identifying Potential Members**

from the state transit association or state DOT. Other potential members include larger transit providers in your state, transit systems in nearby states, and agencies funded under the FTA Section 5310 program. It is important to remember that although Section 5310 operators are FTA grantees, they only need drug and alcohol testing for employees who require a Commercial Driver's License (CDL). Therefore, they would fall under FHWA regulations, which have slightly different requirements.

Depending upon the number of potential members among your initial contacts, it may be necessary to identify other potential candidates in order to have enough members to take advantage of economies of scale and collective buying power. If you need a larger number of potential members, your next step would be to compile a list of secondary candidates. These could include FHWA regulated agencies such as intercity bus operators, shuttle bus operators, trucking companies, city and county departments of transportation and others.

### **ASSESSING THE NEEDS OF POTENTIAL MEMBERS**

Once you have identified potential members, it will then be necessary to assess the specific testing service needs of these organizations. This could be done through a written or telephone survey. Potential members should be asked about testing services they would want a consortium to provide. Ask about both drug testing services and alcohol testing services. Also, ask what part of the testing program they may want to either provide directly or contract for on their own. Develop a questionnaire to obtain needed information. Agencies may not know all the services that are available. Be sure to distinguish between required and supplemental services. The following are examples of required testing, administrative and management, and non-required supplemental services.

<b>Testing Services:</b>	Urine Collection, Laboratory Analysis, MRO, BAT, SAP
<b>Administrative/Management Services:</b>	Education, Training, Random Number Selection, Record keeping, Reporting, Program Manager
<b>Supplemental Services:</b>	EAP, Program Monitoring, Legal Services, Technical Support

### **Assessing the Needs of Potential Members**

Typically, agencies want a consortium to procure urine collection, breath testing, laboratory drug testing and Medical Review Officer services. You will also need to know the administrative/management services that agencies would like to procure. This may include random selection, training and education, policy development, reporting and record keeping, employee assistance program services and even comprehensive testing program management services.

### **DETERMINING THE SCOPE OF SERVICES FOR THE CONSORTIUM**

After polling potential members regarding desired services, you must then determine the feasibility of having the consortium provide these services. For each service, estimate the interest among members and the cost to the consortium to provide each of these services. Investigate potential cost effective alternatives, such as third-party administrators, that could provide any or even all of these services.

### **DETERMINE THE FORM OF THE CONSORTIUM**

As discussed in Chapter II, there are three basic models for a consortium: Cooperative Purchase, Separate Management Entity, and Managing Partner. The form your consortium takes will depend upon the needs of your members, the resources that are available to your organization, and the amount of effort your organization and other participants can devote to establishing the consortium.

In assessing the needs of potential members, you should have determined the testing, administrative and supplemental needs of the interested agencies. The needs of potential members should be the greatest determinant of the form the consortium will take. If there is no need for administrative or management services and potential members are only looking for a specific package of services for a competitive price, a Cooperative Purchase model may be the most efficient form for your consortium. A Cooperative Purchase consortium would write and issue RFPs and select vendors, but it generally requires little on-going administrative effort. If the majority of potential members want administrative or managerial support along with testing services, then it might be best to consider one of the other two consortium models.

### **Determining the Scope of Services for the Consortium**

### **Determining the Form of the Consortium**

*The needs of potential members should be the greatest determinant of the form the consortium will take.*

Choosing one of the two consortium models which provide administrative or managerial support will require more thought. As an initial consideration, you will need to determine the resources available to the potential members. Could one or more members serve as a managing partner? To do so would require staff and personnel resources that could be devoted to managing and administering testing services for several transit agencies. If there are no agencies that are able and willing to take on the role of a managing partner, then some form of the Separate Management Entity would probably be an appropriate choice.

The Separate Management Entity model requires a considerable amount of time and effort to establish. A legal entity must be formed if not already available in the form of a transit association or other agency, usually as a non-profit organization. The real decision that needs to be made concerning the Separate Management Entity is the amount of internal staff required to operate the consortium. You must determine whether it is best for the consortium to have a single point of control over all testing services, or for the consortium to have direct control over individual vendors. If the consortium needs to have a single point of control over the services, then it would be best to establish a non-profit organization with a small staff, and contract with a third-party administrator. The staff could be limited to one or two knowledgeable persons. If supplemental services are to be provided, make these services part of the third-party administrator's package by requiring in the RFP that these services be included in the total package solicited by the consortium. An important aspect of the third-party administrator's responsibilities is to enable the consortium to operate with the lowest possible overhead. The single point of control that a third-party administrator offers means that all the services of the consortium can be readily overseen by a relatively small number of day-to-day operating personnel.

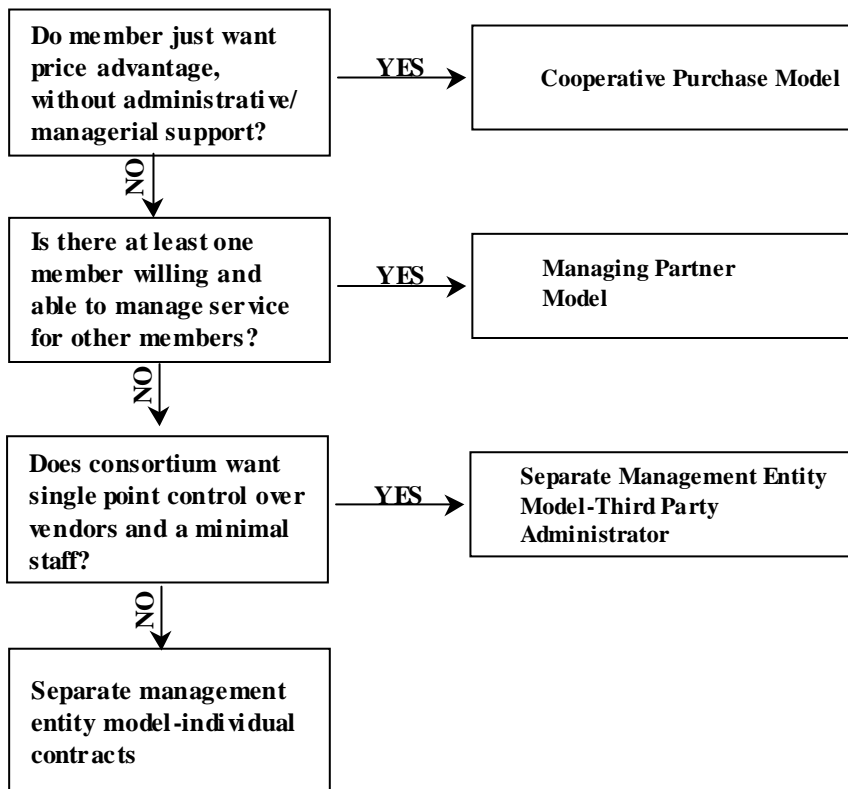
If the consortium wants direct control over individual vendors, then it would be best to set up a non-profit organization with staff who are very knowledgeable about the applicable regulations, contracting, and service monitoring. This is the most difficult type of consortium to manage, but it allows for the most complete control over vendors. Because vendors are contracted individually, it is much easier to replace a vendor who does not perform to established standards. This approach also allows your organization to contract with vendors that are best suited to your members' needs. The challenge will be to adequately control the vendors, their services, and the overhead required to operate the consortium.

Table VI-1 shows a decision tree which summarizes the key questions and answers leading to the development of the various consortium models.

*If there are no agencies that are able and willing to take on the role of a managing partner, then some form of the Separate Management Entity would probably be an appropriate choice.*

The next chapter addresses how to design your consortium once a particular model has been selected.

**Table VI-I  
Decision Tree Summary**







## *Designing the Consortium*



## VII. DESIGNING THE CONSORTIUM

Once you have determined the type of consortium to implement, several steps should be taken to design its operating structure. These steps are identified below under four general headings: organizational description, administrative responsibilities, obligations among members, and establishing a cost-sharing plan.

### ORGANIZATIONAL DESCRIPTION

The first step in formally defining the various aspects of the consortium is specifying membership, organizational structure, leadership, potential contractors and funding. Each of these categories is discussed below.

#### *Membership*

Start by formalizing a list of potential members. This list may have changed during the planning process and, in all likelihood, it will not be complete until bids have been received for testing services and agencies have formally joined the consortium. Your list of members will serve as your mailing list for the dissemination of information regarding the developing consortium. Members and potential members should be kept informed of all the various components of the consortium and other changes affecting the developing consortium.

#### *Organizational Structure*

In the planning process you determined the form of the organization. Based upon the chosen form, an organizational chart and supporting documentation should be developed. These will describe the relationships among the various participants, including lines of responsibility.

It may be helpful to develop the organizational chart first. Design the organizational chart from the top down. That is, work from the highest leadership position and then show what positions report directly to that position. Continue to work down from each position fully describing the hierarchy of the organization. Be sure to indicate how members relate to the consortium organization - who they interface with both directly and indirectly. If the consortium is part

### **Organizational Description**

*The first step in formally defining the various aspects of the consortium is specifying membership, organizational structure, leadership, potential contractors and funding.*

## Organizational Description

of a larger organization, be sure to show enough of the larger organization so it is clear how the consortium is integrated into the structure and operation of that larger organization, including direct and indirect links with the Board of Directors (if any) and operating committees of the larger organization.

The next step is to develop written descriptions of the organizational chart and the overall organizational structure. Explain the different sections of the organization and the responsibilities assigned to each section. A job description should be developed for each position within each section.

### *Leadership*

For the primary leadership positions in the consortium, indicate the names of the persons who are expected to fill those positions. Include biographical information such as educational background, work history, current career position outside the consortium (if relevant), and any other necessary information. This will be important to members as well as to potential vendors who seek to understand the strengths and weaknesses of the leadership of the consortium.

### *Potential Contractors*

Develop a list of potential contractors who could provide testing services for the consortium. All mailings to these potential contractors should indicate that contracts for testing services will be bid on a competitive basis. This list will further serve as a mailing list for sending out Requests for Proposals (RFP). Be sure to identify the anticipated services which could be provided by each contractor. You may want to include a reference list of some of the other organizations for which potential contractors currently provide services.

### *Funding*

Funding sources for the consortium should also be identified and described. This will be important for providing a more complete picture of the financial future of the organization and the implied financial risks of the members and vendors. Funding sources could include membership fees, surcharges on fees for services,

administrative fees, federal and state grants, local funds, and other sources.

## ADMINISTRATIVE RESPONSIBILITIES

A next step in designing the consortium is to define those major administrative tasks which will be conducted internally and those which will be contracted to outside vendors, all of which will vary with the type of organizational structure selected.

### *Memorandum of Understanding*

It is wise to develop a Memorandum of Understanding (MOU) between the consortium and its members. Developing the MOU should involve a representative from every member agency as well as administrative staff of the consortium. The actual writing of the MOU may be the responsibility of the consortium's Program Manager or a team led by the Program Manager. Legal counsel for the consortium and its member agencies should review the proposed MOU before it is finalized.

### *Cost-Sharing Plan*

A critical component of designing a drug and alcohol testing consortium is the development of a cost-sharing plan. This should clearly identify responsibility for payment for every available service together with a specific dollar amount of each service. If members are to be billed only for direct testing services, a per-test cost for both drug testing and alcohol testing must be developed. If the consortium also bills for administrative or other support services, the cost of providing these services must be accurately estimated and shared among member agencies. The cost of services that are provided uniformly to each member, such as the actual tests, should be priced the same for each member. Services which members may need to varying degrees should be priced and billed to members according to the number of service units they receive. Administrative costs could be assigned based on the size of each of the participating agencies.

## Administrative Responsibilities

## Administrative Responsibilities

A specific consideration must be made in regard to how consortia determine how random testing costs will be shared. The cost for each agency member can be calculated in two ways. First, the cost can be determined by the actual number of random tests performed for each agency member. Second, the cost can be determined by multiplying the number of tests for each agency member (50 percent for drug testing and 25 percent for alcohol testing) by cost of each random test. The latter method is easier. If the latter method is used, each agency would be billed for the number of random tests they would have to perform independently. Over time, the costs are equitable and budgeting for random testing expenses is made easier.

### *Request For Proposals for Contract Services*

Another major task in establishing the consortium is the preparation of an RFP for drug and alcohol testing services. Depending upon the structure and size of the consortium, this may be the responsibility of the Program Manager or a team led by the Program Manager. It is important that the Program Manager be knowledgeable of the testing process and the regulatory requirements in order to assure that the RFP is structured to cover all the important aspects of contracting out the desired services. The consortium should obtain input from potential members regarding the contents of the RFP including missing elements or proposed practices outside of the applicable regulations. Other states which have previously implemented a similar consortium should also be used as resources.

### *Review Proposals and Negotiate Services*

Another administrative responsibility will be the review and evaluation of service proposals submitted in response to the RFP. The Program Manager as well as a team of member agencies should be involved in this process. If a task team was assembled to develop the RFP, it is preferable to have this team also review the proposals. They will be familiar with the RFP and its intent. The Program Manager should check the references of the bidders and report the findings to the team.

### *Service Monitoring*

Once the consortium is in place, the Program Manager should be responsible for overseeing both the contracted services and the services provided directly by the consortium. If the consortium relies upon a turn-key operator or broker, that entity should monitor service providers, with general oversight provided by the Program Manager. Although service monitoring may be conducted by a Program Manager or a third-party administrator such monitoring does not relieve individual transit agencies of the responsibility to comply with all federal requirements. It does, however, make the contractor accountable to the consortium for any negligence and help in the resolution of problems.

### *Data Reporting*

A final administrative responsibility is data reporting. Regardless of the organizational type, lines of responsibility for producing required reports must be clearly defined. The task of compiling and formatting testing data may be assigned to the service vendor, a consortium staff person, or the consortium's Program Manager. Ultimate responsibility for the accuracy of all reported data should be assigned to the Program Manager. Any data that are supplied by the vendor or vendors should be checked against consortium and transit agency records. Discrepancies will need to be worked out between the various entities. The best practice is to produce monthly reports, but quarterly reports may be sufficient. An annual report will also be needed to meet FTA Management Information System (MIS) requirements.

## **OBLIGATIONS OF MEMBERS**

Another task in designing the consortium includes defining the obligations of members. These obligations are summarized below.

### *Policy Statements*

Each transit agency subject to FTA testing must have a written, adopted policy statement informing employees of the drug and alcohol testing program. Support for writing and amending policy statements may be provided by the consortium or vendors. However, it is the sole responsibility of the transit agency to make sure its

## **Administrative Responsibilities**

## **Obligations of Members**

*Each transit agency  
subject to FTA testing  
must have a written  
adopted policy  
statement informing  
employees of the drug  
and alcohol testing  
program.*

policy is in compliance with FTA regulations. It should be specifically stated that before contracting for services through a consortium, members need a written policy statement which has been adopted by its board of directors.

### ***Service Contracts***

If the consortium members will be contracting for services directly with vendors with whom the consortium has negotiated prices, it should be made clear to members that it is their responsibility to complete the contracting process. If members will be contracting for services through the consortium, members should be presented with a copy of the agreement and advised that it is their responsibility to sign and return the agreement to the consortium before receiving services. Services should not be provided before an agreement has been signed by both the consortium and transit agency. It is the consortium Program Manager's obligation to ensure an agreement is in place before services are rendered.

### ***Monitoring Consortium Activities***

Because a transit agency cannot legally contract away its responsibility for having a testing program that is in compliance with all applicable federal regulations, it is the responsibility of member agencies to monitor the activities of the consortium, making sure the overall testing program is in compliance. It is important that the agreement between the consortium and its members permits members to review the consortium's procedures, testing records and the qualifications of vendors. Members should also check the accuracy of data reported by the consortium against its own record of test results. If problems are found, agency members must work closely with the Program Manager to immediately implement corrective actions.

### ***Payment of Membership Dues and Testing Fees***

The agreement between the consortium and its members should clearly define the dues structure and when the dues must be paid. It should also identify the fees for services and when those fees must be paid. The agreement should further indicate the billing cycle for fees and that services will be withheld if dues and fees are not paid as required.

## **Obligation of Members**



If members will be billed for services after they are provided, a billing process, a billing cycle, and methods of payment must be established. Members should be given a reasonable amount of time to pay bills in accordance with generally accepted business practices. Safeguards and procedures for withholding services and collecting for past services should be well established and clearly defined for members. If the consortium will be paying vendors and then billing members for reimbursement, the billing cycle for members should be equal or preferably shorter than its billing cycle with vendors. Cash flow can become a serious problem if billing cycles are not properly established and maintained. Also, the consortium should plan for sufficient cash reserves which can adequately support two billing cycles without reimbursement in order to avoid collection problems with vendors. The next chapter discusses important aspects to be considered for a consortium start-up.

### **Obligation of Members**



## *Consortium Start -Up*



## VIII. CONSORTIUM START-UP

After designing the consortium, the next step is implementation. Essential steps in the implementation process are described below.

### COMPLETING A MEMORANDUM OF UNDERSTANDING

As discussed in the previous chapter, a Memorandum of Understanding (MOU) is a contractual agreement defining the working relationship between the consortium and its members. The MOU should clearly state the responsibilities of the consortium, as an independent entity, and of its individual agency members. It should clearly define the consortium's administrative responsibilities and the testing services to be procured for its members. Using the information presented in Chapter VII, a list of the specific administrative tasks the consortium will undertake should have been identified. The tasks the consortium will not address should also be identified and included in the MOU. Member responsibilities should also be clearly stated, including fees and cost-sharing arrangements, billing and payment procedures.

A draft of the MOU should be submitted to member agencies for review by legal counsel. The draft may need to be revised several times in order to address the concerns of potential members. It is important to remember that the finalized and executed MOU is a legally binding document.

### PROCURING ADMINISTRATIVE AND TESTING SERVICES

Procuring administrative and testing services involves three primary tasks including, developing Requests for Proposals (RFPs), reviewing those proposals, and awarding contracts.

#### *Developing RFPs*

In order to procure administrative and testing services for consortium members, one or more RFPs must be developed and disseminated. A range of administrative and testing services could be included in your RFP, depending on the selected consortium model and the specific services desired. You may want to structure your RFP so that vendors can bid on all or portions of the needed services. Be clear what you are asking for and whether you want a turn-key provider or alternatively, if vendors can bid upon individual services.

### Completing a Memorandum of Understanding

*It is important to  
remember that the  
finalized and executed  
MOU is a legally  
binding document*

### Procuring Administrative and Testing Services

## Procuring Administrative and Testing Services

It is important to require that all proposals contain the specific information needed to render a well-reasoned decision regarding prospective vendors. This information should include each vendors' qualifications, experience, references and current clients, in addition to specifics regarding the services they propose to provide and their price quote. The selection criteria you will use to evaluate each proposal should also be included.

Make sure to include requests for specific forms or documentation showing eligibility. This may include DHHS certification, professional liability insurance, minority/disadvantaged business enterprise status, statements of good standing, etc. Also, be sure to include the standard elements of an RFP, such as the required number of copies of each proposal, the deadline for submissions (date and time), any special contact requirements, and the address to which the proposals should be sent.

Because RFPs must be detailed and carefully worded, it is best to put together a team of consortium staff, agency members and other knowledgeable persons to assist with this task.

### *Reviewing Proposals*

Prior to reviewing any submitted proposals, your team should develop the criteria to be used in the evaluation process. Your selection criteria should be a prioritized list of factors to be used in comparing vendors. Although price is important, it should be considered relative to the completeness and quality of services offered. Price is often negotiable.

Suggested criteria include: service quality, experience, verifiable customer satisfaction, price, problem resolution, ability to coordinate with other related services, monitoring, and breadth of services offered. Once your selection criteria are established, develop a proposal review sheet based on these criteria. Design the review sheet to include a tally system for rating the proposal on each of the criteria, with room for written comments.

The goal of the review is to determine the best qualified vendors for the contract award. Depending on the number of proposals submitted, a preliminary review could be conducted in order to reject vendors that have submitted incomplete proposals, submitted proposals late, or that otherwise have a "fatal flaw."

Review packets should be assembled and delivered to each review team member. The review packets should contain a copy of each proposal that passed the preliminary review, and a review sheet for each proposal. A reasonable amount of time should be given to complete the review. You should also schedule a meeting some time after the proposal deadline to discuss the proposals and determine the short-listed candidates, usually the top three or four firms.

Once you have narrowed the review to a set of finalists, references should be checked. Next, finalists should be invited for interviews conducted by your review panel.

## CONTRACT AWARD

After you have identified the best qualified vendors, take some time to renegotiate prices and services to arrive at the best package. Don't be timid in requesting needed changes during the give-and-take final negotiation process. The selected vendor(s) should then be notified and contracts prepared. The contract should be reviewed by legal counsel for all parties. Be sure all required elements are included in the contract.

Make sure the contract includes permission to review the vendor's procedures and facilities, and those of any subcontractors the vendor uses. Also, there should be specific requirements regarding performance, including services provided by the vendor's subcontractors. These requirements should include specific performance measures and repercussions for not meeting these goals.

Be sure to leave plenty of time to complete the contract negotiation process. The experiences of many consortia indicate that this process usually takes longer than originally planned.

## TESTING SERVICE IMPLEMENTATION

The implementation phase should include provision for a "dry run" of the contracted testing services. The consortium's Program Manager should also be readily available during the start-up period to respond to specific circumstances which need attention. The Program Manager should be available to both the vendor(s) and to consortium members to answer questions, as needed. Both vendors and consortium members will be relying

## Procuring Administrative and Testing Services

### Contract Award

*After you have identified the best qualified vendors, take some time to renegotiate prices and services to arrive at the best package. Don't be timid in requesting needed changes during the give-and-take final negotiation process.*

### Testing Service Implementation

on the Program Manager to help address problems and clarify how the program is implemented.

A periodic newsletter should be considered during the initial stages of the consortium. The newsletter can provide updates regarding implementation progress and address frequently asked questions.

The next chapter addresses program monitoring.



## *Monitoring*



## **IX. MONITORING**

Monitoring will be required in two areas including, monitoring testing service vendors/contractors and monitoring the consortium as a whole.

### **INDIVIDUAL VENDORS/CONTRACTORS**

There are two main aspects related to monitoring contractors - reviewing procedures and facilities and reviewing performance. Both of these should be of critical concern because both can affect the overall effectiveness of the testing program and the transit agency's status of compliance with federal regulations. As noted throughout this manual, even though agencies are participating in a consortium, each member transit agency is responsible for maintaining its testing program in compliance with all applicable the federal regulations.

The consortium's Program Manager should be responsible for periodically reviewing the services of all contracting vendors. Permission to inspect and review the vendors' procedures and facilities should be specifically stated in the service contract. The Program Manager should make an initial site visit to all vendors in order to inspect their facilities and review their operating procedures. The Program Manager will need to be familiar with the facility requirements and the proper testing procedures. If necessary, the Program Manager should develop checklists of these requirements to use during inspections and reviews.

After the initial inspection, the Program Manager should make it a point to make periodic site visits. If there are complaints from consortium members about vendor practices, this may warrant a special site visit to remedy problems. It may be most practical for transit managers to also make site visits to designated collection sites, as a means for assisting the monitoring activities of the Program Manager. In this case, the Program Manager should supply transit managers with instructions and a checklist which can be used during an inspection.

On-time performance should be monitored by both the Program Manager and individual transit agencies. If agencies have a recurrent problem with a vendor's on-time performance, they should report it to the Program Manager. It should be the responsibility of the Program Manager to follow up and make sure the problem is corrected. The Program Manager should also review the overall on-time performance of the vendors. If a vendor's performance does not meet the contractually defined standards, as stated in

### **Individual Vendors/Contractor**

the service contract, the Program Manager must follow through with any recommendation necessary to correct the problem.

### **THE CONSORTIUM ITSELF**

It is the responsibility of consortium members as well as the Program Manager to ensure that the consortium is fulfilling its obligations as stated in the Memorandum of Understanding (MOU).

It may be best to establish a review committee to regularly monitor the activities of the consortium. The MOU should give consortium members the right to review the consortium's procedures and the testing records.

In accordance with the MOU, agencies should receive regular reports of testing activity and compare these reports with their agency's records for accuracy. If discrepancies exist, they will need to be resolved between the agency and the consortium's Program Manager. Even if the consortium only provides storage of back-up documents, transit agencies should make sure that records are secured in an appropriate manner and that records are retained for the appropriate length of time. Also, members will need to make sure that the consortium's records are readily available for inspection, usually within five working days.

### **SUMMARY**

The decision to join a consortium must be made by transit systems based on the unique set of circumstances, resources and capabilities of the system. Once the decision has been made, however, the transit system must realize that the consortium serves merely as a contract service provider. The transit system retains compliance responsibility. If the consortium is out of compliance it is up to the transit system to ensure corrective actions are taken or to sever the contractual ties and find a new vendor. Assurance or guarantees of compliance from consortiums or their vendors are not justifiable explanations for being out of compliance.

Participation in a consortium can prove very beneficial to transit systems. However, the decision to join must be accompanied by the commitment to provide the necessary oversight and direction to consortium management. Subsequently, transit managers must be diligent in their efforts to keep informed of relevant regulatory changes, interpretations and clarifications.

### **The Consortium Itself**

***Appendix A***  
***Sample Request for Proposals***



**REQUEST FOR PROPOSALS**

**NO. 96-100**

**DRUG AND ALCOHOL TESTING SERVICES**

**Georgia Transit Association  
c/o Isaiah Hugley, President  
P. O. Box 1340  
Columbus, GA 31902**

**Issue Date: April 18, 1996**

**Response Date: May 15, 1996**

**Anticipated Award Date: May 20, 1996**

**Implementation Date: July 1, 1996**





## **I. INTRODUCTION**

The Georgia Transit Association (GTA) is soliciting proposals on behalf of a Georgia Drug and Alcohol Consortium (“Consortium”) comprised of several small urban and rural transit operators throughout the State of Georgia. On behalf of the Consortium, GTA is soliciting proposals through this Request for Proposals (“RFP”) from qualified drug and alcohol testing firms to provide drug and alcohol testing services for approximately 160 safety sensitive Consortium employees. All services requested of the selected contractor shall conform to the requirements specified in the Department of Transportation’s “Procedures for Transportation Workplace Drug Testing Programs” as set forth in 49 CFR Part 40, as amended, and Federal Transit Administration “Prevention of Prohibited Drug Use in Transit Operations” and “Prevention of Alcohol Misuse in Transit Operations” as set forth in 49 CFR Part 653 and 49 CFR Part 654, respectively, as amended.

Each member of the Consortium will execute an agreement with the successful proposer, herein after referred to as (“the Contractor”), for a period commencing July 1, 1996, and extending through December 31, 1997. The agreement shall be a reimbursement type inclusive of fee for a period of eighteen (18) months with an option of renewing said agreement with the Contractor on an annual basis with a maximum of three (3) years, subject to the approval of the Georgia Department of Transportation funding sources and continued participation by member agencies.

It is understood by all parties that the GTA is only acting on behalf of the transit systems and is not directly responsible for any of the program costs. It is understood that the remaining costs, i.e. the costs of testing, will be paid by each transit property listed in Exhibit B of this RFP (collectively referred to as “Purchasers”). A separate contract will be required between the contractor and each individual purchaser for their respective tests. It is understood that the GTA is not liable for these costs or for the services rendered by the Contractor. The GTA will endorse the Contractor to Consortium Purchasers.

The Consortium Purchasers should be incorporated into one pool for random testing, but the reporting of individual test results must be provided only to the respective employer. The individual transit systems will be responsible for reporting management data to GTA on a quarterly basis.

The following sections of this RFP contain instructions for submitting required information and criteria for selection of a Contractor proposing the Services.

- Exhibit A - Scope of Services
- Exhibit B - Consortium Members’ Information
- Exhibit C - Certifications and Forms
- Exhibit D - Bid Form

All questions regarding this RFP should be addressed to:

Georgia Transit Association  
c/o Isaiah Hugley, President  
P. O. Box 1340  
Columbus, GA 31902  
(706) 571-4882

or

Office of Intermodal Programs  
Attn: Wayne Jackson  
Georgia Department of Transportation  
276 Memorial Drive  
Atlanta, GA 30303

## **II. SUBMISSION INSTRUCTIONS**

Sealed proposals will be received by the GTA in accordance with these instructions, until May 15, 1996, at 2:00 p.m. at which time all proposals properly received and in proper form shall be publicly opened. Proposals received prior to the advertised time of opening will be kept securely sealed. Any proposal received after the time to which reference is made will not be considered.

This procurement is governed by the various Federal statutes and regulations, by Office of Management and Budget Circular A-102, and by FTA Circular C-4220. 1B. These require, among other things, that professional service requirements be made according to qualifications and approved criteria, which become a part of the Contract between the Purchasers and the successful proposer.

### **A. Date. Time. Address, and Number of Copies**

Contractors shall submit one (1) original and five (5) copies of the Proposal to:

Georgia Transit Association  
c/o Isaiah Hugley, President  
P. O. Box 1340  
Columbus, GA 31902

prior to **2:00 p.m. Eastern Standard Time, May 15, 1996**

Proposals shall be enclosed in a sealed envelope and clearly marked in the lower left corner as follows:

Proposal Identification Number: 96-100

Item: "PROPOSALS FOR DRUG AND ALCOHOL TESTING SERVICES"

Proposal Opening Date: May 15, 1996 at 2:00 p.m. EST.

B. Validity of Proposals

Proposers agree that their proposals remain valid for a period of sixty (60) days after the above cited closing date for submission of proposals and may be extended beyond that time by mutual agreement.

Proposers are hereby notified that after award of a contract all submittals become part of the procurement record and will be available for public inspection. Proprietary financial information on the company and disclosures of trade secrets contained in the respondent's proposal will be treated as confidential only if such materials are so marked in the original proposal submission and within the limits provided under Georgia state law.

**III. REQUIRED PROPOSAL ELEMENTS**

Information in the offerer's submission shall be organized in a single bound. volume printed on 8½" x 11" paper. Extraneous information should be avoided and general sales materials not specifically related to the proposal as submitted should not be included.

The submittal shall be arranged in the following format:

- A. Statement of Qualifications
- B. Quality of Service
- C. Implementation Plan and Schedule
- D. Signed Cost Proposal Form
- E. Required Forms

A. Statement of Qualifications

Proposers shall present a profile of their firm or entities to include:

1. Statement whether the firm is local, regional, national, or international;
2. The location of the office or facility from which the Services will be administered;
3. The range of drug and alcohol testing services performed by the Contractor and locations where such services are performed;
4. A list of references, a minimum of five (5), including company, address, telephone number, and contact person(s) for each reference for work performed similar to that requested in this RFP;
5. A list of references (a minimum of five (5)) and range of drug and alcohol testing services performed by the Contractor for Department of Transportation agencies (Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, Federal

Transit Administration, and Research and Special Programs Administration);

6. Minimum qualifications of collection site personnel, and Breath Alcohol Technicians (BATs). Describe the initial training and ongoing training provided to collection site personnel;
7. Identify the Medical Review Officer(s), describe qualifications, and describe procedures for remaining up-to-date on current relevant issues;
8. The executive personnel to be assigned to perform and/or administer these services. Also, each Proposer shall name the person who will be the Chief Executive of this project and will be responsible for executing an agreement with each transit system for the provision of these Services; and
9. It is the policy of the GTA and Purchasers that disadvantaged business enterprises (“DBH”s) shall have the maximum opportunity to participate in the performance of all contracts let by stated parties. This participation may be in the form of prime contracts, and/or subcontracts, and/or direct or general overhead items procured from DBEs allocated to the Services. The term “disadvantaged business enterprise” means a business enterprise that is at least 51% owned and controlled by one or more socially disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background, or other similar cause. Such persons would include but not be limited to citizens of the United states who are: Black Americans (not of Hispanic origin), Hispanic Americans; Native Americans; Asian-Pacific Americans; and women, regardless of race and ethnicity.
10. Indicate if the company is an approved FAA consortium.

B. Quality of Service

1. Describe Proposer’s method for complying with Section A of the Scope of Services (“Specimen Collection and Drug Testing”).
2. Describe Proposer’s method for complying with Section B of Scope of Services (“Breath Alcohol Testing”). Specify quantity, location, and type of Evidential Breath Testing (EBT) devices proposed.
3. Describe the random selection process that will be used consistent with Section C of the Scope of services (“Random Database”).
4. Describe your recordkeeping and reporting procedures.

C. Plan and Schedule

Proposers shall set forth a plan to assume the drug and alcohol testing services for the purposes of carrying out the Scope of Services contained in Exhibit A. Services are to be implemented for each of the transit systems identified in Exhibit B by July 1, 1996.

D. Signed Cost Proposal Form

A fully completed Cost Proposal Form shall be submitted by an authorized principal or officer of the Proposer.

E. Required Forms

The proposal must be submitted with the provided required forms. All documents to be submitted with the proposal must be properly signed and notarized where specified. Proposals submitted on any other forms may be considered non-responsive and may be rejected. Any erasures, corrections or other changes appearing on the proposal form must be initialed and dated by the person signing the proposal.

The contract proposal and all other accompanying documents or materials submitted will be deemed to constitute part of the proposal. The following forms must be included in the proposal. Copies of the forms are provided in Exhibit C.

Affidavit and Information Required for Proposer  
Certification of Authority, Corporation, Partnership, Individual  
Proposer's Certification of Eligibility  
List of Similar References

#### **IV. SELECTION CRITERIA**

A committee comprised of representatives of the Georgia Department of Transportation (GDOT), GTA, and Purchasers will review the proposals using the criteria with their relative weights as cited below. Interviews with Proposers may be scheduled. However, the committee reserves the right to make its decision on submitted proposals only; request additional information; to reject any and all proposals; and to waive any irregularities or required formalities. The committee also reserves the right to conduct all investigations and background checks necessary for adequate evaluation.

A. Background and Experience -- 20%

This element shall include the following items:

1. Expertise in drug and alcohol testing services;
2. Years of experience of Contractor principals;

3. Number of drug and alcohol testing services managed and location thereof;
4. References;
5. Specific experience with mass transit industry;
6. Specific experience with Department of Transportation - mandated tests; and
7. Qualifications of Staff including MRO, Laboratory Certifying Scientist, Collection Site Personnel, and BATs.

**B. Quality of Services -- 40%**

1. Methods used to comply with 49 CFR Part 653.
2. Methods used to comply with 49 CFR Part 654 including number, type, and location of EBTs and BATs.
3. Quality control measures including methods utilized to minimize test cancellations.
4. Response time for laboratory confirmed test results (negative and positive), and for MRO average response time.

**C. Schedule -- 10%**

The Proposer's ability to demonstrate a feasible implementation schedule and ability to work with the Purchasers to implement the Services by July 1, 1996, will be evaluated in this element.

**D. Proposed Bid Price -- 30%**

The total bid price, with breakouts, submitted per drug test, alcohol test, and program administration.

## **V OTHER CONDITIONS**

### **1. FINANCIAL ASSISTANCE**

The services described in these specifications shall be purchased with the assistance of monies from GDOT and the Federal Government under the Federal Transit Administration Act of 1964, as amended. The successful proposer and all subcontractors will be required to comply with all terms and conditions prescribed for third party contracts in a grant contract between the United States of America and the purchasers.

## 2. AUTHORIZATION OF PROPOSAL

If the proposal is made by an individual doing business under an assumed name, the proposal shall so state. If the proposal is made by a partnership, the full name and addresses of each member and the address of the partnership shall be given and the proposal shall be signed by one member thereof. If the proposal is made by a corporation, it shall be signed in the corporate name by an authorized officer, and the corporate seal shall be affixed thereto. If the proposal is made by a joint venture, the full name and address of each member of the joint venture shall be given and the proposal shall be signed by each venturer. Forms are included in Exhibit C to be filled out and submitted with the proposal.

## 3. PROTEST PROCEDURE

Protests concerning these instructions, the contract requirements, the specifications, or the proposal procedures, any request for explanation or clarification shall be submitted in writing and will include the following information:

- (a) the name and address of the protestor,
- (b) the name and telephone number of the protestor contact,
- (c) a complete statement of the grounds of the protest with full documentation of the protestor's claim(s)

This information must be submitted to the procurement agent identified in section II of this document, who will act as the contact point for all protests.

Protests shall be filed within the specified time limits set forth in the specifications that are the subject of the procurement and must adhere strictly to any procedures specified therein.

(a) Any potential proposer believing documents or drawings to contain restrictive specifications or any other improprieties regarding the solicitation for proposal may file a protest with GTA which shall be received by GTA not later than ten (10) working days prior to RFP opening and shall contain all reasons for the protest. GTA will respond to the protest within five (5) working days of receipt of the protest.

The protestor will have five (5) working days to appeal to GTA after receiving GTA's initial response to its protest.

Once an appeal has been received, GTA will render its final decision in writing, within ten (10) working days.

(b) In cases other than those covered in the preceding paragraphs, proposal protests shall be filed with GTA no later than five (5) working days after notification of the award of the proposal.

GTA shall have fifteen (15) working days from receipt of the formal protest package to evaluate and issue a response to the protest.

(c) Protestors dissatisfied with GTA's final decision may utilize the appeal procedure set forth in the U. S. Department of Transportation, Federal Transit Administration (FTA) Circular 4220.

1B, Chapter V, Third Party Contracting Guidelines. This circular is on file in the purchasing department of GTA. FTA's decision on any appeal will be final.

#### 4. ADDENDUM

Any changes in these instructions, the General Conditions or Specifications, or other requirements will be accomplished by an addendum in writing, sent to all prospective proposers. All such addenda shall become a part of the contract. Each prospective proposer is required to acknowledge receipt of all addenda in writing. Failure to acknowledge receipt of all addenda may cause the proposal to be considered non-responsive, and therefore, rejected.

#### 5. PROPOSAL WITHDRAWAL

(a) Each and every proposer who submits his proposal specifically waives any right to withdraw it except as hereinafter provided. The Proposer will be given permission to withdraw any proposal after it has been deposited with GTA provided the proposer makes his request by telephone, telegraph or in writing, twenty-four (24) hours before the due time. Requests pertaining to withdrawal by telephone or telegraph must be confirmed in writing by the proposer and must reach the Office of Intermodal Programs not later than one (1) hour prior to the time fixed for submission of proposal.

(b) No proposer may withdraw his proposal within sixty (60) days after the date fixed for proposal opening.

#### 6. PROPOSAL REJECTION

GTA reserves the right to waive any minor proposal informalities or irregularities received which do not go to the heart of the proposal or prejudice other proposers, or to reject, for good and compelling reasons, any and all proposals submitted. Conditional proposals, or those which take exception to the general conditions, specifications, or to other contract requirements may be rejected. GTA reserves the right to reject any and all submittals and to re-solicit. GTA does not guarantee that any contract will be awarded as a result of the Request for Proposals.

#### 7. PROPOSAL EVALUATION

The firm selected shall demonstrate a clear understanding of GTA's requirements, propose the best work plan, and demonstrate the best relevant experiences and most capable project team. Each proposal submitted will be evaluated by the criteria set forth in the RFP. The evaluation committee, working independently, will evaluate and rank each proposal submitted, when all proposals have been evaluated and ranked, the highest rated firm will be recommended to the Purchasers for contract execution.

If only one proposal is submitted it will be treated as a negotiated procurement and GTA reserves the right to negotiate with the single proposer to achieve a fair and reasonable price. If a negotiated price cannot be agreed upon by both parties, GTA reserves the right to reject the single proposal.

Contract change orders or modifications will be subject to price or cost analysis.



## **8. TERMINATION OF CONTRACT**

### **Termination for Convenience**

The Purchasers may terminate this contract, in whole or in part, at any time by (30) thirty days written notice to the Contractor. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claims to the Purchaser for payment. If the Contractor has any property in its possession belonging to the Purchaser, the Contractor will account for the same, and dispose of it in the manner the Purchaser directs.

### **Termination for Default**

If the Contractor does not deliver property in accordance with the contract delivery schedule, or, if the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provision of the contract, the Purchaser(s) may terminate this contract for default. Termination shall be effective by serving (30) thirty days written notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for service performed in accordance with the manner of performance set forth in the contract.

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

## **9. REMEDIES/SANCTIONS FOR BREACH OF CONTRACT**

Without limiting in any manner other remedies or damages to which the Purchaser(s) may be entitled in law or in equity and/or under this contract in the event of a breach by the contractor, or a failure by the contractor to satisfactorily complete its contracts, Purchaser(s) shall be entitled to recover the full amount of its costs which are related in any manner of soliciting new proposals which include all or any portion of the work the contractor has agreed to perform under this contract. Should the contractor fail to substantially complete the work covered by this contract within the time specified, and unless such delay is caused by actions entirely beyond the control of the contractor, contractor shall likewise be liable to the Purchaser(s) for all expenses and damages, direct and consequential, resulting from such delays.

## **10. PROPOSAL AWARD**

GTA reserves the right to accept any proposal, or to reject any or all proposals, or to recommend the award of the contract to Purchasers on such basis as GTA deems to be in its best interest.

## **11. CONTRACT SUBLETTING**

No contract may be assigned, sublet, or transferred without the written consent of the Purchaser(s).

## 12. CONTRACT CHANGES/ MODIFICATIONS

The scope of services set forth in this proposal may be reduced, modified or expanded beyond the limits of this proposal by written contract modifications executed by the Purchaser(s) and the proposer.

In the event that Purchaser(s) requires the Contractor to undertake work not identified in and beyond the scope of services, this proposal may be amended in writing to incorporate such services and compensation as are mutually agreed upon.

## 13. CONTRACT COMPLIANCE STATEMENT

The offerer shall state his/her compliance with all applicable rules and regulations of Federal, State, and Local governing entities. Offerer must state his/her compliance with terms of this Request for Proposal.

The offerer must demonstrate that the proposal meets all applicable rules, regulations, zoning, permitting, registration and licensing requirements, whether local, State or Federal. It is the responsibility of the potential contractor to determine the applicability of any rule, regulation or other requirement.

## 14. COSTS INCURRED IN RESPONDING

All costs directly or indirectly related to preparation of a response to the Request for Proposals or any oral presentation required to supplement and/or clarify the submittal which may be required by GTA shall be the sole responsibility of and shall be borne by the offerer(s).

Each proposer by submitting its Proposal, waives any claim for liability against GTA or the Purchaser(s) as to loss, injury and costs or expenses which may be incurred as a consequence of its response to this document.

## 15. INSURANCE

Without limiting its liability hereunder, the Contractor shall maintain, during the life of this Agreement, the following insurance and furnish the GTA, Certificates of insurance as evidence thereof.

- A. Worker's Compensation Insurance. Providing coverage in compliance with the laws of the state in which any part of the work is to be performed, and Employer's Liability Coverage in the minimum amount of \$100,000 for each occurrence.
- B. Contractor's Professional Liability Insurance. Bodily injury and property damage combined single limit in the minimum amount of \$250,000 each occurrence, \$250,000 aggregate. The Comprehensive General Liability Insurance referred to in this section, paragraphs (B) and (D) above, shall include broad form Contractual Liability Coverage for the liability assumed by the Contractor in Section 23.
- C. The Contractor's Certificate shall include:

1. The Contractual Insurance coverage is on a Blanket Broad Form basis unless specifically indicated.
  2. The company or companies, upon request, agree to deliver within fifteen (15) days a certified copy of any and/or all of the policies of insurance to GTA.
  3. If one (1) or more Umbrella Excess policies are used, there is no gap between the limits of the primary policies and the deductible features of the Umbrella Excess policies.
  4. Coverage under the primary policies have no deductible features unless there is a check mark here ( ). If there are deductible features or the insured has adopted a funded self-insurance program, they are fully explained on an attached sheet which becomes a part of the Certificate.
  5. The coverage provided shall not be canceled, reduced in coverage or allowed to lapse unless and until GTA receives at least thirty (30 ) days advanced written notice of same. Said written notice must be delivered to GTA.
- D. The Contractor shall provide evidence of the Medical Review Officer's malpractice insurance, as applicable.

#### 16. DEBARMENT

Each proposer will be required to certify by signing the proposal that the proposer is not included on the U. S. Comptroller General's Consolidated List of Persons or Firms currently Debarred for Violations of Various Contracts Incorporating Labor Standards Provisions.

#### 17. NON-COLLUSION

The proposer guarantees that the proposal submitted is not a product of collusion with any other proposer. An affidavit of non-collusion form is included and must be signed and submitted with the proposal.

#### 18. INTEREST OF MEMBERS OF, OR DELEGATES TO, CONGRESS

In accordance with 18U. S. C. 431, no member of, or delegates to, the Congress of the United States shall be admitted to a share of part of this contract or to any benefit arising there from.

#### 19. CONFLICT OF INTEREST

No employee, officer, or agent of the grantee shall participate in the selection, or in the award of administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

The employee, officer or agent, any member of his immediate family, his or her partner, or any organization which employs, or is about to employ, has a financial or other interest in the firm selected for award.

The grantee's officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties of sub-agreement.

## 20. NO CONTINGENCY FEES

The Contractor shall warrant that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business, for the breach or violation of which warranty the Purchaser(s) shall have the right to annul said contract without liability or, in its discretion, to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

## 21. INDEMNIFICATION

The Contractor shall indemnify, save, defend and hold GTA, the Purchaser(s), their officers, agents and employees free of all losses, damages, claims and expenses in any wise arising or resulting from the actions and omissions of the Contractor, its employees, agents or contractors in the performance of its services hereunder.

## 22. INDEPENDENT CONTRACTOR

The Contractor is at all times an independent contractor and in no way shall be deemed to be in joint venture, partnership or other relationship with GTA or the Purchasers.

## 23. FALSE OR FRAUDULENT STATEMENTS OR CLAIMS

The Contractor acknowledges that should it make a false, fictitious or fraudulent claim, statement, submission or certification to GTA or the Purchaser(s) in connection with this project, GTA or the Purchaser(s) reserves the right to pursue the procedures and impose on the Contractor the penalties of 18 U. S. C. 1001, 31 U. S. C. 231 and 3801 et. seq., and/or 49 U. S. C. 1607(h), as may be deemed by GTA to be appropriate.

## 24. EQUAL EMPLOYMENT OPPORTUNITY

In connection with carrying out this project, the contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, handicap, and national origin. The contractor will take affirmative action to insure that applicants are employed, and the employees are treated during employment, without regard to race, religion, color, sex, age, handicap, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other compensation, and selection for training, including apprenticeship.

## 25. DISADVANTAGED BUSINESS ENTERPRISE

It is the policy of the Department of Transportation that Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under the Agreement. Accordingly, the DBE requirements of 49 CFR Part 23 apply to this Agreement. In connection with the performance of this contract, the contractor will cooperate with GTA or the Purchaser(s) in meeting its commitments and goals with regard to maximum utilization of Disadvantaged Business Enterprises and will use its best effort to insure that disadvantaged businesses will be utilized when possible by steps in accordance with FTA Circular 4716.1 and DOT regulations 49 CFR Part 23.

## 26. TITLE VI CIVIL RIGHTS ACT OF 1964

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

(1) Compliance with Regulations: The contractor shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (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.

(2) Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the ground of race, religion, color, sex, or national origin in the selection and retention of subcontractors, including the procurement of materials and lease 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.

(3) Solicitation for Subcontractors Including Procurement of Materials and Equipment: In all solicitations whether 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, religion, sex, or national origin.

(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 the Purchaser(s), GTA, GDOT, or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Purchaser(s), GTA, GDOT, or the FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of the contractor's non-compliance with the nondiscrimination provisions of this contract, the Purchaser(s) 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.

(6) Incorporation of Provision: The contractor shall include the provisions of paragraph (1) through (6) of this section in every sub-contract, including procurements of materials and lease of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Purchaser(s), GTA, GDOT, or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor, subcontractor or supplier as a result of such direction, the contractor may request the Purchaser(s), GTA to enter into such litigation to protect the interests of the Purchaser(s), GTA, and in addition, the contractor may request the services of the Attorney General in such litigation to protect the interests of the United States.

## 27. AUDIT AND INSPECTION

The Contractor shall permit the Purchaser(s), GTA, GDOT, the Secretary and comptroller General of the United States, or any of their duly authorized representatives to inspect all work materials, payrolls, other data and records with regard to the Project, and to audit the books, records and accounts pertaining to such contracts with regard to the Project.

The Contractor shall maintain documentation for all charges against the Purchaser(s) under this Contract. The books, records and documents of the Contractor, insofar as they relate to work performed or money received under the Contract, shall be maintained in conformity with generally accepted accounting principles for a period of three (3) full years from the date of final payment, and shall be subject to audit, at any reasonable time upon reasonable notice, by the Purchaser(s), the State of Georgia or the Comptroller of the Treasury, or their duly appointed representatives, or a licensed independent public accountant. Further, the records shall be maintained for a period of not less than three (3) years from the date of final payment.

In the event the Purchaser(s) is audited by any Federal or State agency, the Contractor shall provide whatever records, information, and assistance as the Purchaser(s) may reasonably require. The Contractor shall provide information and assistance requested by the Purchaser(s) for progress reports required of the Purchaser(s) by Federal or State Governmental agencies.

## 28. APPLICABLE LAW

The contract shall be construed and governed in accordance with the law of the State of Georgia.

## 29. USE OF GTA'S NAME IN ADVERTISING, PUBLIC RELATIONS AND NEWS RELEASES

GTA reserves the right to review and approve GTA related copy prior to publication. The Contractor shall not allow GTA related copy to be published in the Contractor's advertisement or public relations program until submitting the GTA related copy and receiving prior written approval from GTA.

News releases pertaining to the contents of this RFP or any negotiations must not be made without the prior approval of GTA.

## 30. CORRESPONDENCE

In cases where communication is required between proposer and the GTA, such should be directed to Mr. Isaiah Hugley, President, Georgia Transit Association, P. O. Box 1340, Columbus, GA 31902.

## 31. TERMS OF PAYMENT

Payment shall be net thirty (30) days upon monthly progress report. Proposers should note any discounts for payment before thirty (30) days. Invoices should be sent to the attention of the Accounts Payable Department of each respective Purchaser(s). Invoices shall reflect the following: Purchase order number, description of service, total amount of payment due.

## 32. MISCELLANEOUS PROVISIONS

The Contractor, the Purchaser(s), and GTA mutually agree as follows:

- A. Personnel. The Contractor represents that he/she has or will secure at his/her own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the Purchaser(s) or GTA.  
  
All services required hereunder will be performed by the Contractor or under his/her supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.
- B. Withholding of Salaries. If, in the performance of this Agreement, there is any underpayment of salaries by the Contractor or by any subcontractor thereunder, the Purchaser(s) shall withhold from the Contractor out of payments due to him/her, an amount sufficient to pay the underpaid employees. This amount shall be established by the difference between the salaries required hereby to be paid and the salaries actually paid such employees for the total number of hours worked. The amount withheld shall be disbursed by the Purchaser(s) for and on account of the Contractor or subcontractor to the respective employees to whom they are due.
- C. Claims and Disputes Pertaining to Salary Rates. Claims and disputes pertaining to salary rates or to classifications of professional staff, technical engineers and technicians

performing work under this Agreement shall be promptly reported in writing by the Contractor to the Purchaser(s) for the latter's decision which shall be final with respect thereto.

- D. Interest of Other Local Public Officials. No members of the governing body of the locality in which the area of the Project is situated and no other public official of such locality who exercises any functions or responsibilities in the review or approval of the carrying out of the Project to interest, direct or indirect, in this Agreement.
- E. Contractor's Endorsement. The Contractor's endorsement shall be placed on the final report, cost estimates; also other data and documents furnished by the Contractor to the Purchaser(s) of GTA.
- F. Control. All work by the Contractor is to be performed in a manner satisfactory to the GTA and in accordance with the established customs, practices and procedures. The decision of the GTA is to control in all questions regarding the work covered hereunder. The Contractor is to periodically request sufficient conferences to insure that the work is being done by the Contractor in a satisfactory manner and that all locations and work are made in accordance with the wishes of the GTA.
- G. Access to Records. The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance of work under this Agreement in accordance with accepted professional practice and appropriate accounting procedures and practices. Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards and formally established audit regulations, procedures and guidelines of the reviewing or audit agency.



## **EXHIBIT A**

### **SCOPE OF SERVICES**

The scope of services being sought requires the Contractor to be responsible for carrying out all aspects of the existing drug and alcohol testing program pursuant to 49 CFR Parts 40, 653, and 654, as amended.

Services shall include the following outlined items.

#### **A. Specimen Collection and Drug Testing**

1. Establish multiple collection sites throughout the state capable of handling all required tests. At a minimum, collection sites should be located within close proximity to the central office site for each of the transit systems identified in Exhibit B. At a minimum, GTA desires that sites be established within a one hour drive of each of these locations.

Collection services should be available during all hours that each respective transit system has on-duty safety-sensitive employees (see Exhibit B). Collection sites must be mutually agreed upon by the respective Purchaser and the Contractor before the collection site can become a permanent collection site for the contract period.

2. Implement the collection process conforming to all applicable Federal and State requirements for urinalysis drug testing, recognizing that in the event of a conflict in law, the regulations in 49 CFR Part 40, as amended, govern. Take measures to prevent test cancellations. Transport specimens from collection sites to the appropriate lab(s) within 24 hours of the time of collection.
3. Establish testing by a laboratory which has been certified by the Department of Health and Human Services (DHHS)/Substance Abuse Mental Health Services Administration (SAMHSA) using proper chain-of-custody procedures, and in compliance with 49 CFR Part 40, as amended. Such laboratory must remain certified throughout the term of this contract. Negative test results should be reported within forty-eight (48) hours of receipt. Positive test results should be reported within seventy-two (72) hours of receipt by the laboratory. The specific time frames are from the time of delivery to the testing laboratory to time of notification.
4. Provide the services of a second DHHS-certified laboratory for the testing of split specimens. The second laboratory must meet the same requirements as those specified for the primary lab.
5. Provide the services of a Medical Review Officer ("MRO") knowledgeable in substance abuse disorders, with the appropriate medical

training to interpret and evaluate a positive test result together with the medical history and any other relevant biomedical information of the donor.

Provide a backup in case the primary MRO is unavailable.

All MROs assisting this contract are responsible for the procedures established in 49 CFR Part 40, as amended, including notifying labs of employee split specimen test requests, notifying employer and employee of split sample test results, and verifying opiate positives. These MROs must also understand the requirements pertaining to the role of the MRO in 49 CFR Parts 653 and 654, as amended. Such MROs cannot have ownership or financial interest in any laboratory used by the transit property for its substance abuse testing.

6. Have capability to conduct a minimum of fifty (50) tests monthly from the following categories:
  - a. Pre-employment
  - b. Reasonable Cause
  - c. Random
  - d. Return to duty
  - e. Post-Accident
  - h. Follow up testing

The Contractor shall understand and agree that the GTA does not guarantee a minimum or maximum number of drug and alcohol screening analyses that the vendor shall perform.

7. Conduct urinalysis drug tests for the following:
  - a. Cannabinoids (e.g. marijuana)
  - b. Cocaine
  - c. Amphetamines
  - d. Opiates (e.g. heroin, Codeine, Morphine)
  - f. Phencyclidine (PCP)
8. Submit sufficient quantities of spiked and clean blind samples consistent with the quality control requirements set forth in 49 CFR, part 40, as amended.
9. Implement procedures to minimize canceled tests including chain of custody errors.

B. Breath Alcohol Testing

1. Provide breath testing services in compliance with 49 CFR Part 40, as amended. Specifically address such issues as time requirements. Tests must be performed within two (2) hours of notification of need for test. Confirmation test must be performed after fifteen (15) minutes of the initial test but no later than thirty (30) minutes after the initial test.
2. Provide Evidential Breath Testing (EBTs) devices in sufficient quantities and at locations necessary to provide complete service area coverage within the specified time requirement. Make provisions for back-up EBTs as necessary.
3. Provide certified Breath Alcohol Technicians (BATs) trained to proficiency on the proposed EBT that will be available during all times the transit employees are on duty. Make provisions for back-up BATs as necessary.
4. Provide for all necessary maintenance and calibration of EBTs. Perform an external calibration check after every confirmed positive test result.
5. Follow all procedures for testing specified in 49 CFR Part 40, as amended.

C. Random Database

Using a computer based random number generation program, provide the date and list of employees to be tested for weekly random tests to each Purchaser, individually and separately. Currently, the Consortium is required to test fifty percent (50%) of its safety-sensitive pool annually for drugs and twenty-five percent (25%) for alcohol. Random numbers should be generated in sufficient numbers to cover for unanticipated absences by employees selected for testing, incomplete tests, and cancelled tests.

Maintain a current updated database of all safety-sensitive employees. The database should be updated on a monthly basis to ensure the pool size accurately reflects variations in the safety sensitive work force. The database should include at least the following information on each employee: Name; social security number; employee identification number; and safety-sensitive position. Provide summary information in compliance with record keeping needs stated in 49 CFR Parts 40, 653, and 654, as amended.

D. Policy Statements

Provide a sample policy statement for the urban systems and a sample policy statement for the rural systems.

E. Recordkeeping, Reporting, and Certification

1. Maintain records concerning all positive test results and EBT calibration documentation for at least five (5) years. Maintain all records related to the collection process for two years. These records include collection log books, if used; documents relating to the random selection process; MRO verifications for medical explanation for insufficient volume; and documentation of breath alcohol technician training. Maintain documentation of negative test results for one year.

Assure that all positive urine specimens are retained by the drug testing laboratory for a minimum of one year. Specimens shall be retained longer if litigation or a grievance is pending. Split specimens shall be maintained in long-term frozen storage for at least 60 days if the primary specimen is positive.

2. Assure all test results are forwarded directly to the MRO for verification, employee contact as appropriate and disposition to appropriate Consortium member consistent with the requirements set forth in 49 CFR Part 40.
3. The Contractor shall provide an aggregate quarterly statistical summary of laboratory urinalysis testing results and proficiency testing results to the GDOT within 14 calendar days after the end of the quarter. The Contractor should forward the employee-specific data to the respective Purchaser (employer) within 14 days of receipt of the laboratory quarterly report.

Laboratory confirmation data only shall be included from test results reported within that quarter. The summary shall contain only the following information:

- number of specimens received for testing;
- number of specimens confirmed positive by drug;
- number of specimens for which a test was not performed;
- total number of confirmatory test results reviewed;
- number of reanalysis requested;
- number of split sample tests requested;
- number of confirmatory test results not confirmed by MRO due to (a) results being consistent with legal drug use; or (b) insufficient data; and
- total number of results confirmed by the MRO for controlled substances and alcohol testing.

Quarterly reports shall not contain personal identifying information or other data from which it is reasonably likely that information about individuals' tests can be readily inferred.

4. Provide necessary documentation to employer in the case of a positive test result where litigation is involved. (e.g., arbitration, unemployment, workers' compensation, court hearing, EEOC charge, etc.)
5. Maintain all other records as required by 49 CFR Parts 40, 653, and 654, as amended.
6. Provide copies of records upon request within fourteen (14) working days of the request.
7. The Contractor shall ensure that strict confidentiality of test results is maintained. All tests acquired by the Contractor shall become property of the respective Purchaser. Any test results or material prepared shall not be released without prior written consent of the Purchaser.

F. Agreement Amendment

The agreement with the Contractor may be amended to fulfill the requirements of any new or amended State or Federal Law or Regulation.

The agreement may be amended by individual Purchaser to add independent testing services. Such cases will be handled on an individual basis between Contractor and Purchaser.

G. Billing and Management Methods

The Contractor will submit monthly invoices to the individual Purchasers for their specific testing services consistent with the per unit price proposed in the Bid Form provided in Exhibit D of this document the testing.

Exhibit B

**District 1 Providers**

Agency Name  
Contact  
Address  
City, State ZIPcode  
Telephone Number  
Agency Name  
Contact  
Address  
City, State ZIPcode  
Telephone Number  
Agency Name  
Contact  
Address  
City, State ZIPcode  
Telephone Number  
Agency Name  
Contact  
Address  
City, State ZIPcode  
Telephone Number  
Agency Name  
Contact  
Address  
City, State ZIPcode  
Telephone Number  
Agency Name  
Contact  
Address  
City, State ZIPcode  
Telephone Number

<b>Hours</b>	<b>Accidents</b>	<b>SS Employees</b>	<b>Hires/Year</b>
8a-5p	.5	15	1
M-F			

**District 2 Providers**

Agency Name  
Contact  
Address  
City, State ZIPcode  
Telephone Number  
Agency Name  
Contact  
Address  
City, State ZIPcode  
Telephone Number

Exhibit C

DBE COMPLIANCE STATEMENT

For the purpose of Disadvantaged Business Enterprise evaluation each bidder shall comply with the Metropolitan Transit Authority's disadvantage business enterprise policy. As such the bidder must:

1. Be a disadvantaged business enterprise. \_\_\_\_\_
2. Achieve the DBE subcontract goal of 20%. \_\_\_\_\_
3. Demonstrate good faith efforts toward achieving the 20% DBE goal. \_\_\_\_\_
4. Authenticate the reasons that sub-contracting will not be practical for this project. \_\_\_\_\_

Each bidder will be required to mark the above statement that applies to them and SUBMIT PROPER DOCUMENTATION for the statement.

\_\_\_\_\_  
Name of Individual, Partner or Corporation

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Telephone Number of Contact Person Regarding Bid

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

AFFIDAVIT AND INFORMATION REQUIRED FOR BIDDER

Affidavit of Non-Collusion:

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

- (1) That I am the bidder (if the bidder is an individual), a partner in the bid (if the bidder is a partnership), or an officer or employee of the proposing corporation with authority to sign on its behalf (if the bidder is a corporation):
- (2) That the attached bid or bids have been arrived at by the bidder independently, and have been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other bidder, of services described in the Request for Bid, designed to limit independent bidding or competition.
- (3) That the contents of the bid or bids have not been communicated by the bidder or its employees or agents to any person not an employee or agent of the bidder or its surety on any bond furnished with the bidder or bid; and
- (4) That I have fully informed myself regarding the accuracy of the statements made in this affidavit.

Signed: \_\_\_\_\_

Firm Name: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_  
19 \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_ .

Bidder's EIN \_\_\_\_\_ .

(Number used on Employer's Quarterly  
Federal Tax Return)



BIDDER'S CERTIFICATION OF ELIGIBILITY

The \_\_\_\_\_  
(name of third-party contractor) hereby certifies that it is/is  
not (underscore one) included on the U. S. Comptroller General's  
Consolidated List of Persons or Firms Currently Debarred for  
Violation of Various Public Contracts Incorporation Labor  
Standards Provision.

Signed: \_\_\_\_\_

Firm Name: \_\_\_\_\_

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_

19 \_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires \_\_\_\_\_, 19\_\_\_\_.

CERTIFICATE OF AUTHORITY, IF BIDDER IS A CORPORATION

I, the undersigned, as Secretary if the corporation submitting the foregoing bid, hereby certify that under and pursuant to the By-Laws and Resolutions of said corporation, each officer who has signed said Bid on be half of the corporation, including the foregoing assurance of irrevocability, is fully and completely authorized so to do.

Dated\_\_\_\_\_

ACKNOWLEDGMENT OF BIDDER, IF A CORPORATION

STATE OF\_\_\_\_\_ ) ss:

)

COUNTY OF\_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_, before me personally came and appeared \_\_\_\_\_, to me know, who, being by me dully sown, did depose and say that he/she resides at \_\_\_\_\_, that he/she is the \_\_\_\_\_, or \_\_\_\_\_,

the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation; and it was so affixed by order of the Directors of said corporation; and that he/she signed his/her name thereto by like order.

\_\_\_\_\_  
NOTARY PUBLIC

ACKNOWLEDGEMENT OF BIDDER, IF A PARTNERSHIP

STATE OF\_\_\_\_\_ )

) ss:

COUNTY OF\_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_, before me personally came and appeared \_\_\_\_\_, to me known and known to me to be one of the members of the firm of \_\_\_\_\_, described in and who executed the foregoing instrument that he/she acknowledged tome that he/she executed the same as and for the act that deed of said firm.

\_\_\_\_\_  
NOTARY PUBLIC

ACKNOWLEDGMENT OF BIDDER, IF AN INDIVIDUAL

STATE OF \_\_\_\_\_ )

) ss:

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_, before me personally came and appeared \_\_\_\_\_, to me know, and known to me to be the person described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

### LIST OF SIMILAR CONTRACTS/REFERENCES

1.

2.

3.

4.

5.

### LIST OF DOT AGENCY REFERENCES

1.

2.

3.

4.

5.

---

COMPANY NAME

---

SIGNATURE OF AUTHORIZED PERSON

---

TELEPHONE NUMBER



Exhibit D

Proposal Price Form

**BID FORM**

FROM: \_\_\_\_\_  
(Company Name)

AUTHORIZED SIGNATURE: \_\_\_\_\_

PRINT NAME AND TITLE: \_\_\_\_\_

RE: Drug and Alcohol Testing Consortium

Base amounts on approximately \_\_\_\_\_ drug tests and \_\_\_\_\_ alcohol tests for 1996 and \_\_\_\_\_ drug tests and \_\_\_\_\_ alcohol tests for 1997. The Contractor shall understand that these numbers are only estimates and that GTA does not guarantee a minimum or maximum number of drug and alcohol screening analyses that the vendor shall perform.

All amounts should be reflected in a per-test basis. The amount shown in item D below should be the sum of items A through C.

Contractor to determine number and location of centralized collection sites throughout the State.

**A. Specimen Collection & Drug Testing**

	<u>1996 Unit Rate</u>	<u>1997 Unit Rate</u>
Specimen Collection	\$_____	\$_____
Laboratory	\$_____	\$_____
MRO	\$_____	\$_____

**B. Breath Alcohol Tests**

Alcohol Test Including	\$_____	\$_____
Initial Screen and Confirmation Test		

**C. Program Administration**

Quality Control (Blind Sample Testing)	\$_____	\$_____
--	---------	---------

Random Selection Process (In 1996, approximately _____ Random Tests will be required for drugs and _____ Random Tests for alcohol. In 1997, approximately _____ Random Tests for drugs and _____ Random Tests for alcohol will be required.)	\$_____	\$_____
--	---------	---------

Recordkeeping and Reporting	\$_____	\$_____
-----------------------------	---------	---------

Total Administration Fee	\$_____	\$_____
--------------------------	---------	---------

<b>D. Total Bid Price</b>	\$_____	\$_____
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**E. Additional Services**

Litigation package	\$_____	\$_____
		(per package)

Expert Testimony	\$_____	\$_____
		(per day)

Other Testimony (technicians, Administrative, etc.)	\$_____	\$_____
		(per day)

Consultation Fee Contractor	\$_____	\$_____
		(per hour)

MRO	\$_____	\$_____
		(per hour)

**Note:** Selection based on price of item D.

***Appendix B***  
***Sample Contracts***





## **PUBLIC TRANSPORTATION CONSORTIUM MEMBER**

This Agreement is made by and between the Drug and Alcohol Testing Company, Inc. of Anywhere, USA, hereafter called DATC, and XYZ Transit System, a member of the State Public Transportation Consortium, hereafter called CLIENT.

### **1. EFFECTIVE DATES**

This Agreement shall be in effect beginning \_\_\_\_\_ on and ending on \_\_\_\_\_. After the end date, this Agreement will be extended by one year increments unless either party notifies the other to the contrary with sixty (60) days' written notice.

### **2. SERVICES TO BE PERFORMED**

- a. DATC will review the individual policy of the State Public Transportation Consortium (SPTC) members to ensure it is in compliance with U.S. DOT regulations.
- b. Database Management and Random Selection - DATC will enter CLIENT'S covered employees into DATC's SPTC pool of employees. CLIENT employees will be randomly selected as part of this larger pool of employees. When an employee is selected, CLIENT will keep this information confidential from the selected employee until such time that the employee can report to the collection site immediately.
- c. Collection Sites and Specimen Collection - DATC maintains a list of several hundred collection sites for the State. DATC will provide urine and alcohol specimen collection service at any of these existing sites. CLIENT may request that DATC locate and qualify a specific local collection site. DATC will also provide for emergency collections for post accident tests in the unlikely event that the CLIENT needs this service.
- d. Collection Kits - DATC will provide urine specimen collection kits with bottles, Chain-of-Custody forms, bottle seals, and alcohol collection materials.
- e. Urinalysis by DHHS-Approved Laboratory - DATC will use a laboratory approved by the Substance Abuse and Mental Health Services Administration (SAMHSA) and certified by the U.S. Department of Health and Human Services (DHHS) to analyze the urine specimens in compliance with the U.S. Department of Transportation (DOT) Regulations.
- f. Alcohol Analysis - DATC and its designated collection sites (item 2c.) will utilize alcohol equipment that meets the requirements of the U.S. DOT Conforming Products List (CPL). Tests will be administered by a certified Breath Alcohol Technician (BAT).
- g. Medical Review Officer Services (MRO) - DATC will provide the services of an MRO to review drug test results.

- h. Employee and Supervisor Training - DATC will provide CLIENT with one (1) copy each of the Employee Drug and Alcohol Training Manuals and one (1) copy each of the Supervisor Drug and Alcohol Training Manuals. CLIENT will copy and distribute these training manuals to its covered employees. DATC may also provide the services of an Instructor to conduct initial on-site Supervisor training for the price denoted in the Pricing Schedule.
- i. Expert Testimony - DATC will provide expert testimony if required by the CLIENT as appropriate. DATC will also coordinate any expert testimony requirements from our collection sites, laboratory, or MRO.
- j. Audit Support - In the event that the CLIENT is audited by a Federal agency, DATC will provide audit support to assist the CLIENT in audit preparation and will attend the audit if permitted.
- k. Annual Report - DATC will prepare for CLIENT annual (January 1 to December 31) statistical reports.
- l. Blind Samples - DATC will submit blind proficiency, spiked and blank, urine samples to the laboratory.

### **3. COMPENSATION FOR SERVICES**

DATC will provide the above services for the fees identified in the Pricing Schedule - Attachment A. DATC will invoice CLIENT and CLIENT will pay DATC on a monthly basis commencing the first month of this Agreement. CLIENT will pay DATC within thirty (30) days of the date of invoice. CLIENT will pay DATC a late charge of 1.5% of the outstanding balance per month for overdue payments, which will automatically be calculated and added to CLIENT'S next invoice. DATC will comply with Federal regulations applicable to anti-drug programs as of January 1, 1995. In the event the rules and regulations are changed after January 1, 1995, DATC will endeavor to incorporate the changes without changing the terms and conditions of this Agreement, unless the rule changes are substantive, in which case the terms of the Agreement will be revised.

### **4. CONFIDENTIALITY**

CLIENT and DATC will maintain strict confidentiality with respect to employee information and drug test results, and will ensure that this information is not disclosed to any other party except as permitted under federal law. This Agreement and its terms and conditions, including fees, shall not be disclosed, duplicated, or used on the whole or in part to a third party beyond CLIENT'S Board of Directors, Officers, and legal representation.

## **5. MUTUAL INDEMNIFICATION**

DATC and CLIENT will indemnify and hold each other harmless, their partners, subsidiaries, and affiliates from any loss, damage, or claim brought by third parties, of whatever nature, allegedly arising out of or resulting from any willful act or any negligent act or omission on the part of DATC or CLIENT relating to this Agreement, their agents or employees, whether or not the party bringing the claim actually prevails. DATC is an independent contractor and shall not be deemed to be engaged either directly or indirectly in the business of CLIENT or deemed to be an agent of CLIENT. DATC does not have any control of CLIENT'S policy or personnel or the actions of CLIENT.

## **6. FORCE MAJEURE**

In no event shall DATC have any responsibility or liability to CLIENT whatsoever for any failure or delay in performance by DATC which is not otherwise excused and which results from or is due, directly or indirectly and in whole or in part, any cause or circumstance beyond the reasonable control of DATC. Such cause or circumstance shall include (but shall not be limited to) acts of God, acts of CLIENTS, acts rules or regulations or orders of any governmental authority or agency thereof (whether civil, military, executive, legislative, judicial, otherwise), strikes or other concerted acts of works, lockouts, or other labor disputes or difficulties, fires, storms, floods, earthquakes, epidemics, or other natural disasters, accidents, wars, riots, rebellion, sabotage, insurrection or civil disturbance, difficulties or delay in private or public transportation or postal delivery services, or any other cause beyond DATC's reasonable control.

## **7. MISCELLANEOUS**

This Agreement contains the only and entire understanding and agreement between CLIENT and DATC, oral or written. This Agreement can only be changed by mutual written consent and signed by both parties. Such a Change becomes an inseparable part of this Agreement for the remaining term of the Agreement. This Agreement shall extend to and be binding upon both parties, their legal representatives, heirs, successors and assignees. The provisions of this Agreement relating to indemnification and liability shall survive any expiration or termination of this Agreement. Notices pertaining to this Agreement shall be given in writing by U.S. First Class registered mail and return receipt, or equivalent, addressed to each party's address of record. The captions and headings contained in this Agreement are for reference purposes only, and shall not effect the construction or interpretation of this Agreement. The non-enforceability, invalidity or illegality of any part of this Agreement shall not render unenforceable, invalid, or illegal the remainder of this Agreement.

## 8. ACCEPTANCES

By signing below, I understand, accept, and approve the terms and conditions of this Agreement on behalf of my Company.

### ACCEPTED FOR DATC

---

Signature

---

Typed Name

---

Title

---

Date

### ACCEPTED FOR CLIENT

---

Signature

---

Typed Name

---

Title

---

Date

*Appendix C*  
*Sample Surveys*



**SUBSTANCE ABUSE MANAGEMENT SERVICES CONTRACT**  
**(INFORMATION SURVEY)**

1. Is your agency willing to participate in a comprehensive consortium (SAMS) contract developed by FDOT to meet the new FTA Drug/Alcohol Testing Regulations? YES\_\_\_\_\_ If NO, how will you implement the new regulations? \_\_\_\_\_

(NOTE: FDOT prefers that each agency use the consortium contract a minimum of onee [1] year.)

**AGENCY/CONTRACTOR INFORMATION**

**COUNTY:** \_\_\_\_\_

2. Agency Name: \_\_\_\_\_  
Address/Location: \_\_\_\_\_  
\_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Phone No.: \_\_\_\_\_

(Use separate sheet if more than 3 contractors)

- 2A. Contractor Name: \_\_\_\_\_  
Address/Location: \_\_\_\_\_  
\_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Phone No.: \_\_\_\_\_

Contractor Name: \_\_\_\_\_  
Address/Location: \_\_\_\_\_  
\_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Phone No.: \_\_\_\_\_

Contractor Name: \_\_\_\_\_  
Address/Location: \_\_\_\_\_  
\_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Phone No.: \_\_\_\_\_

### SYSTEM SAFETY/SENSITIVE PERSONNEL

Definition: A system safety employee has duty, position or job category that required the performance of a safety-sensitive function(s).

3. Is your agency a Section 9 recipient? YES \_\_\_\_\_ NO \_\_\_\_\_
  1. No. of system safety operations staff \_\_\_\_\_
  2. No. of system safety-sensitive mechanics staff \_\_\_\_\_
  3. No. of system safety-sensitive (contract) operations staff \_\_\_\_\_
  4. No. of system safety-sensitive (contract) mechanics staff \_\_\_\_\_ (Sec. 9 Only)
4. Is your agency a Section 18 recipient? YES \_\_\_\_\_ NO \_\_\_\_\_
  1. No. of system safety operations staff \_\_\_\_\_
5. Does your agency employ or contract for security personnel who carry firearms? YES \_\_\_\_\_ NO \_\_\_\_\_
  1. No. of security personnel who carry firearms \_\_\_\_\_
6. What has been your turn-over rate in safety-sensitive personnel within the last year? \_\_\_\_\_
7. Are you planning to increase safety-sensitive staff positions within the coming year?
  1. Operations \_\_\_\_\_
  2. Mechanics \_\_\_\_\_
  3. Others \_\_\_\_\_
8. No. of accidents in 1994 that resulted in injuries. \_\_\_\_\_  
Contractor accidents in 1994 with injuries. \_\_\_\_\_
9. Total estimated Random Drug/Alcohol tests for this agency year.  
50% Drug \_\_\_\_\_ 25% Alcohol \_\_\_\_\_
10. Is your agency a designated CTC, but NOT a Section 9 or 18 recipient? \_\_\_\_\_
11. 

Estimated No. Pre-employment Tests	DRUGS	ALCOHOL
Section 9	_____	_____
Section 9 Contractors	_____	_____
Section 18	_____	_____
Section 18 Contractors	_____	_____
CTC Entities	_____	_____
12. 

Estimated No. Reasonable Suspicion Tests	DRUGS	ALCOHOL
Section 9	_____	_____
Section 9 Contractors	_____	_____
Section 18	_____	_____
Section 18 Contractors	_____	_____
CTS Entities	_____	_____



Page 2.

13.	Estimated No. Post Accident Tests	DRUGS	ALCOHOL
	Section 9	<hr/>	<hr/>
	Section 9 Contractors	<hr/>	<hr/>
	Section 18	<hr/>	<hr/>
	Section 18 Contractors	<hr/>	<hr/>
	CTC Entities	<hr/>	<hr/>
12	Estimated No. Return to Duty/Follow-up Tests	DRUGS	ALCOHOL
	Section 9	<hr/>	<hr/>
	Section 9 Contractors	<hr/>	<hr/>
	Section 18	<hr/>	<hr/>
	Section 18 Contractors	<hr/>	<hr/>
	CTS Entities	<hr/>	<hr/>



*Appendix D*  
*Memorandum of Understanding*



(Transit System Letterhead)  
(Applicable Contractor/Governmental Entity Letterhead)

Sample Letter

Date: \_\_\_\_\_

Name and Address of Your FDOT District Office

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Subject:        Commitment for Participation in the Statewide Consortium Contract for  
                 Substance Abuse Management Services (SAMS)**

Dear: \_\_\_\_\_

\_\_\_\_\_ Name of Transit System or Applicable Contractor \_\_\_\_\_ desires to participate in the Florida Department of Transportation SAMS Consortium Contract with the contractor "FirstLab."

It is our understanding that this contract provides third party administration of all the necessary requirements (except policy formulation) that meet Federal Transit Administration (FTA) regulations for drug and alcohol testing and is available to any FTA recipient transit system and their covered contractors. Services provided under this contract include complete drug and alcohol testing services, including establishment of a random pool, random selection and testing, reporting and recordkeeping services, technical assistance and training and substance abuse professional referral services,

\_\_\_\_\_ Name of Transit System or Applicable Contractor \_\_\_\_\_ agrees to utilize the contract for a minimum of fifteen (15) months starting October 1, 1995 (for Section 18 systems and applicable contractors), and twelve (12) months starting January 1, 1996 (for large Section 9 operators, applicable contractors and governmental entities). Also, it is understood that the contract per-test price (drug test \$38, alcohol test \$30) includes all of the services provided by the contract and the contractor "FirstLab" may require an open purchase order or purchase contract for the minimum time period.

Thank you for the consideration and assisting us in meeting the Federal regulations.

Sincerely,



*Appendix E*  
*Glossary of Terms*





## **GLOSSARY OF TERMS**

**Breath Alcohol Technician (BAT)** - An individual who instructs and assists individuals in the alcohol testing process and operates an EBT.

**Employee Assistance Program (EAP)** - A program provided directly by an employer, or through a contracted service provider, to assist employees in dealing with drug or alcohol dependency and other personal problems. Rehabilitation and reentry to the work force are usually arranged through an EAP.

**Evidential Breath Testing device (EBT)** - An EBT approved by the National Highway Traffic Safety Administration for the evidential testing of breath and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices (CPL).

**Federal Highway Administration (FHWA)** - An agency of the United States Department of Transportation which oversees the nation's highways and establishes safety standards for motor carriers.

**Federal Transit Administration (FTA)** - An agency of the United States Department of Transportation which oversees and administers the federal program of financial assistance to public transit.

**Medical Review Officer (MRO)** - A medical review officer is a medical doctor who not only has knowledge of substance abuse disorders, but who also has been trained to interpret and evaluate laboratory test results in conjunction with an employee's medical history. A medical review officer verifies a positive test result by reviewing a laboratory report and an employee's unique medical history to determine whether the result was caused by the use of prohibited drugs or by an employee's medical condition.

**Memorandum of Understanding (MOU)** - A contractual agreement that defines the working relationship between the consortium and its members.

**Safety-Sensitive Employee** - An employee whose function is any duty related to the safe operation of mass transit service including the operation of a revenue service vehicle (whether or not the vehicle is in revenue service), dispatch, maintenance of a revenue service vehicle or equipment used in revenue service, security personnel who carry firearms, and any other employee who holds a Commercial Driver's License.

**Substance Abuse Professional (SAP)** - A licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission), with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol-related disorders.

**U.S. Department of Health and Human Services (DHHS)** - The cabinet level Department of the federal government that is responsible for certifying drug testing laboratories which transit systems must use to implement DOT drug testing regulations.

**U.S. Department of Transportation (USDOT)** - The cabinet level Department of the federal government that is responsible for administration of federal transportation programs including public transportation, highways, railroads, air transportation, shipping and the Coast Guard. Each state also has a department of transportation.

**49 CFR Part 40** - Procedures for Transportation Workplace Drug and Alcohol Programs

**49 CFR Part 653** - Prevention of Prohibited Drug Use in Transit Operations

**49 CFR Part 654** - Prevention of Alcohol Misuse in Transit Operations

***Appendix F***  
***Industry Contacts***



## INDUSTRY CONTACTS

Kathy Dannenhold  
Transportation Manager  
Tennessee Department of Transportation  
Office of Public Transportation  
Suite 400  
James K. Polk Building  
Nashville, TN 37243-0325  
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Jeanne Erickson  
Executive Director  
Colorado Association of Transit Agencies  
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Denver, CO 80203-1614  
(303) 839-5197

Ann Gilbert  
Director  
Arkansas Transit Association, Inc.  
5905 Forest Place, Suite 200  
Little Rock, AR 72207  
(501) 663-2288

Mike Johnson  
Safety and Substance Abuse Program Manager  
Public Transit Office  
Florida Department of Transportation  
605 Suwannee Street, Mail Station 26  
Tallahassee, FL 32399-0450  
(904) 488-7774

Christina Olson  
Director  
Transportation Support Services  
Greater Hartford Transit District  
One Union Place  
Hartford, CT 06103  
(203) 247-5329

Jim Van Sickle  
Kansas Department of Transportation  
217 SE 4th Street  
Topeka, KS 66603  
(913) 296-5194



***Appendix G***  
***Third Party Administrator Guidelines***





## ***GUIDANCE ON THE ROLE OF CONSORTIA AND THIRD-PARTY ADMINISTRATORS IN DOT DRUG AND ALCOHOL TESTING PROGRAMS.***

**SUMMARY:** The Department of Transportation encourages the provision of drug and alcohol testing services through consortia and third-party administrators. The guidance in this notice responds to a number of questions that have arisen about the proper role of these organizations in assisting employers to meet the requirements of the Department's drug and alcohol testing regulations.

\* \* \* \* \*

The Department of Transportation's drug and alcohol testing programs require employers to take a variety of actions to ensure a transportation workplace free of drug and alcohol misuse. Consortia and third-party administrators (C/TPAs) can play an important role in assisting employers to meet these requirements, and the Department's policy is to encourage their availability to employers. At the same time, the Department is committed to ensuring that the confidentiality of the testing process for employees is not compromised.

The following guidance spells out the Department's views and interpretations of the proper role of C/TPAs in DOT drug and alcohol testing programs. It responds to a number of questions that participants have raised about the place of these organizations. This is Department-wide guidance, applying to participants in the programs of all DOT operating administrations involved: the Federal Aviation Administration (FAA), Federal Railroad Administration (FRA), Federal Highway Administration (FHWA), Federal Transit Administration (FTA), United States Coast Guard (USCG), and Research and Special Programs Administration (RSPA).

### **General Role and Functions of C/TPAs**

- \* Employers are permitted to use C/TPAs to carry out certain aspects of their drug and alcohol testing programs.

- \* If an employer uses a C/TPA to implement its program, the employer must ensure that the C/TPA performs its services in accordance with the applicable rules.

- \* C/TPAs may operate random testing programs for employers and may facilitate the conduct of other functions (e.g., contracting with labs or collectors, conducting collections).

- \* C/TPAs may combine employees from more than one entity or one industry in a random pool. It should be noted that employees not covered by DOT rules may not be part of the same random pool with DOT employees, that adjustment to random testing rates in various industries may complicate the ability of C/TPAs to operate multi-industry pools, and that any C/TPA including aviation employees must be approved by the FAA.

- \* C/TPAs may assist medical review officers and substance abuse professionals (MROs/SAPs) in ensuring that follow-up testing is conducted in accordance with the schedule

established by the MRO/SAP. Like an employer, a C/TPA may not randomly select employees from a “follow-up pool” for follow-up testing. (Follow-up testing, while unannounced, is not random: it follows individualized directions established by the MRO/SAP for the particular employee.)

\* The C/TPA acts as an agent of the employer, and “stands in the shoes” of the employer, subject to certain limits. Within these limits, the duties the rule assigns to employers are to be carried out by the C/TPAs acting as their agents. Because the C/TPA acts as an agent of the employer, it is not required that the employee provide written consent to permit the employer to provide confidential information to the C/TPA (e.g., individual test results). In their role as agents of the employer, C/TPAs must follow the same confidentiality rules as the employer itself.

*\* Limits on use of C/TPAs as agents include the following:*

◆ A C/TPA cannot make reasonable suspicion, post-accident, or -refusal determinations. This is a non-delegable duty of the -employer itself.

◆ The employer itself is responsible for making sure that an employee who has tested positive for alcohol or drugs, or otherwise violated the rules, is removed from performance of safety-sensitive positions.

◆ As noted above, an employer cannot delegate responsibility for compliance to C/TPA. The employer remains obligated to DOT for compliance, and the C/TPA’s failure to implement any aspect of the program as required in Part 40 and applicable operating administration regulations makes the employer subject to enforcement action by the Department.

◆ A C/TPA cannot act as “program manager” in FAA and RSPA programs, which call for the employer itself to have an individual designated to manage the drug and alcohol testing program for the employer.

\* The fact that a C/TPA stands in the employer’s shoes does not obviate the C/TPA’s obligation to transmit quarterly laboratory statistical summaries to each actual employer.

\* The limitations on self-referrals by SAPs for treatment apply in situations in which SAPs are part of a C/TPA.

\* It is not appropriate for laboratories to receive drug and alcohol forms for an individual packaged or attached (e.g., stapled) together, since this is inconsistent with the privacy and confidentiality of personally-identified test records. Consequently, C/TPAs (including those that are operated by or affiliated with laboratories) must ensure that laboratories receive only the drug chain of custody form. One useful way in which C/TPAs can implement this guidance is to establish separate addresses for the receipt of drug and alcohol forms, respectively. C/TPAs could also establish procedures to separate alcohol and drug forms that arrive together.

## **Confidentiality, Test Results, Recordkeeping**

\* C/TPAs may receive from employers or other parties and maintain all records concerning DOT alcohol and drug testing programs, including individual test results, both positive and negative. Record retention requirements (i.e., requirements that records be maintained for a certain amount of time) apply to records maintained by C/TPAs in the same way as the requirements apply to employers.

\* Where operating administration rules or policies require employers to keep certain information in their own files (e.g., for purposes of review during inspections), employers must do so, even though the same information is maintained by a C/TPA for other purposes.

\* Information needed for operating a drug/alcohol program (e.g., names of employees in random pool, random selection lists, copies of notices to employers of selected employees) may be maintained by C/TPAs. Consortia may make random selections from the pool and notifications of random tests. If the C/TPA does not maintain this information, the employer itself must do so.

\* If the C/TPA is conducting or arranging for drug testing, the employer's copy of the COC form may pass through the C/TPA to provide notice to the C/TPA that the employee's specimen has been collected. The document must be forwarded to the actual employer, if required by applicable operating administration rules.

\* C/TPAs must follow all confidentiality requirements applicable to employers.

\* Like an employer, a C/TPA may not provide individual test results or other confidential information to another employer without a specific, written consent from the employee. For example, suppose a consortium has employers X and Y as members. Employee Jones works for X, and has a drug or alcohol test result kept for X by the consortium. Jones wants to change jobs and work for Y. The consortium may not inform Y of the test result without obtaining specific, written consent from Jones. Likewise, the consortium cannot provide this information to Z, who is not a consortium member, without Employee Jones' consent.

\* Blanket consent forms authorizing the release of employee testing information by C/TPAs to a third party are not permitted.

\* C/TPAs must establish adequate confidentiality and security measures to ensure that confidential employee records are not available to unauthorized persons. This includes protecting the physical security of records, limiting the number of persons with access to the records and other appropriate access controls, and computer security measures to safeguard confidential data in electronic data bases.

## **Medical Review Officer Issues**

\* Employers may obtain MRO services through C/TPAs. While the conflict-of-interest provisions of Part 40 concerning relationships between laboratories and MROs apply, they do not prevent independent C/TPAs (e.g., a C/TPA not operated by a laboratory) from employing or contracting with MROs or contracting for laboratory services.

\* If an MRO is employed or contracted for by a C/TPA, the MRO must perform duties independently and confidentially. C/TPAs which have relationships with MROs must structure these relationships to ensure that this independence and confidentiality are not compromised. Specific means (including both physical and operational provisions, as appropriate) to separate MRO functions and other C/TPA functions are essential. The purpose of this mechanism is to ensure that the MRO is independently in charge of all MRO functions and that, with respect to performing MRO-related functions, C/TPA staff are subject to the direction and control only of the MRO.

\* Only those C/TPA staff members who are actually under the day-to-day supervision and control of an MRO with respect to MRO functions may perform these functions. This does not mean that those staff may not perform other functions at other times. However, the designation of C/TPA staff as MRO purposes should be limited and not used as a subterfuge to circumvent confidentiality requirements in DOT rules and guidance. MRO staff must also operate under controls sufficient to ensure that the independence and confidentiality of the MRO process are not compromised (see previous paragraph).

\* Confirmed test results must be sent directly from the laboratory to the MRO or MRO staff designated in accordance with this guidance. For example, a practice in which results are transmitted from a laboratory to a C/TPA computer system, and then assigned to an available MRO, is inconsistent with this guidance.

\* MROs must personally conduct the final interviews with employees who have tested positive and must personally make the decision concerning whether to verify a test as positive or negative. MRO staff cannot perform these functions.

\* MROs and BATs must send final individual test results directly to the actual employer as soon as the results are available, since it is employers who have the authority to remove employees from performing safety-sensitive functions. While results may be maintained afterwards by the C/TPA, and while there is no objection to the MRO or BAT transmitting results simultaneously both to the employer and to the C/TPA, it is not appropriate for the MRO or BAT to send the results only to the C/TPA, which subsequently retransmits them to the employer. This is true even where the MRO or BAT is employed by or under contract with the C/TPA. Operating administrations are authorized to make exceptions to this general rule in situations where it may be impracticable for the individual test results to be sent to individual employers before-going to the C/TPA (e.g., where a C/TPA is the only party in a position to inform an owner-operator who has tested positive that he or she must cease performing safety-sensitive functions).

## **Enforcement**

\* Consistent with this guidance, employers may contract out their drug and alcohol testing functions to C/TPAs; employers may not contract away their responsibility to comply with DOT rules.

\* DOT regulates employers, not C/TPAs (with the exception of FAA's approval process for C/TPAs in the aviation industry). It is the employer, not the C/TPA, who must answer to DOT for noncompliance with DOT requirements if the employer's C/TPA does not properly carry out the requirements of DOT rules.

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[Page 38204-38205] [ From the Federal Register Online via GPO Access [[wais.access.gpo.gov](http://wais.access.gpo.gov)]]