



Request for Proposal

RFP 501-2020

Emergency Backup Generator

Date Issued: June 23, 2020

TABLE OF CONTENTS

1 INTRODUCTION.....4

 1(A) Background.....4

 1(B) REQUESTS for Proposal (RFP) Purpose4

2 RFP Instructions and Information5

 2(A) RFP Timeline5

 2(B) Selection and Evaluation Team.....5

 2(C) RFP Contact.....5

 2(E) Evaluation Criteria Chart7

 2(F) Notices and Response Criteria7

3 REQUIREMENTS for proposals11

 Requirement11

 Existing Power.....11

 Known Demand11

 Standby Generator Intent.....11

 Generator Location11

 Automatic Transfer Switch & Electrical Disconnect Location11

 Generator Foundation12

 Work12

 Submittal Requirements12

 PRICING CONSIDERATIONS12

 Insurance Requirements13

 Single Point of Responsibility16

4 Questions.....16

4(A) Background and Introduction 16

4(C) Single Point of Responsibility/Accountability 16

4(D) General Questions..... 16

5 Proposal 18

 Pricing..... 18

6 Question Submittal Form..... 19

New York State (NYS) Clauses..... 20

9. REQUIRED FORMS FOR SUBMITTAL 26

 9 (A) DISADVANTAGED BUSINESS ENTERPRISE (DBE) 26

 9 (B) ANTI-DISCRIMINATION CLAUSE 27

 9 (C) Federal Transit Administration Certifications and Assurances..... 29

ACKNOWLEDGEMENT OF PROPOSER, IF A CORPORATION 30

9 (D) NON-COLLUSION CERTIFICATION 32

9 (E) CERTIFICATION OF COMPLIANCE 33

10. ADDENDA ACKNOWLEDGEMENT 34

11. Protest Information 35

12. RFP Response Submittal Checklist 37

13 Statement of No Proposal 38

14 Additional Notes: 39

Federal Clauses 40

1 INTRODUCTION

1(A) BACKGROUND

TCAT, Inc. (Tompkins Consolidated Area Transit, Inc.) is a not-for-profit corporation that provides public transportation for Tompkins County, a rural county in upstate New York of approximately 105,000 residents. TCAT serves all parts of the county; frequent service is centered in the densely populated Ithaca Urbanized Area (UZA), with a population of approximately 53,000. TCAT serves over 4.1 million passenger trips every year, traveling more than 1.66 million miles over 135,000 hours in revenue service. The fleet currently consists of 54 buses, 6 of which are hybrid-electric diesel buses, 2 of which are gasoline 16-passenger vans, and the remaining 46 vehicles are standard 30'-40' diesel buses. TCAT also offers complementary ADA Paratransit services through a subcontractor, Gadabout. TCAT exhibits relatively lean staffing levels, with 28 Administrative Staffers, 86 Bus Operators, and 21 Maintenance Mechanics and Bus Handlers.

TCAT, Inc.'s facility is located at 737 Willow Avenue, Ithaca, New York 14850 (on the outskirts of the City of Ithaca) and encompasses approximately two acres of property inclusive of our estimated 50,000 square foot Administrative Wing, Bus Storage Area, Bus Wash, Dispatch & Transit Supervisor Office, Employee Lounge, Fuel Storage Area, Maintenance Bays and Parts Storage Area. Constructed in 1992 TCAT, Inc.'s facility is utilized year-round to conduct transportation orchestration, on average, 20 hours per day 7 days per week.

1(B) REQUESTS FOR PROPOSAL (RFP) PURPOSE

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

Tompkins Consolidated Area Transit Inc., (TCAT) is interested in a design-build contract for all required of the completion of design and construction necessary to install an Emergency Standby Generator at TCAT Main Facility at 737 Willow Ave, Ithaca, NY. The proposed contract award amount will be a fixed amount.

2 RFP INSTRUCTIONS AND INFORMATION

2(A) RFP TIMELINE

| Day/Date | Description |
|---|---|
| June 23, 2020 (Week of) | Announcement of RFP are also placed with area newspapers, New York State Contract Reporter and TCAT, Inc. websites. |
| June 23, 2020 | RFP copies available to suppliers via e-mail and websites. |
| July 9, 2020 | On-site pre-bid meeting at 1:30 PM |
| July 17, 2020 | Written questions due |
| July 22, 2020 | Written replies to questions distributed to all known parties. |
| July 29, 2020 No later than 4 PM EST Late bids will not be accepted. | RFP responses due at following address: TCAT, Inc. 737 Willow Avenue Ithaca, New York 14850 Attention: Raymond Lalley Submittals Due By 4:00 PM EST |
| August 6, 2020 | Responses will be analyzed and scored by TCAT, Inc. evaluation team. Total scores will factor heavily into TCAT, Inc.'s decision as to which parties are considered finalists |
| No later than August 28, 2020 | TCAT, Inc. project award is made (subject to successful negotiations of terms and conditions). |

2(B) SELECTION AND EVALUATION TEAM

| | |
|---|---|
| Curt Parrish TCAT, Inc. Maintenance Supervisor | Team Member |
| Scot Vanderpool TCAT, Inc. General Manager | Team Member |
| Mike Smith TCAT, Inc. Operations Manager | Team Member |
| Raymond Lalley TCAT, Inc. Purchasing Manager | Single Source of Contact though RFP Process |

2(C) RFP CONTACT

| | | |
|----------------|--|---|
| Raymond Lalley | TCAT, Inc. Purchasing and Projects Manager | 737 Willow Avenue Ithaca, New York 14850 Phone: 607-277-9388 (X-540) Fax: 607-277-9551 E-mail: rl1@tcatmail.com |
|----------------|--|---|

2(D) RFP Evaluation Criteria

An evaluation team listed in Section 2(B) and others will analyze the RFP responses received from each Contractor. Prior to the selection of the award, TCAT, Inc. reserves the right to conduct on-site visits of any of the respondents' facilities and require each Contractor to present items contained in the RFP response and any other items deemed appropriate by TCAT, Inc.

If an award is made as the result of this RFP, it shall be awarded to the respondent whose proposal is most advantageous to TCAT, Inc. 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 TCAT, Inc.'s Evaluation Team (if applicable); on-site visits at supplier's site (if applicable); product samples which TCAT, Inc. may – at our discretion – request as part of the RFP process; and any additional criteria deemed appropriate by TCAT, Inc. that 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, any one of which will suffice to determine if a respondent is either not responsible or the proposal is not the most advantageous to TCAT, Inc., will be considered:

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. TCAT, Inc.'s termination for default of a previous contract, with a respondent, shall be deemed as 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 to the full extent of the RFP.
8. There is uncompleted work with TCAT, Inc. 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 TCAT, Inc. 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 TCAT, Inc.’s sole option and discretion, for termination for default subsequent to award or execution of contract.

12. More likely than not, the respondent will not 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 New York State, is not registered as a contractor in New York, 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 TCAT, Inc.

2(E) EVALUATION CRITERIA CHART

| Evaluation Criteria | Percentage |
|---|------------|
| 1. Pricing | 50 |
| 2. Ability to meet RFP Requirements | 30 |
| 3. Implementation Plan | 5 |
| 4. Experience with Design Build for Generator Installations | 15 |
| Total | 100 |

2(F) NOTICES AND RESPONSE CRITERIA

This RFP has been compiled in good faith. The information contained within is selective and subject to TCAT, Inc.’s updating, expansion, revision and amendment.

TCAT, Inc. reserves the right to change at any time any aspect of, terminate, or delay the RFP, the RFP process and/or the program, which is outlined within this RFP. Notice shall be given in a timely manner thereafter.

Recipients of this RFP are advised that nothing stated herein, or any part thereof, or any communication during this evaluation and selection process, shall be construed as constituting, offering or awarding a contract, representation or agreement of any kind between TCAT, Inc. and any other party, save for a formal written contract that is properly executed by both parties.

Responses to this RFP will become the property of TCAT, Inc., and will form the basis of negotiations for an agreement between TCAT, Inc. and the successful supplier.

TCAT, Inc. is not liable and will not be responsible for any costs incurred by any supplier(s) for the preparation and delivery of the RFP responses, nor will TCAT, Inc. be liable for any costs incurred prior to the execution of an agreement, including but not limited to, presentations by RFP finalists to TCAT, Inc.

During the review of this document please note TCAT, Inc.’s emphasis on the expectations, and qualities and requirements necessary to be positioned as an RFP finalist and successful supplier.

Questions from respondents regarding this RFP must be submitted in writing (MS Word) on the question submittal form provided in Section 6 and returned via an attachment to an email sent to the RFP Contact shown in Section

2(C). Questions from respondents pertinent to this RFP will be answered so long as they are received by the day/time indicated in the RFP Timeline, Section 2(A) and in the specified format. Answers to all pertinent questions will be sent to all known respondents.

Note: Please review the following additional criteria

1. WAIVER OF MINOR ADMINISTRATIVE IRREGULARITIES
TCAT, Inc. reserves the right, at its sole discretion, to waive minor administrative irregularities contained in any proposal.
2. SINGLE RESPONSE
A single response to the RFP may be deemed a failure of competition and, in the best interest of TCAT, Inc., the RFP may be cancelled.
3. PROPOSAL REJECTION
TCAT, Inc. reserves the right to reject any or all proposals at any time without penalty.
4. WITHDRAWAL OF PROPOSALS
Suppliers may withdraw a proposal that has been submitted at any time up to the proposal closing date and time. To accomplish this, a written request, signed by an authorized representative of the supplier, must be submitted to the RFP Contact. The supplier may submit another proposal at any time up to the proposal closing date and time.
5. NON-ENDORSEMENT
As a result of the selection of a supplier of products and/or services to TCAT, Inc., TCAT, Inc. is neither endorsing nor suggesting that the supplier's product is the best or only solution. The supplier agrees to make no reference to TCAT, Inc. in any literature, promotional material, brochures, sales presentation or the like without the express written consent of TCAT, Inc.
6. PROPRIETARY PROPOSAL MATERIAL
Any information contained in the proposal that is proprietary must be clearly designated. Marking the entire proposal as proprietary will be neither accepted nor honored. If a request is made to view a supplier's proposal, TCAT, Inc. will comply according to applicable Open Public Records Acts. If any information is marked as proprietary in the proposal, such information will not be made available until the affected supplier has been provided an opportunity to seek a court injunction against the requested disclosure.
7. RESPONSE PROPERTY OF TCAT, INC.
All materials submitted in response to this request become the property of TCAT, Inc. Selection or rejection of a response does not affect this right.
8. NO OBLIGATION TO PROCURE

TCAT, Inc. reserves the right to refrain from contracting with any supplier. The release of this RFP does not compel TCAT, Inc. to procure. TCAT, Inc. may elect to proceed further with this project by interviewing suppliers well suited to our project, conducting site visits or proceeding with an award.

9. COST OF PREPARING PROPOSALS

TCAT, Inc. is not liable for any costs incurred by suppliers in the preparation and presentation of proposals and demonstrations submitted in response to its RFP.

10. ERRORS IN PROPOSALS

TCAT, Inc. will not be liable for any errors in supplier proposals. Suppliers will not be allowed to alter proposal documents after the deadline of proposal submission.

TCAT, Inc. reserves the right to make corrections or amendments due to errors identified in proposals by TCAT, Inc. or the supplier. This type of correction or amendment will only be allowed for such errors as typing, transposition or any other obvious error. Suppliers are liable for all errors or omissions contained in their proposals.

When, after the opening and tabulation of proposals, a respondent claims error and requests to be relieved of award, said respondent will be required to promptly present certified work sheets. The RFP Contact will review the work sheets and if the RFP Contact is convinced by clear evidence that an honest, mathematically excusable error or critical omission of costs has been made, the respondent may be relieved from said proposal.

After opening and reading proposals, TCAT, Inc. will check all for accuracy of extensions of the prices per unit and the total price. If a discrepancy exists between a price per unit and the extended amount of any proposal item the price per unit will control, TCAT, Inc. will use the total of extensions corrected where necessary.

11. BID BOND

Refer to Federal and State Requirements

12. PERFORMANCE BOND

Refer to Federal and State Requirements.

13. RESPONSE INFORMATION

Information regarding this RFP, including any addenda, is available at www.tcatbus.com (see News & Procurement → TCAT Projects→ Current and Future Projects) or contact Raymond Lalley at (607) 277-9388 Extension 540 or email rl1@tcatmail.com.

14. ADDENDA

Suppliers are responsible for checking TCAT, Inc.'s website for the issuance of any addenda prior to submitting a response. Our website address is ww.tcatbus.com (see News → Procurement).

15. CONTRACT AWARD AND EXECUTION

TCAT, Inc. will select the proposal that, in its sole discretion, is the most advantageous to TCAT, Inc. TCAT, Inc. reserves the right to make an award without further discussion of the proposal submitted; there may be no best and final offer procedure, therefore, all proposals should be initially submitted on the most favorable terms the supplier can offer.

TCAT, Inc. shall attempt to negotiate a contract with the respondent who offered the most advantageous proposal at a price which TCAT, Inc. determines is fair and reasonable. If TCAT, Inc. is unable to negotiate a satisfactory contract with the firm selected at a price TCAT, Inc. determines to be fair and reasonable, negotiations with that firm shall be formally terminated and TCAT, Inc. shall select the next best proposal, and continue until an agreement is reached or the process is terminated.

3 REQUIREMENTS FOR PROPOSALS

REQUIREMENT

TCAT will require the contractor to design, and provide installation of an emergency backup generator.

EXISTING POWER

TCAT currently uses a 50 Kw generator, which is installed in the mezzanine, which will have to be removed and disposed of properly. The railing section in mezzanine area is removable, and a forklift can pick it up from the edge.

KNOWN DEMAND

The existing MDP is 480volt, 3ph, 4w, 600amp served by 3 pole mounted transformers. Based on meter data, the approximate maximum KW draw of the building is 350kW, based on engineering review.

STANDBY GENERATOR INTENT

The following requirement is to install a 350kW generator or larger*. The generator would be tied to the exg MDP which would back-up the entire building.

DIESEL GENERATOR:

- 350 Kw Cummins (or equivalent) generator with a level 2 enclosure
- 600 amp, 480v service entrance rated, NEMA 3r automatic transfer switch
- Concrete pad and trenchwork
- Wire, conduit and accessories
- Training for maintenance personnel
- Remote notifications regarding generator alarms. (iPhone and Android Apps must be available)

This generator will be relocated in a few years when TCAT has built a new facility and place in parallel set-up.

* In some instances, a manufacturer may have situation where a larger generator is available at a cost less than 350 kW due to varying factors, availability, surplus stock, more common size in mass production, etc.

GENERATOR LOCATION

The proposed location for the new Emergency Standby Generator is on the southwest side of the building, set back approximately 10 feet from the building in the vicinity of the diesel tank.

AUTOMATIC TRANSFER SWITCH & ELECTRICAL DISCONNECT LOCATION

Automatic transfer switches and electrical disconnects shall be installed on the exterior of the existing building at the southwest side, or approved alternate. All components in this section shall be installed and protected per the manufacturer's specifications and applicable building and electrical codes.

GENERATOR FOUNDATION

Design-Builder shall provide foundation as required, including site preparation, and concrete slab. Foundation shall be sufficient to support the proposed generator. The foundation area shall be enclosed by 6 ft wall minimum height with a manner to provide secure access to generator, and look to complement to the concrete blocks utilized by the diesel containment area. With an opening which is secure, allows for easy access to maintain.

Building drawings are located here:

https://www.dropbox.com/sh/pbkspuupqdopegu/AAAC1ixK9C0_04oS4cNPUIi0a?dl=0

WORK

For small items TCAT has on-site disposal available for scrap metal, recycling, and general trash which may be utilized.

Planned power outage can occur mid-day, 2-3 hours.

SUBMITTAL REQUIREMENTS

The successful proposer will:

- Provide all engineering, design, labor, equipment, and parts such that the functional needs as described in this RFP are fully met and operational on a turn-key basis.
- Provide new Standby Generator and Pad/Bollards and Enclosure, all required.
- Train personnel on use of the equipment.
- Manuals and documentation for proper maintenance and repair.
- Agree to submit the reports, technical details, drawings, expense documentation, and invoices as maybe required by TCAT.
- Shall provide all documentation as required for local permits.
- Permits shall be completed and submitted by the contract
- Be able to meet the project schedule in order to complete all aspects of the project and provide all required paperwork no later December 31, 2020.

Submittal Sections are labeled in Section 12 below.

PRICING CONSIDERATIONS

Pricing should include total labor and material with all required permitting.

Must meet Buy America Requirement

Prevailing Wage Requirement for Tompkins County, NY.

INSURANCE REQUIREMENTS

The Contractor and any subcontractors shall procure and maintain throughout the term of this Agreement, and beyond the term of this Agreement where explicitly required below, insurance of the following types of coverage and limits of liability:

- 1) Commercial General Liability (CGL) with limits of Insurance of not less than \$1,000,000 each occurrence and \$2,000,000 Annual Aggregate.
 - a) If the CGL coverage contains a General Aggregate Limit
 - b) CGL coverage shall be written on ISO Occurrence form CG 00 01 1093 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury.
 - c) Contractor, TCAT, City of Ithaca, Tompkins County, Cornell University, and all other parties required of the Contractor, shall be included as insured on the CGL, using ISO Additional Insured Endorsement CG2010 (11/85) or CG2010 (04/13) AND CG2037 (04/13) or CG2037 (04/13) AND CG2038 (04/13) or an endorsement providing equivalent coverage to the additional insureds. This insurance for the additional insureds shall be as broad as the coverage provided for the named insured Contractor/subcontractor. It shall apply as Primary and non-contributing Insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insureds.
 - d) Contractor/subcontractor shall maintain CGL coverage for itself and all additional insureds for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for at least 3 years after completion of the Work.
- 2) Automobile Liability
 - a) Business Auto Liability with limits of at least \$1,000,000 each accident.

b) Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.

c) Contractor, TCAT, City of Ithaca, Tompkins County, Cornell University, and all other parties required of the Contractor, shall be included as insureds on the auto policy.

3) Commercial Umbrella

a) Umbrella limits must be at least \$5,000,000.

b) Umbrella coverage must include as insureds all entities that are additional insureds on the CGL.

c) Umbrella coverage for such additional insureds shall apply as primary before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insureds, other than the CGL, Business Auto Liability and Employers Liability coverages maintained by the Contractor/subcontractor.

4) Workers' Compensation and Employer's Liability - Statutory coverage complying with the New York Workers' Compensation Law. Contractor and any subcontractors must submit one of the following forms:

- CE-200 - Certificate of Attestation of Exemption from NYS Workers' Compensation, OR
- C-105.2 - Certification of NYS Workers' Compensation Insurance, OR
- U-26.3 - State Insurance Fund version, OR
- SI-12 - Certificate of NYS Workers' Compensation Self Insurance, OR
- GSI-105.2 - Certificate of NYS Workers' Compensation Group Self-Insurance.

5) Disability Benefits Coverage - Statutory coverage complying with the NYS Workers' Compensation Law. Contractor and any subcontractors must submit one of the following forms:

- CE-200 - Certificate of Attestation of Exemption from NYS Disability Benefits Coverage, OR
- DB120.1 - Certification of Disability Benefits Insurance, OR
- DB155 - Certificate of Disability Self-Insurance.

6) Waiver of Subrogation

a) Contractor waives all rights against TCAT, City of Ithaca, Tompkins County, Cornell University and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by Commercial General Liability, Commercial Umbrella liability, Business Auto Liability or Workers' Compensation and Employer's Liability insurance maintained per the requirements stated above.

b) Contractor shall assure that all subcontractors execute a waiver of all rights against Contractor, TCAT, City of Ithaca, Tompkins County, Cornell University and their agents, officers, directors and employees for

recovery of damages to the extent these damages are covered by Commercial General Liability, Commercial Umbrella liability, Business Auto Liability or Workers' Compensation and Employer's Liability insurance maintained per the requirements stated above. Contractor shall provide the subcontractors' executed subrogation waivers to TCAT prior to the commencement of work under this Agreement.

7) Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the Contractor/subcontractor's policies. These certificates and the insurance policies shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the Contractor.

8) Contractor acknowledges that failure to obtain the insurance described in this constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to TCAT, City of Ithaca, Tompkins County and Cornell University. The Contractor is to provide TCAT with certificates of insurance and any other documentation requested by TCAT, evidencing the above requirements have been met, prior to the commencement of work or use of facilities. The failure of TCAT to object to the contents of the certificates, forms or endorsements, or the absence of same, shall not be deemed a waiver of any and all rights held by TCAT, City of Ithaca, Tompkins County, or Cornell University.

SINGLE POINT OF RESPONSIBILITY

TCAT, Inc. expects to have a single point of contact consisting of a single point of authority and a single contract entity for this project. TCAT, Inc. will not enter into any agreement that does not provide a single point of accountability.

4 QUESTIONS

Please respond in the text blocks underneath each question.

4(A) BACKGROUND AND INTRODUCTION

1. Do you have any assumption in reference to TCAT, Inc.'s design and build for emergency backup generator which is pertinent in your response?
2. Do you have any open questions about the summary of requirements considered pertinent to your response?
3. Describe your experience in supporting similar requirements for companies with similar size and/or service?

4(C) SINGLE POINT OF RESPONSIBILITY/ACCOUNTABILITY

1. TCAT, Inc.'s expectation is to have a single point of contact, i.e. a single point of responsibility/accountability and a single contracting entity for this project. This is of critical nature pertaining to this RFP; a contract will not be awarded to a firm/individual who does not submit this single point of responsibility or accountability. Indicate below your understanding of the aforementioned requirement and include contact information for your single point of responsibility and accountability.

4(D) GENERAL QUESTIONS

1. How many years has your company been in business? How long have you been providing design and construction service for emergency backup generators? What is your company's primary line of business?
2. Provide a brief overview of your company (furnish your business philosophy, mission statement, Management Structure, Organizational Chart, etc.).
3. How many employees do you have? What are the total years' of experience your employees possess providing transit consulting services?

4. State the type of ownership of your company. Provide the state and date of your incorporation if applicable. List Headquarters and Regional/Full-Service office locations and website address.
5. Provide key contact names, titles addresses, telephone and fax numbers. Also, identify the person(s) authorized to contractually bind your organization.
6. Please provide the status of any current, or pending, litigation **against your company** that may directly affect ability to deliver the services you offer.
7. Include names of three (3) current clients (with title and phone number) utilizing similar requirements to what your company is proposing in response to our RFP.
8. Please include reference names of former clients, if any, (with title and phone numbers) and reasons for disengagement of your services.
9. Describe any value-added services your company is capable of providing.
10. Explain, in one page or less, how the proposed will differentiate you from other companies and why TCAT, Inc. should choose your company as our company. Also, please list unique features that provide your company with a competitive edge.

5 PROPOSAL

PRICING

Pricing for this requirement is as follows:

| | Material | Labor |
|--|---------------------------------|---------------------------------|
| Generator, 350 Kw | \$ | \$ |
| 600 Amp, 480V service, transfer switch | \$ | \$ |
| Concrete pad, enclosure (wall) and trench work | \$ | \$ |
| Wire, conduit, and accessories | \$ | \$ |
| Training | \$ | \$ |
| Misc. _____ | \$ | \$ |
| | | |
| Bonds | | \$ |
| Permit, Allowance | | \$ |
| | | |
| Subtotal cost material | \$ | |
| Subtotal cost labor | | \$ |
| | | |
| Total project cost | \$ | |

US
Dollar

6 QUESTION SUBMITTAL FORM

Questions regarding this RFP may be submitted via email to the RFP Contact listed in Section 2(C), only during the allotted timeframe detailed in the timeline, Section 2(A)

Answers to all pertinent questions, from all Suppliers, will be returned to all known RFP participants without identifying the Supplier submitting the inquiry.

NEW YORK STATE (NYS) CLAUSES

STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

- 1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.
- 2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
- 3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$15,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$30,000 (State Finance Law Section 163.6.a).
- 4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
- 5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance

with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the **prevailing wage rate and pay or provide the prevailing supplements**, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any monies due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity

authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of

affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must

promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development

Division for Small Business

30 South Pearl St -- 7th Floor

Albany, New York 12245

Telephone: 518-292-5220

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development

Division of Minority and Women's Business Development

30 South Pearl St -- 2nd Floor

Albany, New York 12245

<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State Contractors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. PURCHASES OF APPAREL. In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any Contractor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) Contractor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

9. REQUIRED FORMS FOR SUBMITTAL

9 (A) DISADVANTAGED BUSINESS ENTERPRISE (DBE)

**CERTIFICATION FOR NON-ROLLING STOCK
MATERIALS OR SERVICES**

As a recipient of funding under Section 1101(b) of TEA-21, 23 U.S.C. Section 101, our transit system must identify Disadvantaged Business Enterprise participation in all contracts which can be used to meet our overall obligation. For this reason, we require all Contractors, as a condition of being authorized to bid on this project, to certify the level of Disadvantaged Business Enterprise participation which will be involved if he/she is awarded the contract for the project.

Accordingly, the following certification must be completed and submitted with your bid:

I _____, hereby
(Name and Title)

certify that DBE participation in the items offered shall not be less than _____ percent,

\$ _____ U.S. dollars of the final purchase price.

I understand that the Disadvantaged Business Enterprise participation levels indicated will be a material factor in the public agency's decision to award a contract for the items offered.

Signature of Authorized Official

Title

Attach a listing of the DBE firms from whom purchase of components or services is anticipated, pending award of this contract for items covered, in this procurement. Please indicate the type of items to be purchased, an address, phone number and contact person for each Disadvantaged Business Enterprise as well as the amount of purchases anticipated.

9 (B) ANTI-DISCRIMINATION CLAUSE

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

- (a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination because of race, color, creed or national origin. Such action shall be taken with reference, but not be limited, to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
- (b) The contractor will send to each labor union or representative of workers with which he has or is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by the State Commissioner for Human Rights, advising such labor union or representative of the contractor's agreement under clauses (a) through (f) hereinafter called "non-discrimination clauses". If the contractor was directed to do so by the contracting agency as part of the bid or negotiation of this contract, the contractor shall request such labor union or representative to furnish him with as written statement that such labor union or representative either will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment and the terms and conditions of employment under this contract shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnishes such a statement, the contractor shall promptly notify the State Commission for Human Rights of such failure or refusal.
- (c) The contractor will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commission for Human Rights setting forth the substance of the provisions of clauses (a) and (b) and such provisions of the State's Laws against discrimination as the State Commission for Human Rights shall determine.
- (d) The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color or national origin.
- (e) The contractor will comply with the provisions of Sections 291-299 of the Executive Law and the Civil Rights Law, will furnish all information and reports deemed necessary by the State Commission for Human Rights under these non-discrimination clauses and such sections of the Executive Law, and will permit access to his books, records and accounts by the State Commission for Human Rights, the Attorney General and the Industrial Commissioner for purposes of investigation to ascertain compliance with these non-discrimination clauses and such sections of the Executive Law and Civil Rights Law.
- (f) This contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the contracting agency upon the basis of a finding made by the State Commission for Human Rights that the Contractor may be declared ineligible for future contracts made by or on behalf of the State or a public authority or agency of

the State, until he satisfies the State Commission for Human Rights that he has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commission for Human Rights after conciliation efforts by the Commission have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the Commission, notice thereof has been given to the Contractor and opportunity has been afforded him to be heard publicly before three members of the Commission. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law. The Contractor will include the provisions of clauses (a) through (f) in every subcontract or purchase order in such a manner that such provisions be performed within the State of New York. The Contractor will take such action in enforcing such provisions of such subcontract or purchase order as the contracting agency may direct, including sanctions or remedies for non-compliance. If the Contractor becomes involved in or is threatened with litigation with a subcontractor or Contractor as a result of such direction by the contracting agency, the Contractor shall promptly so notify the Attorney General, requesting him to intervene and protect the interests of the State of New York.

GENERAL CONDITIONS ACCEPTED BY:

Firm: _____ By: _____

Date: _____ Title: _____

9 (C) FEDERAL TRANSIT ADMINISTRATION CERTIFICATIONS AND ASSURANCES

Name of Proposer: _____

Name of Authorized Person: _____

Title of Authorized Person: _____

By endorsing this signature page, _____ (authorized person) declares that he or she is duly authorized to make the certifications and assurances on behalf of the Proposer and bind the Proposer to comply with them. Thus, when its authorized person signs this document, the Proposer agrees to comply with all Federal statutes, regulations, and executive orders required for Third Party Contracts (Part 2 Terms & Conditions).

The Proposer affirms the truthfulness and accuracy of the certifications and assurances it has made in this statement herein and acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801, et seq. apply to any certification, assurance or submission made to TCAT, Inc. and the FTA.

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances and other statements made by me on behalf of the Proposer are true and correct.

Date: _____

Signature - Authorized Person

State of _____

COUNTY of _____

On this ____ day of _____, 2019, before me came _____

_____, known to me to be the person who executed the foregoing certification. In witness whereof, I hereto set my hand and seal.

_____ (Seal)

Notary Public

My Commission Expires: _____

ACKNOWLEDGEMENT OF PROPOSER, IF A CORPORATION

STATE OF _____

COUNTY OF _____

On this _____ day of _____, 2019, before me personally came and appeared _____, to me known, who, being by me duly sworn, did depose and say that he/she resides at _____, that he/she is the _____ of _____ the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation, that one of the seals affixed to said instrument is such seal; that it was so affixed to said instrument by order of the Directors of said corporation; and that he/she signed his/her name thereto by like order.

(Seal) _____

ACKNOWLEDGEMENT OF PROPOSER, IF A PARTNERSHIP

STATE OF _____

COUNTY OF _____

On this _____ day of _____, 2019, before me personally came and appeared _____, to me known, and known by me to be one of the members of the firm of _____, described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed the same as and for the act and deed of said firm.

(Seal) _____

ACKNOWLEDGEMENT OF PROPOSER, IF AN INDIVIDUAL

STATE OF _____

COUNTY OF _____

On this _____ day of _____, 2019, before me personally came and appeared _____, to me known, and known by me to be the person described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed same.

(Seal) _____

9 (D) NON-COLLUSION CERTIFICATION



Emergency Backup Generator

NON-COLLUSION CERTIFICATION

I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting an offer for this bid/quote, and is in all respects fair and without collusion or fraud.

The below signed respondent has not divulged to nor discussed or compared his/her bid with other suppliers and has not colluded with any other respondent or parties to bid whatsoever. Note: No premiums, rebates or gratuities to any employee or agent are permitted either with, prior to, or after any delivery of materials and/or services. Any such violation will result in the cancellation and/or return of material as applicable.

Company Name: _____

Mailing Address: _____

City/State/Zip: _____

Date: _____

Authorized Signature (written): _____

Authorized Signature :(printed): _____

Title: _____

9 (E) CERTIFICATION OF COMPLIANCE



**CERTIFICATION OF COMPLIANCE
WITH PROPOSAL SPECIFICATIONS**

I hereby certify that all items, which may be delivered under attached bid proposal, shall meet or exceed the minimum specifications dated _____

(date)

issued by _____

(Procurement Administrator)

as amended by responses to requests for clarifications, approved equals or exceptions issued on or before

_____ (Date)

By:

(Name)

(Date)

(Title)

(Company)

(Street Address)

(City, State, Zip)

(Phone)

10. ADDENDA ACKNOWLEDGEMENT

The Undersigned, hereinafter called "PROPOSER", having become familiar with the local conditions, nature and extent of the work, and having examined carefully the Request for Proposals and having fulfilled their requirements, proposes to sublease and utilize the premises and timely furnish all required services as described in this RFP, in full accordance with the proposal documents and all other documents related thereto on file with TCAT, Inc., and if awarded the agreement, to occupy and utilize the subleased premises and provide the required services within the time limits specified.

The above proposal shall remain in full force and effect for a period of 90 calendar days after the time of the opening of this proposal and it shall not be revoked, withdrawn or canceled within that time frame.

Acknowledgment is hereby made of receipt of the following Addenda issued during the proposal period:

Addendum No. _____ Dated _____ Addendum No. _____ Dated _____

Addendum No. _____ Dated _____ Addendum No. _____ Dated _____

TCAT, Inc. department head, employee or officer has a direct interest in the proposal. This proposal is genuine and not collusive or a sham; the person, firm or corporation named herein has not colluded, conspired, connived nor agreed directly or indirectly with any Proposer or person, firm or corporation, to put in a sham proposal, or that such other person, firm or corporation, shall refrain from proposing, and has not in any manner directly or indirectly, sought by agreement or collusion, or communication or conference with any person, firm or corporation, to fix the unit prices of said proposal or proposals of any other Proposer, or to secure any advantage against TCAT, Inc. or any person, firm or corporation interested in the proposed contract; all statements contained in the proposal or proposals described above are true; and further, neither the undersigned, nor the person, firm or corporation named herein, has directly or indirectly submitted said proposal or the contents thereto, to any association or to any member or agent thereof. In witness whereof, the PROPOSER has hereunto set his signature and affixed his seal this _____ day of _____ 2019.

ATTEST: _____ (Seal)

By: Printed _____

By: Signature _____

Title: _____

Company Name Contact Person

Mailing Address Phone Number

City, State, and Zip Fax Number

11. PROTEST INFORMATION

Parties have the right to appeal a proposed solicitation or award of contract issued by TCAT pursuant to the following procedural steps:

Who May Protest or Appeal

Any parties showing a substantial economic interest in the award of a contract under a procurement who claims to be aggrieved in connection with the solicitation or proposed award of a contract under this procurement may protest to TCAT in accordance with the procedures set forth herein.

Timing of Protest

Protests based on the contents of a procurement shall be submitted no later than seven (7) business days prior to the date and time designated for submittal of bids or proposals. A protest of a proposed award or of an award shall be filed within five (5) business days after the award of a contract or notice of apparent successful proposer/bidder, whichever is sooner.

Contents of Protest

A protest shall be in writing and shall include: (1) the procurement title and/or number under which the protest is made; (2) the name, address, fax number and/or e-mail of the allegedly aggrieved party; (3) a detailed description of the specific grounds for the protest and all supporting documentation; and (4) the specific ruling or relief requested. The written protest shall be addressed to: TCAT, Attn: Purchasing Manager, 737 Willow Ave, Ithaca, NY 14850.

Determination of Non-Responsibility (FOR PUBLIC WORKS/CONSTRUCTION ONLY)

If TCAT determines a bidder to be not responsible, TCAT shall provide, in writing, the reasons for the determination. The bidder may appeal the determination within three (3) business days by presenting additional information to TCAT. TCAT shall consider the additional information before issuing its final determination. If the final determination affirms that the bidder is not responsible, TCAT may not execute a contract with any other bidder until two (2) business days after the bidder determined to be not responsible has received the final determination.

Protest Procedure

Upon receipt of a timely written protest, the Purchasing Manager, or his/her designee, will consider the protest in accordance with established procedures and promptly issue a written decision stating the reasons for the action taken and informing the allegedly aggrieved person of his/her right to appeal the decision to the General Manager. A copy of the decision shall be mailed by U.S. mail, faxed and/or emailed to the allegedly aggrieved.

Appeal Procedure

The decision made by the Purchasing Manager, or his/her designee, shall be final and conclusive unless appealed in writing to the General Manager within five (5) business days of receipt by the Purchasing Manager's, or his/her designee's decision. The General Manager, or his/her designee, will consider the appeal and promptly issue a

written decision, which shall be final and conclusive. A copy of the decision shall be mailed by U.S. mail, faxed and/or emailed to the allegedly aggrieved.

Failure to Comply with Requirements

Failure to comply with these protests and appeal requirements will render a protest or an appeal untimely or inadequate and may result in rejection thereof by TCAT.

Exhaustion of Administrative Remedies

A Protester may not commence litigation prior to exhausting all administrative remedies. Failure to exhaust all administrative remedies shall constitute an absolute waiver of the Protester's right, if any, to commence litigation.

Protests at the FTA Level

When the award is funded in part by Federal Transit Administration (FTA) funds, the vendor may appeal to the FTA pursuant to FTA Regulations. Protests made to the FTA will be limited to TCAT's failure to have followed its protest procedures, TCAT's failure to review a complaint or protest, or violations of Federal law or regulation. Any protest to the FTA must be made in accordance with the following guidelines:

A. A protest must be filed with the FTA no later than five (5) business days after the protester learns or should have learned of an adverse decision by TCAT or other basis of appeal to FTA.

B. A protest to FTA must be filed in accordance with FTA Circular 4220.1F, as amended.

Notify FTA

Agency staff must notify FTA of protests involving FTA funded contracts in accordance with FTA Circular 4220.1F and must keep FTA informed about the status of the protest.

12. RFP RESPONSE SUBMITTAL CHECKLIST

Supplier shall submit a proposal in the following format:

1. Contractor shall create one original proposal (so labeled “original”) with original signature and three (3) identical copies (a total four (4) proposal submittals).
2. The original and three (3) identical copies shall be sent to the RFP Contact at the address shown in Section 2(C), on or before the specified due date and time shown in Section 2(A) within packaging of sufficient size to hold all proposal submittals.
3. TCAT, Inc.’s RFP name and number, associated with our project, must be shown on the lower left-hand corner of the box.
4. The original shall be within the following order as follows:

- Tab 1: RFP Cover Sheet
- Tab 2: Introduction, Instructions and Information
- Tab 3: Technical Proposal including design / construction narrative including schedule
- Tab 4: General Questions
- Tab 5: Pricing / Implementation Plan
- Tab 6: Required Forms / Bonds for Submittals
 - Lobbying (within Federal Clauses)
 - Buy America Certification (Steel and Manufactured Products)
 - Government Wide Debarment and Suspension (within Federal Clauses)
 - Bonding Requirement, 5% of the bid price
 - Performance bond, 100% of the contract price
 - Payment bond, 50% of contract price
- Within RFP:*
 - Disadvantaged Business Enterprise (DBE)
 - Anti-Discrimination Clause
 - Federal Transit Administration Certifications and Assurances
 - NON-COLLUSION CERTIFICATION
 - CERTIFICATION OF COMPLIANCE
- Tab 7: Compliance with Proposal Specifications

Note: TCAT, Inc.’s checklist is intended, primarily, as an aid to Suppliers in providing a response to this RFP. Supplier retains the sole responsibility for accuracy and conformance of response submittals.

13 STATEMENT OF NO PROPOSAL

TOMPKINS CONSOLIDATED AREA TRANSIT PURCHASING
 737 Willow Avenue, Ithaca, NY 14850
 (607) 277-9388 (Extension 540), Fax (607) 277-9551

TO OUR BIDDERS LIST SUPPLIERS: Failure to respond to this request for proposal may result in suspension of your firm’s participation from the solicited item(s)/service. If your firm does not wish to propose a price for the solicited items/service, the “Statement of No Proposal” must be signed and returned to TCAT Purchasing office by the proposal due date in order to remain on the bidder’s list.

STATEMENT OF NO PROPOSAL

NAME OF PROPOSAL: _____ **OPENING DATE:** _____

1. _____ Specifications too “tight”, i.e. geared toward one (1) brand or manufacturer only
2. _____ Specifications are unclear. (Explain below)
3. _____ We are unable to meet specifications.
4. _____ Insufficient time to respond to the Request for Proposal.
5. _____ Our schedule would not permit us to perform within the required time.
6. _____ We do not offer this product or service.
7. _____ Remove us from your bidders list for this particular commodity or service.
8. _____ Please keep our name on your bidder's list for future reference.
9. _____ Other (specify below).

FURTHER REMARKS: (e.g. name change, address, phone or FAX change)

COMPANY: _____ **DATE:** _____

NAME: _____ **TITLE:** _____

SIGNATURE: _____

14 ADDITIONAL NOTES:

FEDERAL CLAUSES

STARTS ON THE FOLLOWING PAGE

CONSTRUCTION MORE THAN \$150,000

LOBBYING

Applicability – construction/architectural and engineering/acquisition of rolling stock/professional service contract/operational service contract/turnkey contracts over \$150,000.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104- 65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$150,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

| |
|---------------------------|
| CONTRACTOR / COMPANY NAME |
|---------------------------|

NAME, TITLE AND SIGNATURE OF CONTRACTOR'S AUTHORIZED OFFICIAL:

| | |
|--------------------|-------|
| TYPE OR PRINT NAME | TITLE |
| SIGNATURE | DATE |

BUY AMERICA CERTIFICATION (STEEL AND MANUFACTURED PRODUCTS)

Applicability – construction contracts and acquisition of goods or rolling stock (valued at more than \$150,000).

Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, as amended by MAP-21 stating that Federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than \$150,000) made with capital, operating or planning funds. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certificate of **Compliance** with Buy America Requirements.

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR part 661.

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|---------------------------|
| CONTRACTOR / COMPANY NAME |
|---------------------------|

NAME, TITLE AND SIGNATURE OF CONTRACTOR'S AUTHORIZED OFFICIAL:

| | | |
|--------------------|-------|--|
| TYPE OR PRINT NAME | TITLE | |
| SIGNATURE | DATE | |

Only sign either Certificate of **Compliance** or Certificate of **Non-Compliance**

Certificate of **Non-Compliance** with Buy America Steel or Manufactured Products Requirements The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. 661.7.

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|---------------------------|
| CONTRACTOR / COMPANY NAME |
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NAME, TITLE AND SIGNATURE OF CONTRACTOR'S AUTHORIZED OFFICIAL:

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|--------------------|-------|--|
| TYPE OR PRINT NAME | TITLE | |
| SIGNATURE | DATE | |

GOVERNMENT WIDE DEBARMENT AND SUSPENSION (NON PROCUREMENT)

Applicability – all contracts more than \$25,000.

The Recipient agrees to the following:

1. It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," <http://www.sam.gov,.proxy1.semalt.design> if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <http://www.sam.gov,.proxy1.semalt.design> if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200.

2. If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel.

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| CONTRACTOR / COMPANY NAME |
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NAME, TITLE AND SIGNATURE OF CONTRACTOR'S AUTHORIZED OFFICIAL:

| | |
|--------------------|-------|
| TYPE OR PRINT NAME | TITLE |
| SIGNATURE | DATE |

SEISMIC SAFETY

Construction of new buildings or additions to existing buildings. These requirements do not apply to micropurchases (\$3,500 or less, except for construction contracts of more than \$2,000). Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in USDOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under this contract, including work performed by subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

BONDING REQUIREMENTS

Applicability – for those construction or facility improvement contracts or subcontracts exceeding \$150,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

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

Bid Bond Requirements (Construction):

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

- b. Rights Reserved - In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of (Recipient). It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of (Recipient), shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor. It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense (Recipient) for the damages occasioned by default, then the undersigned bidder agrees to indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) whole. The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

Performance and Payment Bonding Requirements (Construction)

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

- a. Performance bonds
1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
 2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- b. Payment bonds
1. The penal amount of the payment bonds shall equal:
 - I. Fifty percent of the contract price if the contract price is not more than \$1 million.
 - II. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - III. Two and one half million if the contract price is more than \$5 million.
 2. If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

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

- a. The following situations may warrant a performance bond:
1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
 2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
 3. Substantial progress payments are made before delivery of end items starts.
 4. Contracts are for dismantling, demolition, or removal of improvements.
- b. When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:
1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).

2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- c. A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.
- d. When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:
 1. The penal amount of payment bonds shall equal:
 - I. Fifty percent of the contract price if the contract price is not more than \$1 million;
 - II. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - III. Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

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

Patent Infringement Bonding Requirements (Patent Indemnity)

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

Warranty of the Work and Maintenance Bonds:

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

Applicability – construction contracts and subcontracts, including actual construction, alteration and/or repair, including decorating and painting, of more than \$2,000.

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

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

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met: (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed. (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification. (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof. (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall

be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met: (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination. (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

2. Withholding - The recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the grantee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
3. Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all

payrolls to the recipient for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, and Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following: (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete; (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3; (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract. (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section. (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code. (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

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

If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved. (ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved. (iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

5. Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
6. Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
7. Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
8. Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis- Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
9. Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
10. Certification of Eligibility - (i) By entering into this contract, contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (iii) The penalty for making false statements is prescribed in 18 USC 1001.

CONTRACT WORK HOURS & SAFETY STANDARDS ACT

Applicability – contracts of more than \$150,000.

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 40 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 40 hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in para. (1) of this section, contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable 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 para. (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 40 hours without payment of the overtime wages required by the clause set forth in para. (1) of this section.
3. Withholding for unpaid wages and liquidated damages - the recipient shall upon its own action or upon written request of USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by 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 & 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 para. (2) of this section.
4. Subcontracts - Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

BREACHES AND DISPUTE RESOLUTION

Applicability – all contracts more than \$150,000.

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient's authorized representative. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient's CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729. Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved. Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage. Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the recipient and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State. Rights and Remedies - 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 recipient 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.

CLEAN AIR

Applicability – all contracts more than \$150,000.

1. Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.
2. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

CLEAN WATER

Applicability – all contracts and Subcontracts more than \$150,000. Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

FLY AMERICA REQUIREMENTS

Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$3,500 or less, except for construction contracts over \$2,000).

Contractor shall comply with 49 USC 40118 (the “Fly America” Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

CARGO PREFERENCE

Applicability – all contracts involving equipment, materials or commodities which may be transported by ocean vessels. These requirements do not apply to micro-purchases (\$3,500 or less, except for construction contracts over \$2,000).

Contractor shall: a. use privately owned US-Flag commercial vessels to ship at least 50% 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 US flag commercial vessels; b. furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the recipient (through contractor in the case of a subcontractor's bill-of-lading.); c. include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material or commodities by ocean vessel.

ENERGY CONSERVATION

Applicability – all contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000).

Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

ACCESS TO RECORDS AND REPORTS

Applicability – as shown below. These requirements do not apply to micro-purchases (\$3,500 or less, except for construction contracts over \$2,000).

The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$150,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of 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 contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11). FTA does not require the inclusion of these requirements in subcontracts.

FEDERAL CHANGES

Applicability – all contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000).

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

RECYCLED PRODUCTS

Applicability – all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the current or previous fiscal year using Federal funds.

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

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability – all contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000).

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

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

Applicability – all contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000).

1. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.
2. If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.
3. Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

TERMINATION

Applicability – all contracts more than \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$150,000.

- a. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.
- b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the recipient that 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 contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.
- c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.
- d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall 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 contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.
- g. Termination for Default (Transportation Services) if 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 contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall 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 contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after

termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

- h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. the recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient 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. Contractor and its sureties shall be liable for any damage to the recipient resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work. Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if: (1). Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and (2). Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses. If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.
- i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.
- j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice of termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract closeout costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS

Applicability – when a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000). The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

1. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
2. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

CIVIL RIGHTS REQUIREMENTS

Applicability – all contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000).

The following requirements apply to the underlying contract: The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service: a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute):

- a. FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program.
- b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued.
- c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964,

- as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer". (3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note.
- d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of MAP-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third party contracts exceeding \$250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 implement a DBE program approved by FTA, and 3 establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq., (2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under MAP-21 and previous legislation.
- e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

- f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) 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, which implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a.
- g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) 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 individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of “employer,” (c) 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 individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. part 37, (b) U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27, (c) U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35, (f) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36, (g) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. part 1194, and (j) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance.
- h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2.
- i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following: 1) Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, “DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Persons,” 70 Fed. Reg. 74087, December 14, 2005.

- j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.
- k. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

DISADVANTAGED BUSINESS ENTERPRISE

Applicability – contracts over \$3,500 awarded on the basis of a bid or proposal offering to use DBEs:

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, and Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.
- b. The contractor shall not discriminate on the basis of race, color, religion, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.
- d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.
- f. The contractor must promptly notify the recipient 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 recipient.

PROMPT PAYMENT

Applicability – all contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000).

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

Applicability – all contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000).

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.