



Bis-Man Transit delivers valued public transportation, linking people, jobs and communities.

# REQUEST FOR PROPOSAL

## Farebox Upgrade

October 31, 2022

**RFP #22-007**

**Bis-Man Transit Board**

**3750 East Rosser Avenue**

**Bismarck, ND 58501**



3750 E Rosser Avenue,  
Bismarck, ND 58501



[info@bisantransit.com](mailto:info@bisantransit.com)



701.258.6817



[www.bisantransit.com](http://www.bisantransit.com)

Notice is hereby given that proposals will be received by the Bis-Man Transit Board (BMTB) for performing all work necessary in accordance with the Scope of Work specified herein. Please carefully read and follow the instructions provided. Respondents are responsible for ensuring that their Bid documentation is complete and received by BMTB on or before the closing deadline.

Bids shall be mailed or delivered to:

Bis-Man Transit Board  
Attn: Deidre Hughes, Executive Director  
3750 E. Rosser Ave.  
Bismarck, ND 58501

Proposals shall be clearly marked as follows: RFP #22-007.

**CLOSING DEADLINE: December 1, 2022, at 2:00 pm Central Standard Time (CST)**

BMTB is not liable for any costs incurred by Bidders in responding to this Request for Proposal.

Please direct inquiries to Deidre Hughes, Executive Director, via email at [dhughes@bismantransit.com](mailto:dhughes@bismantransit.com)



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## PROPOSER'S SUBMITTAL CHECKLIST

This checklist is provided to assist Proposers with submitting a complete Proposal. Proposers are to submit the **sealed** Proposal as noted below and **include this Checklist with the Proposal**.

1. \_\_\_\_\_ Proposer's Submittal Checklist
2. \_\_\_\_\_ Cover Letter and Bidder Information
3. \_\_\_\_\_ Technical Specifications (Attachment 1)
4. \_\_\_\_\_ Debarment Certification (Attachment 2)
5. \_\_\_\_\_ Acceptance of Federal Clauses (Attachment 3)
6. \_\_\_\_\_ Proposal Price Breakdown. This should outline product pricing, installation, and training expenses.

**Non-submittal of any requested item may be considered non-responsive.**



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## I. GENERAL INFORMATION

### A. Purpose and Basis of Award

The Bis-Man Transit Board (Bis-Man Transit) invites the submission of Proposals from qualified bidders to provide replacement fareboxes, installation, and training services as specified in Attachment 1 – Technical Specifications.

### B. Organization Background

BMTB was incorporated on April 28, 1987 and began providing door-to-door bus service in 1990 for persons with disabilities. A short time later, the service was also extended to senior citizens. Bis-Man Transit also began a fixed-route bus service for the cities of Bismarck and Mandan, which would be available for everyone to use. In May 2004, the first rides were given on the fixed route service Capital Area Transit (the CAT). Between the two modes of service, we now provide approximately 200,000 passenger rides per year. The Bis-Man Transit Board aims to provide the safest, most cost-effective service to the most significant portion of the population, given the resources at our disposal.

Bis-Man Transit maintains and operates the paratransit and fixed route CAT bus systems in the Bismarck & Mandan communities. For more information, visit the BMTB website at [www.bismantransit.com](http://www.bismantransit.com).

## II. Project Overview

### A. Purpose

Definition Note: Supplier, Contractor, Counsel, and Firm all are referring to the RFP respondent.

Bis-Man Transit desires to solicit proposals for the replacement of the current farebox system on seven CAT buses. The payment methods should be expanded to include mobile payment (via mobile apps) and future expansion of kiosks for paper tickets; Ease of use for both the rider and bus operator is a high priority. The system must include a hardware validator for ticketing and a bus operator override for the use of cash transactions. More detailed requirements are within the Technical Specification appendix. Contractors shall submit proposals to Bis-Man Transit's office by no later than the date outlined under RFP Timeline.

The Bis-Man Transit Board is soliciting proposals for replacement fareboxes for seven fixed-route buses. The fareboxes must be capable of full integration with the existing Genfare Fast Fare system. Two Bis-Man Transit CAT buses are currently equipped with Genfare Fast Fareboxes. The remaining seven buses are equipped with Genfare Odyssey Fareboxes.



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## B. RFP Timeline

Date/Day	Description
October 31 <sup>st</sup> , 2022	Announcement of RFP. Legal advertisement placed in Bismarck Tribune and on Bis-Man Transit website.
October 31 <sup>st</sup> , 2022	RFP copies available to suppliers via e-mail and website.
November 14 <sup>th</sup> , 2022	Written questions due.
November 16 <sup>th</sup> , 2022	Written replies to questions distributed to all known parties. If necessary, addenda posted to website.
December 1 <sup>st</sup> , 2022 <i>No later than 2:00 CST. Late bids will not be accepted.</i>	<b>RFP responses due at following address:</b> Bis-Man Transit 3750 East Rosser Avenue Bismarck, North Dakota 58501 Attention: Deidre Hughes, #22-007 Submittals Due by 2:00 PM CST
December 5 <sup>th</sup> , 2022	Responses will be analyzed and scored by the Bis-Man Transit evaluation team. Total scores will factor heavily into Bis-Man Transit's decision as to which parties are considered finalists.
December 15 <sup>th</sup> , 2022	The evaluation team's recommendation will be presented to the Bis-Man Transit Board for final approval. Bis-Man Transit project award is made (subject to successful negotiations of terms and conditions)

## C. RFP Contract

Deidre Hughes	Bis-Man Transit Executive Director	3750 East Rosser Avenue Bismarck, North Dakota 58501 Phone: 701.258.6817 Fax: 701.258.6752 E-mail: dhughes@bisantransit.com
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## III. RFP EVALUATION CRITERIA

Members of the Evaluation Team, with other pertinent staff members, will evaluate the RFP responses received from each Contractor. Prior to the selection of the award, Bis-Man Transit reserves the right to conduct on-site visits to any of the respondents' facilities and requires each Contractor to present items contained in the RFP response and any other items deemed appropriate by Bis-Man Transit.

If an award is made as the result of this RFP, it shall be awarded to the respondent whose proposal is most advantageous to Bis-Man Transit. with price and other factors including - but not limited to - responses to the RFP questions, demonstrated technical ability and expertise, financial stability, reference calls and/or recommendations, memberships and licenses or any other applicable membership or certifications, presentations to Bis-Man Transit's Evaluation Team (if applicable), on-site visits at supplier's site (if applicable), product samples which Bis-Man Transit may – at our discretion – request as part of the RFP process and any additional criteria deemed appropriate by Bis-Man Transit which would lend itself to establishing the Service Provider's viability to perform the work as outlined in

this RFP. When determining whether a respondent is responsible or when evaluating a respondent’s proposal, the following factors will be considered, any one of which will suffice to determine if a respondent is either not a responsible respondent or the respondent’s proposal is not the most advantageous to Bis-Man Transit.

1. The ability, capacity, and skill of the respondent to perform the contract or provide the service required.
2. The character, integrity, reputation, judgment, experience, and efficiency of the respondent.
3. Whether the respondent can perform the contract within the time specified.
4. The quality of performance of previous public and private contracts – or services – including, but not limited to, the respondent’s failure to perform satisfactorily or complete any written contract. Bis-Man Transit’s termination for default of a previous contract with a respondent shall be deemed to be such a failure.
5. The previous and existing compliance by the respondent with laws relating to the contract and services.
6. Evidence of collusion with any other respondent, in which case colluding respondents will be restricted from submitting further bids on the subject project or future tenders.
7. The respondent is not qualified for the work or to the full extent of the RFP.
8. There is uncompleted work with Bis-Man Transit or others or an outstanding dispute on a previous or current contract that might hinder, negatively affect, or prevent the prompt completion of the work bid upon.
9. The respondent failed to settle bills for labor, or materials, on past or current public or private contracts.
10. The respondent has been convicted of a crime arising from a previous public contract, excepting convictions that have been pardoned, expunged, or annulled.
11. The respondent has been convicted of a crime of moral turpitude or any felony, excepting convictions that have been pardoned, expunged, or annulled, whether in this state, in any other state, by the United States, or in a foreign country, province or municipality. Respondents shall affirmatively disclose to Bis-Man Transit all such convictions, especially of management personnel or the respondent as an entity, prior to notice of award or execution of a contract, whichever comes first. Failure to make such affirmative disclosure shall be grounds, in Bis-Man Transit’s sole option and discretion, for termination for default subsequent to the award or execution of the contract.
12. More likely than not, the respondent will be able, financially or otherwise, to perform the work.
13. At the time of RFP opening, the respondent is not authorized to do business in the State of North Dakota, is not registered as a contractor in the State of North Dakota, or otherwise lacks a required license, registration, or permit.
14. Such other information as may be secured having a bearing on the decision to award the contract.
15. Any other reason deemed proper by Bis-Man Transit.

Evaluation Criteria	Percentage
1. Pricing	30
2. System Integration	50
4. Warranty	10
5. Experience	10
<b>Total</b>	<b>100</b>







# Farebox

## 1. Farebox Functionality

1. The Farebox shall be service proven and shall be installed on the entire fixed route bus fleet for Bis-Man Transit. The contractor shall demonstrate that the equipment can be conveniently used by persons with disabilities, including persons with limited manual dexterity and persons with sight disabilities without the need for assistance or special training. The demonstration must show how persons with sight disabilities will locate the machine, have access to instructions, and carry out transactions
2. The Farebox shall automatically identify and count all U.S. coins in general circulation, including any U.S. coins that may be issued during the service life of the Automatic Fare Collection system.
3. Coin mechanism shall be capable of processing coins at an insertion rate of not less than five items per second sustained.
4. The Farebox shall have a minimum of twenty (20) fare class presets per fare set. There shall be a minimum of 10 fare sets. The preset amounts shall be between \$000.01 and \$999.99.
5. The bill validator shall accept \$1, \$2, \$5, \$10, and \$20 bills. The Farebox shall be capable of accepting bills of "street quality" inserted flat and unfolded. The Farebox shall accept, correctly identify, and total valid U.S. bills while rejecting and returning to the passenger torn, mutilated, partial, and counterfeit or foreign bills.
6. The Farebox shall be capable of recognizing all U.S. legal tender that may be issued over the service life of the system.
7. All U. S. coins and bills shall be deposited into a single Cashbox, securely compartmentalized to separate the coins and bills.
8. The Farebox shall be capable of electronically verifying all coins and bills inserted for fare payment. All coins and bills shall be automatically verified and identified by denomination without operator action. All U. S. coins and bills that cannot be electronically verified shall be automatically rejected and returned to the passenger.
9. The Farebox shall assist operators with verification of the fare deposited by showing an immediate display of the value of coins and bills inserted. If the coin verification functionality is not available due to a jam or equipment malfunction, the operator shall have the ability to place the coin module into bypass mode. While in bypass mode, all coins inserted shall be directly deposited into the Cashbox.
10. The farebox shall conform to the reliability requirements in this specification while in revenue service operations. The Farebox shall be accurate in its counting and data reporting, and shall be secure in its retention and transfer of data and collected revenue. The Farebox design shall keep operator intervention to a minimum while processing of fares on board the bus. The farebox shall automatically and accurately validate any and all optional fare media read by the magnetic stripe processing unit.
11. The farebox shall function under the environmental and operational conditions specified

and shall be designed and manufactured to provide a high degree of security against forced entry and/or unauthorized manipulation.

## **2. Farebox Model and Maximum Dimensions:**

1. The completed farebox will have the following specifications:
  - a. Acceptable models: **GFI GENFARE Fast Fare**, or Bis-Man Transit approved equivalent version which is compatible with the existing CAT Bus farebox system.
  - b. Maximum Dimensions: Height from the floor (including base mounting): 36.25"; Cabinet 10" x 10". Fare collection unit: 10.15" x 9.65".
2. The Contractor shall provide fully dimensioned scale drawings of the Farebox and base plate showing full views for each side and with the doors and covers both opened and closed.

## **3. Farebox Position on the Vehicle**

1. The Farebox shall be installed adjacent to the operator position in close proximity to the front door, and shall be positioned so that an entering passenger, including persons with disabilities, may easily insert the fare into the Farebox. The Farebox position shall allow the rapid and secure inspection of the OCU data or, if required, the positioning of the data probe, and convenient removal of the Cashbox from the Farebox.
2. The Farebox shall not impede the vehicle operator from ready access to the operator seat.
3. Space and structural provisions shall be made for the installation of the Farebox. Location of the fare collection device shall not restrict traffic in the vestibule, including wheelchairs if a front door loading device is used, and shall allow the driver to easily reach the farebox controls and to view the fare register. The Farebox shall not restrict access to the driver area, shall not restrict the operation of driver controls and shall not — either by itself or in combination with stanchions, transfer mounting, cutting and punching equipment, or route destination signs — restrict the driver's field of view. The location and mounting of the fare collection device shall allow use, without restriction, by passengers. The Farebox location shall permit accessibility to the vault for easy manual removal or attachment of suction devices. The floor under the fare box shall be reinforced as necessary to provide a sturdy mounting platform and to prevent shaking of the fare box.
4. Bis-Man Transit will approve the position of the farebox installation on all vehicles.
5. The Contractor shall provide all Bis-Man Transit-approved mounting hardware and kits.
6. The Contractor shall analyze the correct placement of the Farebox on each different make and model of bus and shall provide drawings on the recommended placement for each different make and model of bus.
7. The Contractor shall ensure that the placement of the new Fareboxes meets the required maneuvering and reach ranges of ADA compliance. Relocation, removal or

installation of new railings or other elements that may represent barriers that could be encountered in the vicinity of the new Farebox shall be performed as necessary to meet these requirements.

8. The Contractor shall position the farebox in such a way that oncoming passengers are not harmed in the event of an accidental fall or collision with the farebox. Optionally, the Contractor may supply farebox safety guards.
9. On all types of buses, the location of the Farebox and OCU will be established jointly between Bis-Man Transit personnel and the Contractor.



6. The OCU display and keypad shall be used to facilitate maintenance through prompts and menus shown on the display.
7. The OCU shall have a glare-resistant backlit liquid crystal display (LCD), with adjustable brightness and contrast for sufficient readability in the bus environment.

# Farebox Passenger Display

## 1. Passenger Display Functionality

1. The Farebox shall have a high-intensity, industrial application-type display that is visible to the passenger with normal vision at a distance of three feet and a viewing angle of 60 degrees from the top and sides. The display shall be capable of providing the passenger with information, including transaction details, transaction assistance, and other messages as determined by Bis-Man Transit. The display shall be integrated with the Farebox. The Contractor shall ensure that the passenger display is ADA-compliant.
2. When fare media is processed, pertinent information shall be displayed on the passenger display.
3. Under normal operations, when the Farebox is static for a continuous period of one (1) minute the display shall automatically extinguish or go into a sleep mode to preserve its operating life. When a coin or bill is inserted, the passenger display shall display either "0.00", if no monies were deposited, or the value of the monies inserted into the Farebox. As coins and bills are inserted, the passenger display shall display the amount remaining to full fare.

## 2. Passenger Visual Alerts

1. To aid hearing-impaired passengers, a red and green light shall be integrated into the Farebox. The lights must be clearly visible to passengers. A green light shall indicate acceptance of all fare media. A red light shall indicate rejection of fare media.

# **Audible Signals and Feedback**

## **1. Audible Feedback To Operator and Passengers**

1. The Farebox shall provide audio feedback or display an appropriate code to the driver depending upon certain operating conditions.
2. Media accept or reject alerts shall be assigned to produce two unique audible tones to indicate to the operator whether the media has been processed correctly (accepted as fare paid) or rejected (not accepted for some reason).
3. In the event that the fare media is invalid, a tone shall sound to indicate invalidity both to the passenger and to the operator.
4. The Farebox shall be able to produce audible signals to alert the operator and passenger of errors or events, including, but not limited to the following:
  - Coin rejected.
  - Bill rejected
  - Bill jam.
  - Bill jam cleared.
  - Fare registered by operator command.
  - Fare registered automatically by Farebox.
  - Invalid operator command entered.

# Farebox Transactions and Validations

## 1. Fare Sets

1. Fare sets shall provide, at a minimum, the following information:
  - Default fare for automatic fare registration.
  - Time/day validity
  - Route/run validity.
2. Contractor shall provide details on the fare set configuration, set-up and capacities.
3. Fare set updates shall be transmitted to the Farebox by way of the Bis-Man Transit farebox server computer. Fare sets shall be updated as a regular component of the daily probing sequence and shall occur within the maximum probing time specified under probing.

## 2. Farebox Transactions

1. The farebox shall securely and accurately record all transactional information, including sales data, operational errors and exception conditions, passenger information, and operator commands. At a minimum, the farebox shall record data for all transactions as follows:
  1. All payment transactions
  2. Type of media processed.
  3. All operator fare classification commands
  4. Route
  5. Farebox errors and failures
  6. Security errors and intrusions
  7. Coin jams
  8. Clearance of coin jams
  9. Bill jams
  10. Clearance of bill jams
  11. New fare set selected
  12. Lost Connection



13. Date and time of payment

2. The Farebox shall permit the operator to enter Passenger classifications through the OCU, which shall match such Passenger classifications to fare amounts.
3. In addition to transactional data, the farebox shall maintain running counts and totals such as total number of coins rejected, total number of bills rejected, and other items as required.
4. All transaction and revenue data shall be date and time-stamped to the highest resolution of the Farebox clock.

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## Revenue Collection

### 1. General

1. While in revenue mode, the Farebox shall be capable of continuously and automatically accepting and verifying all coins and bills presented for payment. Coins and bills that are successfully verified shall be deposited into the Cashbox, and their value shall be displayed on the OCU and on the passenger display.
2. The default fare is "Adult Fare". The Farebox shall automatically classify a transaction as "Adult Fare" if that amount is entered and the operator does not press a fare class key within a software configurable timeout period.

### 2. Coin Handling

1. The coin validator shall be capable of processing and validating coins. The coin validator shall determine the validity of inserted coins based on their metallic content and shall be capable of distinguishing between ten (10) different valid coins/tokens provided each item has a distinctive metallic signature.
2. The coin validator shall accept, validate, and count the value of pennies (1¢), nickels (5¢), dimes (10¢), quarters (25¢), and Susan B. Anthony and Sakakawea dollar coins (\$1.00).
3. The cash handling mechanisms shall accept and accurately count "street quality" coins. The Farebox shall be resistant to jams or malfunctions created by coins, or foreign objects.
4. The operator shall have the option to bypass the coin return and accept a rejected coin.

### 3. Bill Handling

1. The bill validator shall be capable of processing and validating US-issued banknotes.
2. The bill validator shall not be susceptible to the accidental entry of coins.
3. The mechanism used to transport the inserted bills to the validator shall not require precise insertion by the passenger. A guide surface shall assist in the entry of the banknote into the validator.
4. The bill transport shall accept "street" condition bills, including wrinkled, torn, folded, or damp bills without jamming.
5. The validator shall show a green light when it is ready to accept bills or alternatively, by means of a red light, that it is not ready or able to accept bills.

#### **4. Currency Insertion and Rejection**

1. The bill validator shall accept an inserted bill in any one of four orientations – face up, face down, or either end first. The acceptor logic shall examine the inserted bill and determine its validity and denomination.
2. Invalid currency and denominations that have not been programmed for acceptance by the Farebox shall be rejected.
3. All bogus bills, foreign currency, and photocopies of valid currency shall be rejected. Additionally, The Farebox shall reject:
  - Bills inserted into the transport in folded condition, thus reducing the overall length of the bill by more than 1/2" (one-half inch).
  - Bills having tears more than 1/2" (one-half inch) long.
  - Bills having internal holes or tears
  - Bills having tape or other foreign material adhering to it
4. If a bill is rejected, the transport mechanism shall reverse and the item shall be returned to the passenger.
5. Processing time shall be less than two (2) seconds per bill regardless of the denomination being processed, as measured from the time the bill acceptor begins to draw in an inserted bill until it is ready to accept another bill.

#### **5. Bill Transport**

1. The bill validator shall feed an accepted bill into a bill transport, which shall deposit the bill into the cashbox. No force shall be required to cause the bill transport to start.
2. The transport shall operate until the bill has been deposited into the Cashbox.

#### **6. Manual Override**

1. Upon examining a rejected bill and deciding that it should be accepted, the bus operator shall have the ability to activate an "accept next bill" feature using the Farebox keypad. This feature shall allow the bill validator to accept the next inserted item without regard to its validity.
2. One and only one bill shall be accepted upon activation of the "accept next bill" feature.
3. It is understood that due to the possibility of human error manually accepted bills are to be excluded from Farebox accuracy calculation.

## **7. Jam Clearing and Bypass**

1. The farebox shall continuously monitor the coin and bill handling systems and shall automatically sense and report bill and coin jams.
2. All detected jam conditions shall be recorded in the Farebox transactional data and displayed to the operator on the operator control unit display.
3. Upon sensing a jam, the coin or bill processing shall be disabled until the jam is cleared.
4. Through OCU commands, the operator will have the ability to attempt to clear bill jams, if possible. After completion of the jam clearance function, bill processing shall be automatically re-enabled.
5. In the event that the coin slot is jammed or the coin validator is inoperative, a means shall be provided to permit coins to pass directly from the coin insertion slot to the Cashbox, bypassing the coin validator. Coins processed in this manner shall not be counted or registered by the Farebox.
6. Use of the coin bypass mechanism shall not affect the security of the Farebox or the collected revenue. Activation of the coin bypass mechanism shall require deliberate action by the operator. The Farebox shall provide visual indication of the bypass to alert the operator of the bypass mode. The operator shall have the capability to deactivate the bypass with a minimum of two keypad actions. The Farebox shall note in its memory and retain for data transmission the exact times when the bypass was activated and deactivated.
7. When the coin bypass is activated, bills and optional electronic farecards shall continue to be accepted, registered and processed in a normal manner.

# **Cashbox**

## **1. Cashbox Design and Functionality**

1. Cashboxes shall be interchangeable among Fareboxes. The Cashbox shall fit into the Farebox only in a singularly correct position and shall easily be placed into the ready position to collect revenue. The Cashbox insertion and removal procedure shall be designed to guide positively the Cashbox into and out of the Farebox and the Cashbox Receiver.
2. Under normal operations, the Farebox shall recognize the presence of a Cashbox properly engaged and ready for service. The absence of a Cashbox properly engaged shall cause the Farebox not to accept monies until the Cashbox is properly engaged.
3. Two (2) total Cashboxes shall be provided for each Farebox.

## **2. Electronic Cashbox Access Door Locking System**

1. The Farebox cashbox access door shall be mechanically latched.
2. The mechanism to unlatch and gain access to the cashbox during normal operation shall be by an electronic key security system that is enabled in the probe mode.



## Computer and Server System

1. All fareboxes shall communicate via probe with the existing Bis-Man Transit farebox server computer.
2. The standard information to be transmitted by the farebox and received and stored by the Bis-Man Transit farebox server computer, including all data accumulated by the farebox since its last probing:
  1. All transaction-level data
  2. The date and time of probing
  3. The bus number and farebox number
  4. The revenue totals
  5. Bill, coin, smart card fares, credit card fares, and mobile ticketing
  6. Selective registration of fares (e.g., key categories 1-9)
  7. Cashbox number
3. The Bis-Man Transit farebox server computer shall be used to enable updates, such as fare changes and time changes. Updates are transferred from the server computer to the fareboxes via probing.

# Warranty

## 1. General

1. The Contractor shall warrant to Bis-Man Transit that all of the equipment furnished under the procurement shall be free from defects in material and workmanship under normal operating use and service.
2. The Contractor shall provide such a Warranty beginning at the time of final acceptance of the system and continuing for a period of two (2) years on all equipment, with an extension at Bis-Man Transit's option to a total of three (3) years.
3. The Warranty shall cover all parts and labor costs during the Warranty period.
4. It is expressly understood that this Warranty covers all parts and labor costs necessary and that all costs for the necessary labor and material during the Warranty period shall be borne by the Contractor and not by Bis-Man Transit except as provided for herein.
5. Bis-Man Transit shall maintain the equipment in accordance with the Contractor's instructions in order to maintain this Warranty, and the Contractor shall be responsible for all shipping charges.
6. The Contractor shall be solely responsible for all materials and workmanship, including all specialties and accessories, whether manufactured by it or others, used in the construction of the fare collection system and for adequate installation and connection of all equipment, accessories, specialties, and components. Under no condition shall Contractor delegate this responsibility to suppliers or other sources.
7. Any apparatus, device or material which experiences an "item" failure during the warranty period shall be brought to the attention of the Contractor by Bis-Man Transit at the conclusion of the first year but prior to the expiration of the Warranty. The Contractor shall be required to repair or replace the apparatus, device or material (at his determination of the problem and its cause) at no expense to Bis-Man Transit.
8. Bis-Man Transit does reserve the right to perform 'hot swaps', the exchange of faulty components, subassemblies, or equipment, for working components, subassemblies, or equipment into Farebox equipment by Bis-Man Transit staff at the Contractor's consent and expense during the warranty period.



# Training

## 1. General

1. Contractor will provide Bis-Man Transit with a proposed training outline for Bis-Man Transit approval at the Final Design Review

## 2. Equipment Maintenance Training

1. The Contractor will provide a comprehensive farebox and related equipment maintenance and repair training program. The instructor provided by the Contractor will be well-versed in the maintenance and repair of the Contractor's equipment.
2. The following topics are to be covered thoroughly in the training program:
  1. Basic construction and functional operation and interaction of the components of the fare collection system
  2. Examination and disassembly of the farebox and subassemblies including, but not limited to:
    - i. Bill transport
    - ii. Coin Mechanism
    - iii. Inspection plates and chutes
    - iv. Electronic chassis
    - v. Lower stanchion and cashbox
    - vi. Electrical wiring harnesses
  3. Preventive maintenance on all subassemblies
  4. Electrical wiring/troubleshooting
  5. Field repair of the farebox
  6. Use and nominal maintenance of assessor equipment required to maintain the revenue collection system
  7. Disassembly, repair, and preventative maintenance of Farebox components
  8. Electronic theory and function of the farebox, computer, and system components
  9. Software overview of all interrelated systems
  10. Disassembly and repair of cashboxes and vaults



**Certification Regarding  
Debarment, Suspension, and Other Responsibility Matters  
Primary Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations are available from local offices of the U.S. Small Business Administration.

**(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS BELOW)**

- 1) The prospective primary participants certified to the best of its knowledge and belief that it and its principals:
  - a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.
  
- 2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

Business Name: \_\_\_\_\_

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

Name and Title of Authorized Representative

\_\_\_\_\_

Signature of Authorized Representative

## INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations (13 CFR Part 145).

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

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

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

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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## **ACCESS TO RECORDS AND REPORTS**

a. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, leases, subcontracts, arrangements, other third party Contracts of any type, and supporting materials related to those records.

b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

## **AMERICANS WITH DISABILITIES ACT (ADA)**

The contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (d), which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

## **BOND REQUIREMENTS**

**Bid Guarantee.** Bidders shall furnish a bid guaranty in the form of a bid bond, or certified treasurer's or cashier's check issued by a responsible bank or trust company, made payable to the Agency. The amount of such guaranty shall be equal to the value or a percentage of the total bid price.

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

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of their bid within [90] days after the bid opening without the written consent of the Agency, or refuse or be unable to enter into this Contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance and Payment Bonds, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, it shall forfeit its bid guaranty to the extent Agency's damages occasioned by such withdrawal, or refusal, or inability to enter into a Contract, or provide adequate security thereof.

It is further understood and agreed that to the extent the defaulting bidder's bid guaranty shall prove inadequate to fully recompense Agency for the damages occasioned by default, then the undersigned bidder agrees to indemnify Agency and pay over to Agency the difference between the bid guarantee and Agency's total damages so as to make Agency whole.

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

**Performance Guarantee.** A Performance Guarantee in the amount of 100% of the Contract value is required by the Agency to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit shall be provided by the Contractor and shall remain in full force for the term of the Contract. The successful Bidder shall certify that it will provide the requisite Performance Guarantee to the Agency within ten (10) business days from Contract execution. The Agency requires all Performance Bonds to be provided by a fully qualified surety company acceptable to the Agency and listed as a company currently authorized under 31 C.F.R. part 22 as possessing a Certificate of Authority as described hereunder. Agency may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Agency may secure additional protection by directing the Contractor to increase the amount of the existing bond or to obtain an additional bond.

If the Bidder chooses to provide a Letter of Credit as its Performance Guarantee, the Bidder shall furnish with its bid, certification that an Irrevocable Stand-By Letter of Credit will be



furnished should the Bidder become the successful Contractor. The Bidder shall also provide a statement from the banking institution certifying that an Irrevocable Stand-By Letter of Credit for the action will be provided if the Contract is awarded to the Bidder. The Irrevocable Stand-By Letter of Credit will only be accepted by the Agency if:

1. A bank in good standing issues it. The Agency will not accept a Letter of Credit from an entity other than a bank.
2. It is in writing and signed by the issuing bank.
3. It conspicuously states that it is an irrevocable, non-transferable, "standby" Letter of Credit.
4. The Agency is identified as the Beneficiary.
5. It is in an amount equal to 100% of the Contract value. This amount must be in U.S. dollars.
6. The effective date of the Letter of Credit is the same as the effective date of the Contract
7. The expiration date of the Letter of Credit coincides with the term of the contract.
8. It indicates that it is being issued in order to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between the Agency and the Contractor the work stipulated herein.

The issuing bank's obligation to pay will arise upon the presentation of the original Letter of Credit and a certificate and draft to the issuing bank's representative at a location and time to be determined by the parties. This documentation will indicate that the Contractor is in default under the Contract.

Payment Bonds. A Labor and Materials Payment Bond equal to the full value of the contract must be furnished by the contractor to Agency as security for payment by the Contractor and subcontractors for labor, materials, and rental of equipment. The bond may be issued by a fully qualified surety company acceptable to (Agency) and listed as a company currently authorized under 31 C.F.R. part 223 as possessing a Certificate of Authority as described thereunder.

## **BUS TESTING**

The operator of the bus testing facility is required to provide the resulting test report to the entity that submits the bus for testing. The manufacturer or dealer of a new bus model or a bus produced with a major change in component or configuration is required to provide a copy of the corresponding full bus testing report and any applicable partial testing report(s) to the Agency during the point in the procurement process specified by the Agency, but in all cases before final acceptance of the first bus by the Agency. The complete bus testing reporting requirements are provided in 49 C.F.R. § 665.11.

## **BUY AMERICA REQUIREMENTS**

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR § 200.322 Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11. Domestic preferences for procurements The bidder or offeror must submit to the Agency the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

## **BYRD ANTI-LOBBYING AMENDMENT**

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Agency.”

## **CARGO PREFERENCE REQUIREMENTS**

The contractor agrees:

a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA Recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and

c. to include these requirements in all subcontracts issued pursuant to this contract when

the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

## **CHARTER SERVICE**

The contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that Recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(d);
2. FTA regulations, "Charter Service," 49 C.F.R. part 604;
3. Any other federal Charter Service regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

The contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

1. Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
2. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
3. Any other appropriate remedy that may apply.

The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

## **CIVIL RIGHTS LAWS AND REGULATIONS**

The following Federal Civil Rights laws and regulations apply to all contracts.

- 1 **Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:
  - a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
  - b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment

on the basis of race, color, religion, sex, or national origin.

- 2 **Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
- 3 **Nondiscrimination on the Basis of Age.** The “Age Discrimination Act of 1975,” as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.
- 4 **Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

### **Civil Rights and Equal Opportunity**

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal

Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any Implementing requirements FTA may issue.
4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
5. **Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

## **CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to FTA and the Regional

Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

#### Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

#### Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.”

## **CONFORMANCE WITH ITS NATIONAL ARCHITECTURE**

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

## **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

- a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs.
- b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.
- c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- d. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

### Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The agency shall upon its own action or upon written request of an authorized representative of the Department of

Labor withheld or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

## **DAVIS BACON ACT AND COPELAND ANTI-KICKBACK ACT**

a. In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

b. The Non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

### “Compliance with the Copeland “Anti-Kickback” Act.

- (1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FTA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.



## **DEBARMENT AND SUSPENSION**

- a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs for a contract in the amount of at least \$25,000
  - (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
  - (2) C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
  - (3) The accompanying certification is a material representation of fact relied upon by the subrecipient. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency and subrecipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

## **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Agency deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, each FTA Recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency's written consent; and that, unless the Agency's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

It is the policy of the Agency and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

## **ENERGY CONSERVATION**

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

## **EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, 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; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## FEDERAL CHANGES

49 CFR Part 18 Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

## FLY AMERICA

- a) Definitions. As used in this clause—
- 1) “International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
  - 2) “United States” means the 50 States, the District of Columbia, and outlying areas.
  - 3) “U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
- b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

### Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

- e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

## **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

Incorporation of Federal Transit Administration (FTA) Terms - The provisions within include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the current FTA Circular 4220 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

## **NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

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

## **NOTIFICATION TO FTA**

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or

a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

## **PATENT RIGHTS AND RIGHTS IN DATA**

### Intellectual Property Rights

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the Agency intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT.

The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions:

Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution.

For purposes of this Contract, the term “subject data” means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of “subject data” include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Federal Government Purposes,” any subject data or copyright described below. For “Federal Government Purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.

a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and

b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.

2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA’s license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.

6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

## **PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES**

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

## **PROCUREMENT OF RECOVERED MATERIALS**

- (1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—
  - i. Competitively within a timeframe providing for compliance with the contract performance schedule;
  - ii. Meeting contract performance requirements; or
  - iii. At a reasonable price.
  
- (2) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>."

## **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract."



## **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.**

- a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
- 1) Procure or obtain;
  - 2) Extend or renew a contract to procure or obtain; or
  - 3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
- (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- c) See Public Law 115-232, section 889 for additional information.
- d) See also § 200.471.

## **PROMPT PAYMENT**

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

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

## **PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS**

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

1. U.S. DOL Certification. Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.

2. Special Warranty. When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.

1. Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

## **SAFE OPERATION OF MOTOR VEHICLES**

### **Seat Belt Use**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or Agency.

### **Distracted Driving**

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

## **SCHOOL BUS OPERATIONS**

The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(f);
2. FTA regulations, "School Bus Operations," 49 C.F.R. part 605;
3. Any other Federal School Bus regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

If Contractor violates this School Bus Agreement, FTA may:

1. Bar the Contractor from receiving Federal assistance for public transportation; or
2. Require the contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

## **SEISMIC SAFETY**

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

## **SIMPLIFIED ACQUISITION THRESHOLD**

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America’s eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).)

## **SPECIAL DOL EEO CLAUSE**

Applies to construction contracts > \$10,000; This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60- 741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

## **SPECIAL NOTIFICATION REQUIREMENTS FOR STATES**

Applies to States –

- a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:
  - (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
  - (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
  - (3) The amount of federal assistance FTA has provided for a State Program or Project.
- b. Documents - The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for

proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

## **SUBSTANCE ABUSE REQUIREMENTS**

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency, or Agency, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with part 655 and to submit the Management Information System (MIS) reports to the Agency.

## **TERMINATION**

### **Termination for Convenience (General Provision)**

The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

### **Termination for Default [Breach or Cause] (General Provision)**

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

### **Opportunity to Cure (General Provision)**

The Agency, in its sole discretion may, in the case of a termination for breach or default, allow

the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions

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

#### Waiver of Remedies for any Breach

In the event that Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Agency shall not limit Agency's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

#### Termination for Convenience (Professional or Transit Service Contracts)

The Agency, by written notice, may terminate this contract, in whole or in part, when it is in the Agency's interest. If this contract is terminated, the Agency shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

#### Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

#### Termination for Default (Transportation Services)

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

If this contract is terminated while the Contractor has possession of Agency goods, the Contractor shall, upon direction of the Agency, protect and preserve the goods until

surrendered to the Agency or its agent. The Contractor and Agency shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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

#### Termination for Default (Construction)

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

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

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract.
3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

#### Termination for Convenience or Default (Architect and Engineering)

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2)

deliver to the Agency 's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

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

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

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

#### Termination for Convenience or Default (Cost-Type Contracts)

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

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

If, after serving a Notice of Termination for Default, the Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

## **VETERANS HIRING PREFERENCE**



Veterans Employment - Recipients of Federal financial assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

## **VIOLATION AND BREACH OF CONTRACT**

### Rights and Remedies of the Agency

The Agency shall have the following rights in the event that the Agency deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

For purposes of this Contract, breach shall include.

### Rights and Remedies of Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the Agency, the Contractor expressly agrees that no default, act or omission of the Agency shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the Agency directs Contractor to do so) or to suspend or abandon performance.

### Remedies

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Contract will be a default of this Contract. In the event of a default, the Agency will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Contract by the Contractor before the Agency takes action contemplated herein, the Agency will provide the Contractor with sixty (60) days written notice that the Agency considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

### Disputes

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

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the Agency's direction or decisions made thereof.

Performance during Dispute

Unless otherwise directed by Agency, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages

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

Remedies

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

Rights and Remedies

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

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_