



CAPE COD REGIONAL TRANSIT AUTHORITY

Request for Proposal (RFP)

Zero Emission Vehicle Transition Plan and Regional Support Study

November 4, 2022

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1. RFP INTRODUCTION

The Cape Cod Regional Transit Authority, in consultation with the Cape Cod Commission, is seeking responses from qualified firms to submit a proposal for the development of a Zero Emission Vehicle Transition Plan and Regional Support Study. It is the CCRTA's intention to award one firm/team to produce this document. The purpose of this project is to develop standards and best practices for the procurement, installation, operation, and maintenance of Zero Emission charging/ fueling infrastructure. This project will be also used for meeting federal EV-related grant requirements and will also serve as a local government resource to collectively build the infrastructure required for mass ZEV adoption. CCRTA recognizes the impact of ZEVs in the industry and would like the consultant to assess various types of ZEV's including electric, hydrogen, and hybrid options to ensure that the agency is moving forward with the correct fueling technology for the near and midterm time frames. Near and midterm time frames to be determined by the Consultant based on anticipated technology development and CCRTA vehicle classes available to transition due to end of useful life.

1.1. Background information

Cape Cod, as a low-lying peninsula, is one of the most vulnerable locations in America to rising sea levels caused by climate change. Transportation accounts for a majority (55.5%) of all greenhouse gas (GHG) emissions produced on the Cape. This amount is higher than the Massachusetts average for transportation GHG emissions, which is at about 46%. As such, to reduce GHG emissions from the transportation sector and to help mitigate climate change, the region is pursuing a transition to zero emission vehicles (ZEVs). While adoption of ZEVs by the general public is important to reduce emissions, local government agencies, which maintain large fleets, play an important role—symbolic and actual—in normalizing the use of ZEVs, strengthening the local market for ZEVs, creating and supporting the infrastructure required for ZEVs, and ultimately, cutting emissions.

Cape Cod is coterminous with Barnstable County, with its year-round population of approximately 230,000 people, the region can see a summer population more than double that. Cape Cod is comprised of 15 towns. While large areas of Cape Cod are suburban and rural, there are a series of "Community Activity Centers," which generally are denser and more historic locations that provide many jobs and tourist-oriented destinations and are expected to continue to grow in coming years. These Community Activity Centers are generally more walkable, bikeable, and transit-friendly than the rest of the Cape and due to density may provide greater need for ZEV charging infrastructure.

Local regional plans support ZEV infrastructure expansion. Both state and regional plans call for the electrification of the transportation system and highlight the need for the expansion of ZEV infrastructure. Pursuant to the Global Warming Solutions Act, as amended in 2021 by An Act Creating A Next-Generation Roadmap for Massachusetts Climate Policy, the Massachusetts Clean Energy and Climate Plan for 2025 and 2030 calls for accelerating the electrification of fleet vehicles and investment in charging infrastructure. Specific to Cape Cod, the Cape Regional Policy Plan (RPP), Comprehensive Economic Development Strategy (CEDs), Cape Cod Climate Action Plan, and Regional Transportation Plan (RTP) all support steps required to expand ZEV access and use. Responding to a planning action in the RPP, the Cape Cod Commission created a GIS screening analysis and online tool that allows users to identify areas with high ZEV demand and locations that could support ZEV charging infrastructure.

Transportation-wise, the Cape is defined by a regional road network bordered by Route 6, which runs east-west for over 60 miles from Bourne and Sandwich to Provincetown. Route 28 is another important highway that parallels Route 6 to the south, taking a less direct route and serving as a main street for numerous towns, such as Falmouth, Dennis, and Harwich. Other important routes run parallel to these, such as Routes 6A and 28A.

The CCRTA runs the bus network, including seven year-round routes, paratransit, and Dial-A-Ride service throughout the year. There are also three seasonal trolley/ shuttle services. The CCRTA is funded by the Federal Transit Administration (FTA), Massachusetts Department of Transportation (MassDOT), local assessments from member communities, farebox revenue, and other revenue from parking, advertising, and miscellaneous revenue sources. In 2021, the CCRTA released a 5-year Comprehensive Regional Transit Plan, which details existing service and operations patterns for the CCRTA, as well as proposed operational improvements. In 2022, the CCRTA developed a 10-Year Strategic Plan and 5-Year Capital Spending Plan, which provides substantial funding resources for the planned migration from fossil fuel vehicles to electric vehicles (EV), supporting EV infrastructure and technician training. An important component of this study would be to confirm that electric vehicle technology is the most prudent option for CCRTA's zero-emission transition. Depending on vehicle class and timeframe for conversion, the consultant will inform the CCRTA whether another fuel source would be more logical in the current environment

2. DETAILED SCOPE OF SERVICES

2.1. PART I: ASSEMBLE DOCUMENTATION GUIDING CCRTA'S ZERO-EMISSION TRANSITION

PART I, TASK 1: ZEV TRANSITION BEST PRACTICES

Research and assemble infrastructure standards, best practices, funding opportunities and recommendations collected from nationally produced documents, to include: interoperability of fueling infrastructure; installation, operation, and maintenance of fueling infrastructure; power grid capacity, constraints and vulnerabilities; supporting traffic control device or on-premises signage acquired, installed, or operated in concert with fueling infrastructure; system data production, including network connectivity of EV charging infrastructure (for electric options) and format and schedule for the submission of such data to a centralized data repository; real-time mapping applications for information on publicly available EV charging infrastructure locations, pricing, and availability; risks and appropriate actions associated with first responder fires. In assembling these standards, best practices, funding opportunities and recommendations, a review and possible inclusion of proposed FHWA regulations currently under development setting minimum standards and requirements for projects funded under the National Electric Vehicle Infrastructure (NEVI) Formula Program and projects for the construction of publicly accessible electric vehicle (EV) chargers is recommended. The final production of this document will guide future consultant efforts under this procurement and will be shared with the Cape's regional stakeholders for potential ZEV infrastructure collaborative opportunities or individual stakeholder use.

Part I, Task 1 is expected to take 3 weeks.

Deliverables: Assemble report from existing verified reports on ZEV infrastructure standards, best practices, and recommendations that fully address the areas of focus identified in the above Task. Compile a list of potential funding opportunities supporting ZEV and/or ZEV infrastructure procurements, including eligibility criteria and application and spending deadlines.

PART I, TASK 2: TRANSPORTATION-RELATED ASSET INVENTORY TEMPLATE

The consultant, working with staff of the CCRTA and its contracted Operator, will develop a template for the collection of the CCRTA's transportation related assets, including characteristics of existing and projected vehicle fleets, related operations, and infrastructure. Template structure will provide for the addition of future updates under Part II, Task 3 to include performance metrics and methods to measure carbon footprint reductions achieved through the migration from internal combustion vehicles to ZE vehicles.

Part I, Task 2 is expected to take 5 weeks.

Deliverables: CCRTA approved data collection template. Template then used to compile CCRTA transportation related assets. Once template is approved by the CCRTA, consultant will review CCRTA's existing transportation asset inventory information, including the CCRTA 10-Year Strategic Plan and 5-Year Capital Spending Plan, for use as the initial basis for populating the template. Consultant will meet with

CCRTA and contracted Operator to collect any missing information and to ensure the information represented in the template is accurate. CCRTA will distribute the blank template to municipal partners and other regional stakeholders for their optional use in collecting their transportation asset information. Consultant will provide one to two virtual meetings open to all stakeholder groups (as defined by the CCRTA) to present the template and to respond to questions.

PART I, TASK 3 – DISCUSSION OF ENERGY RESILIENCY IDENTIFICATION

The consultant shall research and assemble information on energy/charging resiliency from severe weather or power disruptions related to power outages. Issues and opportunities including emergency power generation/access via battery storage, microgrid development, and use of vehicles as mobile generators for emergency situations should be identified.

Part I, Task 3 is expected to take 3 weeks.

Deliverable: Report of issues and opportunities for energy resiliency in the use of ZEV.

2.2. PART II: ELECTRIC VEHICLE FLEET TRANSITION

PART II, TASK 1: ANALYSIS OF OPPORTUNITIES AND SUPPORTING NEEDS FOR ZE CONVERSION FOR THE CCRTA

The Consultant will research, identify, and evaluate opportunities for the conversion of existing CCRTA vehicles to ZEVs of comparable vehicle class and operational function, consolidating all findings into a memorandum delivered to the CCRTA. The Consultant will provide information on what the CCRTA needs to transition to ZEVs (e.g., infrastructure needs such as vehicle charging equipment and estimated electricity capacity needed to support such transition), considering short-term to mid-term transition needs and the need for possible bridge technologies (e.g., hybrid vehicles). Consultant will also evaluate the viability of EV type/size taking into consideration the CCRTA's fixed routes that vary in length (from 10 to 50 miles) and how traffic, weather (temperatures and necessary heating/cooling of vehicle interiors), and topography will impact the travel distance of a ZEV in between charging. As part of this evaluation, the consultant will confirm or suggest alternatives to the CCRTA's current working assumption that its smaller vehicles (under 20 passengers) are suitable for conversion to electric vehicles (EV) under present service use and battery charging technology. These 135 fossil fuel vehicles currently account for 76% of CCRTA's fleet.

The Consultant will compare viable ZEVs for the transition from standard internal combustion engine (ICE) vehicle models. This comparison should include a functional comparison of vehicles by class, as well as purchase cost comparisons, a comparison of operational costs, and a comparison of vehicle emissions (e.g., NO_x, PM_{2.5}, VOCs, CO, and CO₂). The Consultant will also provide information on the costs of supporting equipment for ZEVs (e.g., charging infrastructure), estimated electricity/fuel needed to power vehicles, and power grid capacity to support the transition to ZEVs. This analysis shall quantify the purchasing, functional, and operational (including ongoing maintenance needs) costs and benefits of transitioning from ICE vehicles to ZEVs.

The Consultant will evaluate the CCRTA's 10-Year Strategic Plan and 5-Year Capital Spending plan to confirm or edit the itemization of short-term vehicle purchases that could be filled by ZEVs.

Part II, Task 1 is expected to take 6 weeks.

Deliverables: Memorandum to include the following:

- A list of existing and projected CCRTA vehicles by class able to be converted to ZEVs by State Fiscal Year.
- A list of available ZEV models by vehicle class and their cost of purchase.
- Identification of estimated timelines for procuring ZEVs by ZEV vehicle class.

- Identification of estimated timelines for procuring ZEV infrastructure.
- Comparative analysis between ZEV models and newly purchased standard (ICE) vehicle models, including purchase cost, as well as on-going functional, operational, and emissions costs.
- Evaluate the viability of ZEV type/size charging capacity considering route length, traffic, weather, and topography.
- Capital Plan items identified for possible purchase of comparable ZEV model.
- Information on equipment needs and costs to support such vehicles, including charging/fueling infrastructure and estimated electricity/fueling needs.
- Analysis of power grid capacity to support the transition to ZEVs.

Note: MassDOT is conducting a study which may provide supporting documentation for this task.

PART II, TASK 2: RECOMMENDATIONS FOR ZEV FLEET TRANSITION

Consultant will provide recommendations for ZEV transitions and associated infrastructure upgrades (e.g., charging equipment and estimated fueling needs) required to support recommendations specific to the CCRTA via a consolidated report. Information on the benefits and limitations of recommendations should be provided. Working with staff of the CCRTA and contracted Operator, the consultant will provide suggestions on implementation and phasing (short, medium, and long-term) and suggested timelines for this phasing.

Part II, Task 2 is expected to take 6 weeks.

Deliverables: Report to include:

- Recommendations for ZEV transitions and infrastructure upgrades needed to support those vehicles (excluding the CCRTA maintenance facilities under this task).
- Information on the benefits and limitations of the recommendations.
- Suggestions on implementation and phasing (short, medium, and long-term) as well as suggested timelines for phasing.

PART II, TASK 3: DEVELOPMENT OF PERFORMANCE METRICS AND MEASUREMENT TRACKING PROGRESS

Consultant to update transportation asset template completed under Part 1, Task 2 with the addition of targets/goals for transition to zero emissions status, including performance metrics and method to measure carbon footprint reductions, and other benefits such as improved public health, achieved. This task includes Consultant providing instructions on how to track progress against targets.

Part II, Task 3 is expected to take 8 weeks.

Deliverable: Updated transportation asset template to include trackable metrics as well as instructions for how to use updated template.

2.3. PART III: REGIONAL VEHICLE FLEET INFRASTRUCTURE

PART III, TASK 1: IDENTIFY CCRTA MAINTENANCE FACILITY OPTIONS

The CCRTA's Transition to ZEVs will require the consultant to consider the following maintenance facility alternatives: a) construct a new ZEV maintenance facility, b) undertake a variety of upgrades to its existing operations facility or c) some combination of the two options. Consultant will review the CCRTA 10-Year Strategic Plan and 5-Year Capital Spending Plan for use as the initial basis for evaluating future CCRTA maintenance facility options. Based on a review of maintenance facility options, the consultant will provide a cost benefit analysis of the three maintenance facility options. At a minimum, the cost and operational efficiency of a new maintenance facility should be compared to the cost and operation efficiency of modifying the current facility to accommodate a future ZEV fleet, including a review of the existing maintenance facility footprint to ensure it can accommodate the entire fleet, charging/fueling infrastructure,

and expansion possibilities to accommodate the future ZEV fleet. The estimate should include a breakdown of costs by component such as charging/fueling infrastructure, fire suppression, and other relevant components.

Part III, Task 1 is expected to take 8 weeks.

Deliverable: Provide a cost benefit analysis report and recommendation comparing the cost and operational efficiency of a new maintenance facility with the cost and operation efficiency of modifying the current facility to accommodate a future ZEV fleet, or some combination of the two options.

PART III, TASK 2 – IDENTIFICATION OF CAPE CHARGING/FUELING OPPORTUNITIES

Consultant will identify potential fleet and public use charging/ fueling opportunities for the Cape. A determination of site-specific utility capacity to support charging infrastructure should be addressed as well as costs to bring up to necessary standards, if needed. The consultant will also provide potential approaches for the ownership and operation of a region-wide charging/ fueling network. Included in this discussion should be ownership considerations, payment and maintenance for infrastructure, and cost estimates for infrastructure on a per station basis.

Part III, Task 2 is expected to take 10 weeks.

Deliverable: Comprehensive report that fully addresses the areas of focus identified in the above Task.

PART III, TASK 3: EJ COMMUNITY CONSIDERATIONS FOR ZEV FLEET TRANSITIONS

The consultant should review recommendations to ensure that fleet transitions are geographically and equitably considered including a review of environmental justice (EJ) community impacts.

Mass.gov defines an environmental justice community as a neighborhood where one or more of the following criteria are true:

1. The annual median household income is 65 percent or less of the statewide annual median household income.
2. Minorities make up 40 percent or more of the population.
3. 25 percent or more of households identify as speaking English less than "very well".
4. Minorities make up 25 percent or more of the population and the annual median household income of the municipality in which the neighborhood is located does not exceed 150 percent of the statewide annual median household income.

Part III, Task 3 is expected to take 4 weeks.

Deliverable: Consultant will deliver findings via a memorandum, which will inform CCRTA's timing for transitioning specific services across the Cape Cod region. Memorandum will also detail equity impacts of project implementation as defined above.

PART III, TASK 4: OPPORTUNITIES FOR REGIONAL PARTNERSHIPS AND COLLABORATION

Identify opportunities for shared services or regional partnerships, particularly around:

- Vehicle procurement – potential for regional procurement/accessing state procurement processes.
- Vehicle maintenance/service.
- Shared charging/fueling network.
- ZEV maintenance training for municipal and agency staff/workforce.
- Training for emergency responders.
- Consider policy and legislation impacting relevant technologies.

- Recommend partnerships and strategies with regional stakeholders to support and leverage negotiations with energy providers on electric usage rates, including, but not limited to favorable cost reductions of charging/storage rates during off-peak hours.

The consultant should present opportunities for pursuing regional partnerships/collaboration where appropriate; provide case studies or models and suggestion for implementation including information on funding opportunities to support implementation.

Part III, Task 4 is expected to take 4 weeks.

Deliverable: Memorandum with recommendations for and approaches to implementation of regional collaboration around shared services and/or joint procurements.

2.4. PART IV: PROJECT MANAGEMENT

PART IV, TASK 1: PROJECT MANAGEMENT AND COORDINATION

Consultant shall assign a Project Manager who will be responsible for oversight and management of contract performance and shall act as the contact person for receipt of notice and other communications with the CCRTA. Project Manager will be required to provide weekly updates to CCRTA's Primary Contact via virtual meetings. Consultant will lead coordination meetings with the project steering committee to inform the group of progress on the study and seek input. These meetings can also be utilized to achieve task components that require CCRTA staff approval.

The CCRTA may require the Contractor to replace the Project Manager if:

- The Project Manager does not support the contract requirements.
- The Project Manager does not deliver work that conforms to the requirement as stated in the contract.
- Issues with the Project Manager hinder effective functioning of the Contract.

Part IV, Task 1 is expected to take 40 weeks (entire length of project).

Deliverable: Weekly updates to CCRTA Primary Contact via virtual meetings. Up to six meetings with the steering committee as appropriate for project updates or as requested by the CCRTA.

2.5. PART V: FINAL REPORT

PART V, TASK 1: FINAL REPORT

Consultant to create a summary report of the entire project and all tasks completed as part of this study.

Part V, Task 1 is expected to take 4 weeks.

Deliverable: Final report summarizing entire project.

4. OTHER REQUIREMENTS

Contract Duration

The contract will be for a period of **40 weeks**, with option of one eight-week extension if agreed to by both parties.

The span of the contract, specifically the contract start date, is dependent upon receiving properly executed award paperwork from the bidder.

Acquisition Method(s)

The Cape Cod Regional Transit Authority (CCRTA) makes no guarantee that any commodities or services will be purchased from any Contract resulting from this Bid. It is anticipated that the Agreement resulting from this solicitation, if awarded, will be a time and materials contract based on fixed unit prices for all services set forth in the Scope of Services included in this RFP.

CCRTA reserves the right to negotiate modifications, adjustments, final prices and other performance terms and conditions identified in the Bidders' Responses at any time during the period of the RFP and the contract to achieve the best value for CCRTA.

Number of awards

It is the CCRTA's intention to select one firm/team to provide consultant services under this RFP. Selected Firm/Team warrants that in the performance of this Agreement, it shall comply with all applicable federal, state, and local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated thereunder.

Use of Subcontractors

The successful Bidder(s) cannot subcontract any portion of the contract without the prior written approval of the Cape Cod Regional Transit Authority. Subcontractors should be identified in the response to the RFP wherever possible.

Contractors shall give their personal attention to the faithful performance of the work, shall keep the work under their personal control and shall not assign, by power of attorney or otherwise, nor sublet the work or any part thereof without the prior written consent of the CCRTA. All assignments or transfers of any rights or interests in the contract by the Contractor shall be void, without the prior written consent of the CCRTA.

5. REQUIRED PROPOSAL SUBMISSION CHECKLIST

Contractors must submit the RFP electronically via COMMBUYS. There is a 30-page limit on page count. All proposals shall include at a minimum the following mandatory items in the order below to be considered responsive.

Section 1: Cover Letter, Table of Contents & Management Summary of Company

This Section must include the following components:

1. Cover Letter:

- **Company Introduction** – The Cover letter must introduce the Contractor's company, be signed by an Officer of the organization, and state that:
 - The information contained in this submission is accurate and complete as of the date of submission.
 - The organization is willing to comply with contractual requirements pertaining to equal employment opportunity and fair employment practices.
 - The organization is not on the Comptroller General's List of ineligible Contractors.

- Must also state that the RFP Response will remain valid for a period of sixty (60) days from its submission date and will become part of the contract negotiated with the CCRTA.
 - **Business Contact** – The Cover Letter must also include the name, title, address, telephone number, and email address of a person from Contractor’s firm who can respond to requests for additional information.
- 2. **Detailed Table of Contents:** The Table of Contents shall list all items provided in the proposal submission.
- 3. **Management Summary:** The cover letter and table of contents will be followed by Management Summary of the company, which must include the following information:
 - i. **Business Description** – type of organization (individual, partnership, corporation, etc.); size of business; years in operation; narrative describing the Contractor office location(s) and service support locations.
 - ii. **Description of the Company Services** – (or other corporate structure in the case of a partnership or joint venture), and relevance of company services to this RFP.
 - iii. **Overview of Business Opportunity** – Overview of Contractor understanding of Business Opportunity how Contractor’s portfolio of Business Solutions can assist the CCRTA.

Section 2 - Proposed Value of the Contract

Consultants must submit a proposed project budget with each bidder response. The proposed budget should show a breakdown of number of hours by each proposed team member to complete each task and include each team members fully loaded rate so that a total for each task can be calculated. The proposed budget should identify the agency’s overhead rate and proposed profit for the job. A breakdown of proposed expenses - including mileage and travel expenses - should also be included.

Section 3 – Leadership Biographies

Consultants must submit biographies of leadership team who would oversee this project. Biographies to include:

- Career level
- Qualifications and professional licenses held
- Prior similar experience

Section 4 - Acknowledgement of Project Timeline for Deliverables

Consultant must submit a signed statement that their proposed bid would adhere to the project timeline (Section 3), OR consultant must submit an alternate timeline and why they believe it is a better solution for the CCRTA.

Section 5 - Corporate References – The Contractor must include a listing of agencies or clients utilizing similar products and/or services of the vendor within the last five years. The CCRTA reserves the right to contact any or all the indicated agency contacts as reference for the vendor. Submit the following information for all references:

- **Refence Project Description:**

- Project Name:
 - Owner/Customer/Procuring Authority:
 - Brief Description of Project:
 - Contract Term: Years & Months – Start Date & End Date
 - Current Status:
 - Relevance of Project as a “Corporate Reference”
- **Contractor Team Member Involvement in Project** (*Identify Team Member(s)*)
 - Contractor team member’s technical/business experience, certifications, licenses.
 - Key Personnel Involved, Roles, Responsibilities & Resumes.
- **Reference Contact Information** (Provide current contact information for the Company and Company Representative including):
 - Company Name & Address.
 - Business Contact Name, Title, Contact Information (Phone – Cell/Office, Business Email).
 - Other Business Notes (Include any other notes that may be useful when speaking to this individual or about this company).
- **Refence Project Technical Information:**
 - Project Cost (Project Cost means total cost budgeted if the project is in progress, or, if the project is completed, the total cost of the completed project).
 - Completion within/above Budget (Detail (by approximate value and percentages) amount over/under budget and briefly explain reasons for such deviations).
 - Key Technical Challenges & Solutions Implemented.

Section 6 - Debarment and Suspension Acknowledgement

Certification of Primary Consultant Regarding Debarment, Suspension, and Other Responsibility Matters for all projects if the total proposed aggregate value of the contract exceeds \$100,000, as referenced below in section 10i.

Section 7 – Audit & Insurance

Contractor must provide a scanned copy of appropriate Certificate of Insurance, as referenced in Insurance section below (sections 11 and 12).

Section 8– Required Forms

Bidders Federal, State & Other Certifications. (See Appendix A and Appendix D). This certification must be signed and submitted with each organization’s proposal. A proposal which does not include the required certifications may not be considered.

6. INSTRUCTIONS FOR SUBMITTING PROPOSALS

All Offeror’s must submit Quotes online using tools available only to vendors registered in COMMBUYS. COMMBUYS provides Seller registration functionality at no charge. To register, go to www.COMMBUYS.com and click on the “Register” link on the front page. All Offeror’s who are awarded a contract resulting from this Bid, if any, will be required to maintain an active account during the duration of the Contract, by reviewing their registration information regularly and maintaining its accuracy. Further instructions on how to use COMMBUYS are available on the COMMBUYS website.

Please note that title of this RFP is: “Zero Emission Vehicle Transition Plan and Regional Support Study”.

General Notes Required of All Submissions:

1. **Deadline for Responses** – Proposals and quotes shall be submitted via COMMBUYS and must be received by 5:00 PM Eastern Time on December 7, 2022, at 5 pm. The posting date/time as captured by COMMBUYS will serve as the official date/time of record of receipt. Proposals received after this time or at any other location other than specified will not be accepted.
2. **Digital Submissions** - must be provided in Microsoft Office compatible format or unlocked Adobe Acrobat. All **Scanned Documents** must be in .pdf or .gif format and must be scanned in such a way that they can be read on a computer monitor and printed on 8 1/2” x 11” paper, unless otherwise specified.
3. **Formatting:**
 - a. The Proposal **MUST** be typed. Type Text size must not be smaller than Microsoft Word [Times New Roman 11-point font] or [Arial 11-point font], Scale = 100%, Proportional Spacing = Normal. Text lines must be single-spaced.
 - b. File must have a white background color.
 - c. Please avoid the use of 11” x 17” sheets of paper for illustrations, charts, appendices, graphs, drawings, photographs, diagrams, and tables for ease in printing
4. **File Size** – COMMBUYS will not accept files that approach or exceed 10 MB. If a large file fails to upload, the Offeror **MUST** save the contents as multiple files, distinguishing multi-part files through use of Part 1, Part 2, etc. If a large file fails to upload, the Offeror **MUST** break up the file and append _Part1, _Part2 to the end of the Description and File Name.

7. EVALUATION OF PROPOSALS

A. Evaluation Criteria

The following criteria will be used in evaluating proposals.

	Criteria	Maximum Points
1.	Bidder’s qualifications and experience with similar projects.	40
2.	Overall approach of project objectives.	25
3.	Total completed price for entire project.	20
4.	Quality of references.	10
5.	DBE involvement.	5
	TOTAL MAXIMUM SCORE:	100

B. Evaluation Process

Proposals will be reviewed by an Evaluation Committee who will compile a ranked list of firms. The Committee, at its option, may host Oral Presentations with finalists. CCRTA may make a selection on the basis of the original proposals, without negotiation with any offeror.

The review panel reserves the right to request additional information from any proposer at any time during the evaluation and selection process. Failure to provide the requested information may result in the immediate disqualification and the proposer may be determined to be non-responsive.

Prior to CCRTA entering into a contract with the successful Bidder, a notice of award will be issued to the successful Bidder. All other Bidders will be notified of the outcome of the selection process and given an opportunity for a debriefing, if so requested in writing.

CCRTA may reject any RFP bid if the Contractor takes exception to the terms and conditions of this RFP, includes unacceptable assumptions or conditions in its proposal, fails to comply with the procedure for participating in the RFP process, is not in the required format, or fails to meet any requirement of this RFP. In its sole discretion, the CCRTA may cancel this RFP, reject any or all the proposals and/or seek to do the work through a new RFP or other means.

All proposals will remain valid for a period of 60 days from its submission date and will become part of the contract negotiated with the Cape Cod Regional Transit Authority.

8. ESTIMATED PROCUREMENT CALENDAR AND RELATED REQUIREMENTS

EVENT	DATE
Bid Release Date	November 4, 2022
Deadline for Submission of Questions through COMMBUYS "Bid Q&A"	November 21, 2022, 5 pm
Official Answers for Bid Q&A published (Estimated)	November 25, 2022
Bid Amendment Deadline / Online RFP submission begins. Bid documents will not be amended after this date.	November 25, 2022
Deadline for Bid Responses ("Bid Opening Date/Time" in COMMBUYS)	December 7, 2022, 5 pm
Oral Presentations for Selected Bidder(s) (Estimated, if needed)	December 20, 2022, Location TBD Bidders will be notified individually and be given at least one week's notice if Oral Presentations are required.
Notification of Apparent Successful Bidder(s) (Estimated)	December 30, 2022 (est)
Negotiations (Estimated)	January 6, 2023 (est)
Estimated Contract Start Date	January 17, 2023 (est)

Times are Eastern Standard/Daylight Savings (US), as displayed on the COMMBUYS system clock displayed to Bidders after logging in. If there is a conflict between the dates in this Procurement Calendar and dates in the Bid's Header, the dates in the Bid's Header on COMMBUYS shall prevail. Bidders are responsible for checking the Bid record, including Bid Q&A, on COMMBUYS for Procurement Calendar updates.

Public Opening

There is no public opening of this RFP. The Cape Cod Regional Transit Authority (or its designee) will receive the RFP Proposals on behalf of the CCRTA and report to the Evaluation Committee. COMMBUYS serves as the system of record for receipt for all the RFP's responses.

Written questions via the Bid Q&A on COMMBUYS

The "Bid Q&A" provides the opportunity for Bidders to ask written questions and receive written answers from the Cape Cod Regional Transit Authority (CCRTA) regarding this Bid. Bidders' questions must be submitted through the Bid Q&A found on COMMBUYS (see Appendix 3 for instructions) and prior to the Deadline for Submission of Questions stated in the Estimated Procurement Calendar. The issuing department reserves the right not to respond to questions submitted after this date. It is the Bidder's responsibility to verify receipt of questions.

Please note that questions submitted to the Cape Cod Regional Transit Authority using any other medium (including those that are sent by mail, fax, email, or voicemail, etc.) will not be answered. To reduce the number of redundant or duplicate questions, Bidders are asked to review all questions previously submitted to determine whether the Bidder's question has already been posted.

Bidders are responsible for entering content suitable for public viewing since all questions are accessible to the public. Bidders must not include information that could be considered personal, security sensitive, inflammatory, incorrect, or otherwise objectionable, including information about the Bidder's company or other companies. The CCRTA reserves the right to edit or delete submitted questions that raise any of these issues or that are not in the best interest of the CCRTA or this RFP.

All answers are final when posted. Any subsequent revisions to previously provided answers will be dated.

It is the responsibility of the prospective Bidder and awarded Contractor to maintain an active registration in COMMBUYS and to keep current the email address of the Bidder's contact person and prospective contract manager. The CCRTA assumes no responsibility if a prospective Bidder's/awarded Contractor's designated email address is not current, or if technical problems, including those with the prospective Bidder's/awarded Contractor's computer, network, or internet service provider (ISP), cause email communications sent to/from the prospective Bidder/Awarded contractor to be lost or rejected by any means, including email or spam filtering.

Locating Bid Q&A

Log into COMMBUYS, locate the Bid, acknowledge receipt of the Bid, and scroll down to the bottom of the Bid Header page. The "Bid Q&A" button allows Bidders access to the Bid Q&A page.

Amendment Deadline

The Cape Cod Regional Transit Authority (CCRTA) reserves the right to make amendments to the Bid after initial publication until November 25, 2022. It is each Bidder's responsibility to check COMMBUYS for amendments, addenda, or modifications to this Bid, and any Bid Q&A records related to this Bid. CCRTA accepts no responsibility and will provide no accommodation to Bidders who submit a Quote based on an out-of-date Bid or on information received from a source other than COMMBUYS.

Oral Presentations/Product Demonstrations

Selected Bidders who are asked to participate in Oral Presentations / Product Demonstrations will be expected to prioritize this in their schedules. CCRTA will make every effort to find a mutually convenient time for the Bidders. However, failure to appear at the scheduled time of the presentation/demonstration may result in disqualification, reduction of points, or other action that the CCRTA deems appropriate.

Requirements at Contract or Engagement Termination

CCRTA retains all ownership of intellectual property developed under the Contract.

Best and Final Offers

CCRTA reserves the right to request a Best and Final Offer (BAFO).

Invoicing and Payment

The consultant must submit invoices monthly to the Cape Cod Regional Transit Authority's Accounting Manager by US Postal Mail (CCRTA, 1 Transportation Avenue, PO Box 1988, Hyannis, MA 02601) or by e-mail

(lmckay@capecodrta.org). Monthly invoices must document expenditures by task and must invoice the charges performed by the consultant in the previous month with a detail breakdown of each personnel with name, title, hourly rate, and total hours.

All monthly payments are contingent upon the satisfactory completion of the deliverables outlined herein.

9. DBE PARTICIPATION

CCRTA strongly encourages the inclusion of Disadvantaged Business Enterprises (DBEs) in the performance of this contract either as a prime or sub-contractor. All firms will be afforded full opportunity to submit proposals in response to this Request and will not be discriminated against on the grounds of race, color, sex, national origin, or veterans' status in consideration of an award. CCRTA has not set a DBE goal for this contract, however, CCRTA strongly encourages the use of DBE in the performance of this contract and will consider the use of DBE in the scoring of proposals.

10. OTHER TERMS

a) Applicable Procurement Law

This Bid is issued under the following law(s):

- MGL c. 7, § 22; c. 30, § 51, § 52; and 801 CMR 21.00 (Goods and Services)
- 49 CFR Part 23; 49 CFR -Part 29 (Federal Requirements)

a. Security and Confidentiality

The Contractor shall not divulge to third parties' confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers, or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, personally identifiable information, or commercial proprietary information in the possession of the Cape Cod Regional Transit Authority (CCRTA).

b. Cancellation of Contract

CCRTA reserves the right to terminate contracts upon a 30-day written notice or terminate contracts immediately if the Contractor does not conform to the terms and conditions of the contract or breaches any material element of the contract.

c. Ownership of Reports and Documents

Except as otherwise provided for in this Agreement, the originals of all letters, documents, reports and other products and data produced under this Agreement shall be delivered to, and become the property of, the Cape Cod Regional Transit Authority, without restrictions for further distribution or use. Copies may be made for Contractor's records but shall not be furnished to others without written authorization from the CCRTA. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by the CCRTA.

d. Non-Compliance of Contractor

Cape Cod Regional Transit Authority reserves the right to supplement services by soliciting another awarded Contractor or a bidder associated with this RFP in the event that the Awarded Contractor is unable to maintain adequate delivery schedules, non-delivery or the products being delivered do not meet required specifications. When an Awarded Contractor does not comply with the contract, the Awarded Contractor shall be responsible for any additional cost incurred and expense suffered by the CCRTA because of its action. An Awarded Contractor may be prohibited from further performance under this contract by the CCRTA for either case stated above.

e. Alternatives

A Quote that fails to meet any material term or condition of the Bid, including the submission of required attachments, may lose points or be deemed unresponsive and disqualified. Unless otherwise specified, Bidders may submit Quotes proposing alternatives that provide equivalent, better, or more cost-effective performance than achievable under the stated Bid. These alternatives may include related commodities or services that may be available to enhance performance during the period of the Contract. The Quote should describe how the alternative achieves substantially equivalent or better performance than those described in the Bid.

f. Failure to perform

Failure to perform contractual obligations as outlined in the Standard Contract Form, Terms and Conditions, and RFP may result in the following.

- I. Termination
- II. Suspension
- III. Adding additional contractors
- IV. Cover/Replacement Costs

g. Performance Criteria

The Consultant's performance will be evaluated on an ongoing basis and will be utilized in determining whether or not the consultant is providing services consistent with the scope of the contract and with a quality level commensurate with the scale of this contract.

Consultants shall give their personal attention to the faithful performance of the work, shall keep the work under their personal control and shall not assign, by power of attorney or otherwise, nor sublet the work or any part thereof without the prior written consent of the CCRTA. All assignments or transfers of any rights or interests in the contract by the Consultant shall be void, without the prior written consent of the CCRTA.

h. Indemnification

The Bidder hereby agrees in its bid to indemnify the CCRTA for the payment of any other claims or demands of whatever nature, which may arise, during the performance of work under any order issued pursuant to a contract awarded under this Request for Proposal.

The Bidder hereby agrees to release the CCRTA from all liability in connection with the payment of damages, claims, freight charges, demurrage, cost of material and other claims or demands of whatever nature which may arise, during the Contractor's performance of work under any order issued pursuant to a contract awarded under this Request for Proposal.

i. Debarment and Suspension

Proposers shall complete and submit as part of their proposal, the Certification of Primary Consultant Regarding Debarment, Suspension, and Other Responsibility Matters for all projects when the total aggregate value of the contract exceeds \$100,000. A Certification for each and every subcontractor regarding Debarment, Suspension, and Other Ineligibility and Voluntary Exclusions shall be submitted by the Proposer to CCRTA for each listed sub-Consultant prior to contract award.

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Consultant is required to verify that none of the Consultant, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The Consultant is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its proposal, the Proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by CCRTA. If it is later

determined that the Proposer knowingly rendered an erroneous certification, in addition to remedies available to CCRTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

During the term of the Contract the successful Proposer will be required to immediately notify CCRTA of:

- Any potential sub-Consultant that is subject to this provision and to submit the appropriate certification prior to award of a subcontract.
- Any information that its certification or certification of its sub-Consultants was erroneous when submitted; and
- Any information that certifications have become erroneous by reason of changed circumstances.

j. Right of Protest (FTA Circular 4220.1F)

If a Contractor has a grievance with a solicitation or award, they may protest to the Procurement Team Manager within five days of award. The written protest shall include the name of the protestor, solicitation/contract number or description, and a statement of the grounds for protest. Protests should be filed with the Procurement Team Manager at the following address:

Stephanie Spadoni
Procurement Officer

Cape Cod Regional Transit Authority
1 Transportation Avenue
Post Office Box 1988
Hyannis, MA 02601
sspadoni@capecodrta.org
Phone: 508-775-8504

The Procurement Team Manager will investigate the complaint and decide whether the complaint is justified and if so, what corrective action should be taken. All decisions by the Procurement Team Manager shall be reviewed by the CCRTA Administrator and upon his/her concurrence are final.

The Federal Transit Administration will only entertain a protest that alleges the Cape Cod Regional Transit Authority failed to follow the stated protest procedures. Such protests to FTA shall be filed in accordance with FTA Circular 4220.1F.

11. AUDIT

During the term of this Agreement and for a period of 6 years thereafter, the Cape Cod Regional Transit Authority or other authorized representatives shall be afforded access at reasonable times to Contractor's accounting records, including reports or files, to audit all records relating to goods sold or services performed pursuant to this Agreement. If such an audit indicates that Contractor has materially overcharged the CCRTA, then the Contractor shall remit the overcharged amount and be responsible for payment of any costs associated with the audit.

12. INSURANCE

Vendors/Contractors must provide a scanned copy of appropriate Certificate of Insurance evidencing the following:

Vendor/Contractor shall, at Vendor's/Contractor's cost and expense, at all times during the Term, maintain in full force and effect, and cause its subcontractors, if any, to maintain as a precondition to providing services as

described but not limited to services outlined in this agreement adequate insurance coverage, but in no event shall such insurance coverage be less than the types and amounts of coverage listed below. The limits required below for all insurance coverages are considered minimum limits and do not cap or limit the Vendor/Contractor's liability.

- (a) Workers' Compensation Insurance with statutory benefits and Employer's Liability of not less than \$1,000,000 per accident for all persons to be employed by Vendor/Contractor in connection with this RFP. Vendor/Contractor shall continue such insurance as required by Massachusetts General Law Chapter 152 in full force and effect throughout the Term.

- (b) General Liability Insurance for all damages arising out of bodily injury or death or damage to property incurred in connection with this RFP. The limit shall be not less than \$1,000,000 combined single limit for bodily injury and property damage, \$2,000,000 products aggregate, and \$2,000,000 general aggregate such coverage shall be written on an occurrence basis and include, without limitation, the following: (a) Products & Completed operations hazard coverage, (b) Contractual Liability covering this Contract, and (c) Personal Injury Coverage. This insurance shall expressly provide that the general aggregate limit of liability applies on per project or per location basis.

- (c) Automobile Liability Insurance covering owned, non-owned and hired vehicles in accordance with all applicable laws, including, without limitation, the automobile insurance laws of the Commonwealth of Massachusetts, with limits of not less than \$1,000,000 combined single limit for bodily injury and property damage. Such coverage shall be written on a per accident basis.

- (d) Umbrella Liability Insurance providing excess Commercial General Liability, Employers Liability and Automobile Liability shall contain limits of at least one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) in the aggregate.

- (e) Other Insurance Policy Requirements
 - i. All insurance maintained by Vendor/Contractor pursuant to this Contract shall be written by insurance companies authorized to do business in the Commonwealth of Massachusetts or if not so authorized, by companies which are approved by the Massachusetts Commissioner of Insurance. All insurance companies writing the insurance required by this Agreement must be reasonably acceptable to the CCRTA and must have a Best's Financial Strength Rating of "A-" or higher and a Best's Financial Size Category Class of "VII" or better, unless otherwise approved by the CCRTA in writing.
 - ii. All insurance policies required in prior subsections (b), (c), (d) shall include by way of endorsement, name the CCRTA as an additional insured to the extent of Vendor's/Contractor's indemnification obligations under this Contract and in the amounts set forth above. Vendor/Contractor must submit the endorsement demonstrating the specified additional insured status for each insurance policy for which such endorsement is required.
 - iii. All casualty insurance policies except for workers compensation, shall be endorsed to provide that, with respect to claims against the CCRTA, Vendor's/Contractor's insurance policies shall be primary, and insurance maintained by the CCRTA shall be excess and non-contributory.
 - iv. All insurance policies required above shall be endorsed to waive the insurer's rights of subrogation against the CCRTA, but only to the extent of Vendor's/Contractor's indemnification obligation under

the terms of this Contract; it being the intent of both parties that the waiver of subrogation shall not apply to any loss, claim, damage, injury, cost, or expense arising from the gross and willful negligent acts or omissions of the CCRTA. The workers compensation policy must be specifically endorsed as such.

- v. All policies required above shall provide the CCRTA with 60 days written notification of cancellation. All policies must be endorsed as such.
- vi. Vendor/Contractor shall provide certificate(s) of insurance evidencing such coverage to the CCRTA prior to the date on which Vendor/Contractor executes and delivers this Contract and not less than fifteen business (15) days after the renewal date of any such insurance without lapse in coverage. Such certificate(s) shall indicate (i) the name and address of the insured and the name of the insurer, (ii) the policy period, (iii) that such insurance shall not be subject to cancellation, or non-renewal by either the insurance company or Vendor/Contractor unless thirty (30) days prior written notice is provided to the CCRTA, (iv) the details of coverage, including limits of liability, (v) a waiver of all rights of subrogation with respect to each policy against the CCRTA and its bond trustees and mortgagees, and (vi) a statement that each policy includes the CCRTA as additional insureds as their interests may appear on the insurance policies required in subsections (b), (c), (d), and (vii) a statement that with respect to claims made against the CCRTA, Vendor's/Contractor's insurance is primary and any insurance maintained by the CCRTA shall be excess and non-contributory. The CCRTA is entitled to rely upon the information provided in any such certificate(s) and Vendor/Contractor is responsible for the accuracy and validity of such information.

13. APPENDIX A: FEDERAL CLAUSES

The following table contains the complete set of Federal Clauses; however, for each procurement, only certain ones pertain. For this procurement, the following clauses in **BOLD** font apply:

- ACCESS TO RECORDS AND REPORTS**
- AMERICANS WITH DISABILITIES ACT (ADA)**
- BOND REQUIREMENTS
- BUS TESTING
- BUY AMERICA REQUIREMENTS
- RESTRICTIONS ON LOBBYING**
- CARGO PREFERENCE REQUIREMENTS
- CHARTER SERVICE
- CIVIL RIGHTS LAWS AND REGULATIONS**
- CIVIL RIGHTS AND EQUAL OPPORTUNITY**
- CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT
- CONFORMANCE WITH ITS NATIONAL ARCHITECTURE**
- CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**
- DAVIS BACON ACT AND COPELAND ANTI-KICKBACK ACT**
- DEBARMENT AND SUSPENSION**
- DISADVANTAGED BUSINESS ENTERPRISE (DBE)**
- ENERGY CONSERVATION
- EQUAL EMPLOYMENT OPPORTUNITY**
- NOTICE TO THIRD PARTY PARTICIPANTS**
- FLY AMERICA
- INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**
- NO GOVERNMENT OBLIGATION TO THIRD PARTIES**
- NOTIFICATION TO FTA**
- PATENT RIGHTS AND RIGHTS IN DATA**
- PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES
- SOLID WASTES
- PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**
- PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

- PROMPT PAYMENT**
- PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS
- SAFE OPERATION OF MOTOR VEHICLES**
- SCHOOL BUS OPERATIONS
- SEISMIC SAFETY
- SIMPLIFIED ACQUISITION THRESHOLD**
- SPECIAL DOL EEO CLAUSE**
- SPECIAL NOTIFICATION REQUIREMENTS FOR STATES
- SUBSTANCE ABUSE REQUIREMENTS
- TERMINATION**
- VETERANS HIRING PREFERENCE
- VIOLATION AND BREACH OF CONTRACT**
- TRAFFICKING IN PERSONS**
- FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS**
- SEVERABILITY**

ACCESS TO RECORDS AND REPORTS

- a. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, leases, subcontracts, arrangements, other third-party Contracts of any type, and supporting materials related to those records.
- b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.334. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract in accordance with 2 CFR § 200.337.
- d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract in accordance with 2 CFR § 200.337.

AMERICANS WITH DISABILITIES ACT (ADA)

The contractor agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

BOND REQUIREMENTS

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the

bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must 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 the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of 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 requirements under such contract.
- (c) 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.

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

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

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

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

increase in contract price. The Agency may secure additional protection by directing the Contractor to increase the amount of the existing bond or to obtain an additional bond.

If the Bidder chooses to provide a Letter of Credit as its Performance Guarantee, the Bidder shall furnish with its bid, certification that an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contractor. The Bidder shall also provide a statement from the banking institution certifying that an Irrevocable Stand-By Letter of Credit for the action will be provided if the Contract is awarded to the Bidder. The Irrevocable Stand-By Letter of Credit will only be accepted by the Agency if:

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

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

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

BUS TESTING

The Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 C.F.R. part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or

components, and that the bus model has achieved a passing score. Upon completion of the testing, the contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the recipient.

BUY AMERICA REQUIREMENTS

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

RESTRICTIONS ON LOBBYING

Conditions on use of funds

- (a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.
- (c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.
- (d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

- (e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

Certification and Disclosure

- (a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:
 - (1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or
 - (2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.
- (b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:
 - (1) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or
 - (2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000,Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.
- (c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs
- (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:
 - (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
 - (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- (d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:
 - (1) A subcontract exceeding \$100,000 at any tier under a Federal contract;
 - (2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;
 - (3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,
 - (4) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement, Shall file a certification, and a disclosure form, if required, to the next tier above.
- (e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

- (f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.
- (g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.
- (h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

CARGO PREFERENCE REQUIREMENTS

The contractor agrees:

- a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA Recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

CHARTER SERVICE

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

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

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

remedies may include:

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

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

CIVIL RIGHTS LAWS AND REGULATIONS

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

- 1 **Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:
 - a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. §5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
 - b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.
- 2 **Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
- 3 **Nondiscrimination on the Basis of Age.** The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.
- 4 **Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to

regulations issued by other Federal agencies.

CIVIL RIGHTS AND EQUAL OPPORTUNITY

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

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any Implementing requirements FTA may issue.
4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
5. **Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and

statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to FTA and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

Clean Air Act

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

Federal Water Pollution Control Act

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

CONFORMANCE WITH ITS NATIONAL ARCHITECTURE

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards pursuant to 23 CFR § 940. Conformance with the National ITS Architecture is interpreted to

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

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

Compliance with the Contract Work Hours and Safety Standards Act.

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

the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy

any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

DAVIS BACON ACT AND COPELAND ANTI-KICKBACK ACT

“Davis Bacon Act”

- a. In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.
- b. The Non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

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

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

DEBARMENT AND SUSPENSION

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals,

affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

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

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

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

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

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

ENERGY CONSERVATION

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).

EQUAL EMPLOYMENT OPPORTUNITY

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

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or

pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- (7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

NOTICE TO THIRD PARTY PARTICIPANTS

Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and

Applicable changes to those federal requirements will apply to each Third Party Agreement and parties thereto at any tier.

FLY AMERICA

Definitions. As used in this clause—

- 1) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
- 2) "United States" means the 50 States, the District of Columbia, and outlying areas.
- 3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C.

Chapter 411.

- b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds,

appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

- c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

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

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

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

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The provisions within include, in part, certain Standard Terms and Conditions required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, detailed in 2 CFR § 200 or as amended by 2 CFR § 1201, or the most recent version of FTA Circular 4220.1 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

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

NOTIFICATION TO FTA

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party

Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered

transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

- (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
- (3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

PATENT RIGHTS AND RIGHTS IN DATA

Intellectual Property Rights

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

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

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

For purposes of this Contract, the term “subject data” means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of “subject data” include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog

item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 - a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
 - b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.
6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

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

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49

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

SOLID WASTES

A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

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

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

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

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

- a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
- 1) Procure or obtain;
 - 2) Extend or renew a contract to procure or obtain; or
 - 3) Enter into a contract (or extend or renew a contract) to procure or obtain

equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). Telecommunications or video surveillance services provided by such entities or using such equipment.

(ii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

c) See Public Law 115-232, section 889 for additional information.

d) See also §200.471.

PROMPT PAYMENT

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

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

PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS

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

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

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

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

SAFE OPERATION OF MOTOR VEHICLES

Seat Belt Use

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

Distracted Driving

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

SCHOOL BUS OPERATIONS

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

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

If Contractor violates this School Bus Agreement, FTA may:

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

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

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

SEISMIC SAFETY

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

SIMPLIFIED ACQUISITION THRESHOLD

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

SPECIAL DOL EEO CLAUSE

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

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

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized

in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

SPECIAL NOTIFICATION REQUIREMENTS FOR STATES

Applies to States –

- a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:
 - (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
 - (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
 - (3) The amount of federal assistance FTA has provided for a State Program or Project.
- b. Documents - The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

SUBSTANCE ABUSE REQUIREMENTS

The Contractor agrees to establish and implement a drug and alcohol testing program that

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

TERMINATION

Termination for Convenience (General Provision)

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

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

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

Opportunity to Cure (General Provision)

The Agency, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions

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

Waiver of Remedies for any Breach

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

Termination for Convenience (Professional or Transit Service Contracts)

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

Termination for Default (Supplies and Service)

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

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

Termination for Default (Transportation Services)

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

If this contract is terminated while the Contractor has possession of Agency goods, the Contractor shall, upon direction of the Agency, protect and preserve the goods until surrendered to the Agency or its agent. The Contractor and Agency shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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

Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Agency may take over the work and complete it by contract or otherwise, and may

take possession of and use any materials, appliances, and plant on the worksite necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Agency resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Agency in completing the work.

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

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

Termination for Convenience or Default (Architect and Engineering)

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Agency's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

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

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

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

Termination for Convenience or Default (Cost-Type Contracts)

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

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

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

VETERANS HIRING PREFERENCE

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

VIOLATION AND BREACH OF CONTRACT

Disputes:

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

Performance During Dispute:

Unless otherwise directed by the agencies authorized representative, 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 a reasonable time after the first observance of such injury or damage.

Remedies:

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the agencies authorized representative 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 State in which the Agency is located.

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 Agency or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

TRAFFICKING IN PERSONS

The contractor agrees that it and its employees that participate in the Recipient's Award, may not:

- (a) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect;
- (b) Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or
- (c) Use forced labor in the performance of the Recipient's Award or subagreements thereunder.

FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

- (1) The contractor certifies that it:
 - (a) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
 - (b) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months. If the contractor cannot so certify, the Recipient will refer the matter to FTA and not enter into any Third Party Agreement with the Third Party Participant without FTA's written approval.

- (2) Flow-Down. The Recipient agrees to require the contractor to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.

SEVERABILITY

The Contractor agrees that if any provision of this agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

14. APPENDIX B – REQUIRED TERMS FOR RFP

General Procurement Information

Access to security-sensitive information

Bidders agree to adhere to this section in the event that an eligible entity provides a Contractor with security-sensitive information which, pursuant to MGL c. 4, § 7, cls. 26(n), is generally exempt from public disclosure under the Commonwealth's public records laws and must, for public safety purposes, be safeguarded from widespread public disclosure. This security-sensitive information may be in the form of blueprints, plans, policies, procedures, schematic drawings, etc., which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, and/or any other records relating to the security or safety of persons (pursuant to MGL c. 66A) or buildings, structures, facilities, utilities, transportation, information technology, or other infrastructure located within the Commonwealth. Qualified prospective Bidders interested in accessing this information for the purpose of preparing a Bid must, before being allowed to access the information, sign a confidentiality agreement, thereby agreeing to:

- Restrict the use of these sensitive records for any other purpose than as authorized and for the purpose of putting together a bid proposal;
- Safeguard the information while it is in their possession (consistent with Section 6 of the Commonwealth Terms and Conditions); and
- Return such records and materials to the CCRTA upon completion of the project.

Alterations

Bidders may not alter (manually or electronically) the Bid language or any Bid component files, except as directed in the RFP. Modifications to the body of the Bid, specifications, terms and conditions, or which change the intent of this Bid are prohibited and may disqualify a Bid.

Ownership of Submitted Quotes

The CCRTA shall be under no obligation to return materials submitted by a Bidder in response to this Bid. All materials submitted by Bidders become the property of the CCRTA and will not be returned to the Bidder. The CCRTA reserves the right to use any ideas, concepts, or configurations that are presented in a Bidder's Quote, whether or not the Quote is selected for Contract award.

Quotes stored on COMMBUYS in the encrypted lockbox are the file of record. Bidders retain access to a "read-only" copy of this submission via COMMBUYS, as long as their account remains active. Bidders also may retain a traditional paper copy or electronic copy on a separate computer, or network drive or separate media, such as CD or DVD, as a backup.

Prohibitions

Bidders are prohibited from communicating directly with any employee of the CCRTA or any member of the regarding this RFP except as specified in this RFP, and no other individual CCRTA employee or representative is authorized to provide information or respond to questions or inquiries concerning this RFP. Bidders may contact the individual listed in contact information section of the Header Information this Bid in the event that this RFP is incomplete, or information is missing. Bidders experiencing technical problems accessing information or attachments stored on COMMBUYS should contact the [OSD Help Desk](#) (see the document cover page for contact information).

In addition to the certifications found in the Commonwealth's Standard Contract Form, by submitting a Bid, the Bidder certifies that the Bid has been arrived at independently and has been submitted without any communication, collaboration, or without any agreement, understanding, or planned common course of action with any other Bidder of the commodities and/or services described in the RFP.

Terms and Requirements Pertaining to Awarded Contracts

Commonwealth Tax Exemption

Invoices or invoices submitted to the CCRTA must exclude State sales tax.

Contractor's Contact Information

It is the Contractor's responsibility to keep the Contract's Project Manager information current. If this information changes, the Contractor must notify the CCRTA by email immediately, using the address located in the Header Information of the Purchase Order or Master Blanket Purchase Order on COMMBUYS. The Contractor's COMMBUYS account also must be updated to reflect the new information.

The CCRTA assumes no responsibility if a Contractor's designated email address is not current, or if technical problems, including those with the Contractor's computer, network, or internet service provider (ISP), cause email communications between the Bidder and the SST to be lost or rejected by any means, including email or spam filtering.

Contractual Status of Orders and Service Contracts

Orders or service engagements placed under the Contract established as a result of this Bid by Eligible Entities shall be considered separate Contracts between the Eligible Entity and the Contractor and shall be deemed to incorporate all of the terms and conditions of the Contract. Nothing contained in any order or service contract shall amend or vary the terms of the Contract. Additional terms which do not conflict with the Commonwealth's Terms and Conditions, the Massachusetts Standard Contract Form, this Bid and any amendments, or the Bidder's Quote, may be included in an order or service contract if mutually agreed upon by the Contractor and eligible entity.

Publicity

Any Contractor awarded a contract under this Bid is prohibited from selling or distributing any information collected or derived from the Contract, including lists of participating Eligible Entities, CCRTA employee names, telephone numbers, addresses, or other information except as specifically authorized by the CCRTA.

15. APPENDIX C - INSTRUCTIONS FOR EXECUTION AND SUBMISSION OF COMMONWEALTH STANDARD FORMS

Forms listed below may be electronically signed by the Bidder, see [Acceptable Forms of Signatures](#). Bidders must, if notified of Contract award, submit the following four forms within the timeframe referenced in the RFP section entitled [Acceptable Forms of Signatures](#): the Commonwealth Standard Contract Form, the Commonwealth Terms and Conditions, the Request for Taxpayer Identification Number and Certification (Mass. Substitute W9 Form) and the Contractor Authorized Signatory Listing.

Commonwealth Standard Contract Form

By executing this document, the Bidder certifies, under the pains and penalties of perjury, that it has submitted a Response to this RFP that is the Bidder's Offer as evidenced by the execution of its authorized signatory, and that the Bidder's Response may be subject to negotiation by the CCRTA. Also, the terms of the RFP, the Bidder's Response, and any negotiated terms shall be deemed accepted by the Department and included as part of the Contract upon execution of this document by the State Purchasing Agent or his designee.

If the Bidder does not have a Vendor Code beginning with "VC" or does not know their Vendor Code, the Bidder should leave the Vendor Code field blank. The Bidder should NOT enter a Vendor Code assigned prior to May 2004, as new Vendor Codes have been assigned to all companies since that time.

Commonwealth Terms and Conditions/Commonwealth IT Terms and Conditions

If the Bidder has executed and filed the appropriate Commonwealth Terms and Conditions form pursuant to another RFP or Contract, a copy of this form may be included. If the Bidder's name, address, or Tax ID Number have changed since the Commonwealth Terms and Conditions form was executed, a new Commonwealth Terms and Conditions form is required. The Commonwealth Terms and Conditions are hereby incorporated into any Contract executed pursuant to this RFP.

This form must be unconditionally signed by one of the authorized signatories (see Contractor Authorized Signatory Listing, below), and submitted without alteration. If the provisions in this document are not accepted in their entirety without modification, the entire Proposal offered in response to this Solicitation may be deemed non-responsive.

The company's correct legal name and legal address must appear on this form, and must be identical to the legal name and legal address on the Request for Taxpayer Identification and Certification Number (Mass. Substitute W9 Form).

Request for Taxpayer Identification Number and Certification (Mass. Substitute W9 Form)

If a Bidder previously submitted a Request for Taxpayer Identification and Certification Number (Mass. Substitute W9 Form) and has received a valid Massachusetts Vendor Code, an original W-9 form is not required. A copy of the form as filed may be included. If the Bidder's name, address, or Tax ID Number have changed since the Mass. Substitute W9 Form was executed, a new Mass. Substitute W9 Form is required. The information on this form will be used to record the Bidder's legal address and where payments under a State Contract will be sent. The company's correct legal name and legal address must appear on this form, and must be identical to the legal name and legal address on the Commonwealth Terms and Conditions. Please do not use the U.S Treasury's version of the W9 Form.

Contractor Authorized Signatory Listing

In the table entitled "Authorized Signatory Name" and "Title," type the names and titles of those individuals authorized to execute contracts and other legally binding documents on behalf of the Bidder. Bidders are advised to keep this list as small as possible, as Contractors will be required to notify the Procurement

Manager of any changes. If the person signing in the signature block at the bottom of the first page of this form also will serve as an “Authorized Signatory,” that person’s name must be included in the typed table.

With regard to the next paragraph, which begins “I certify that I am the President, Chief Executive Officer, Chief Fiscal Officer, Corporate Clerk, or Legal Counsel for the Contractor...,” if your organization does not have these titles, cross them out and handwrite the appropriate title above the paragraph.

The second page of the form (entitled “Proof of Authentication of Signature”) states that the page is optional. However, the “optional” aspect of the form is that Commonwealth Departments are not required to use it. In the case of Statewide Contracts, however, this page is **required**, not optional. The person signing this page must be the same person signing the Standard Contract Form, the Commonwealth Terms and Conditions, and the RFP Checklist.

Please note that in two places where the form states “in the presence of a notary,” this should be interpreted to mean “in the virtual presence of a notary or corporate clerk/secretary.” Either a notary or corporate clerk/secretary may authenticate the form; only one is required.

Organizations whose corporate clerks/secretaries authenticate this form are not required to obtain a Corporate Seal to complete this document.

Supplier Diversity Program Plan Form

Download this form and complete as directed by the form instructions; include with online submission. Ink signature is not required.

The specific Supplier Diversity Program (SDP) requirements for this procurement may be found earlier in this document. Bidders are required to state a specific percentage of contract revenues that will represent the annual SDP commitment for the entire contract period, including any renewals.

Current Environmentally Preferable Products / Practices Form

In line with the Commonwealth’s efforts to promote products and practices which reduce our impact on the environment and human health, Bidders are encouraged to provide information regarding their environmentally preferable/sustainable business practices as they relate to this Contract wherever possible. Bidders must complete this form and submit it with their RFP Response.

Prompt Payment Discount Form

Ink signature is not required.

Pursuant to the Prompt Payment Discount terms set forth in the RFP Required Specifications for Contracts and on the Prompt Payment Discount Form itself, all Bidders must execute this form. After entering the “Bidder Name” and “Date of Offer for Prompt/Early Payment Discount,” the Bidder must identify the prompt payment discount(s) terms by indicating the “Percentage Discount off of the Proposed Pricing” and the “Turn-around-time for Payments.” In the event of a hardship that prevents the Bidder from offering a prompt payment discount, the Bidder must document this fact and provide supporting information. If awarded a contract, the final negotiated prompt payment discounts should be reflected on the Commonwealth Standard Contract Form.

Business Reference Form

Bidders must provide all requested information on this form for required references. In completing this form, note that the “Bidder” is the name of the company submitting a Quote in response to this RFP and the “RFP Name/Title” and the “Agency Document Number” may be found on the cover of the RFP document and in the Short Description field in the Header Information of the Bid record in COMMBUYS. Also, please note that: “Reference Name” is the

name of the organization (if not applicable, then name of the individual) that is providing the reference; "Contact" is the name of the individual inside the organization that will provide the reference; and the "Address," "Phone #," and "Fax/Internet Address" are those of the "Contact" so that the CCRTA may contact.

Appendix D

State Mandated Clauses



COMMONWEALTH TERMS AND CONDITIONS

- This Commonwealth Terms and Conditions form is jointly
 - issued by the Executive Office for Administration and
 - Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) for use by all Commonwealth of Massachusetts ("State") Departments
 - and Contractors. **Any changes or electronic alterations by either the Department or the Contractor to the official version of this form, as jointly published by ANF, CTR and OSD, shall be void.** Upon execution of these Commonwealth Terms and Conditions by the Contractor and filing as prescribed by the Office of the Comptroller, these Commonwealth Terms and Conditions will be incorporated by reference into any Contract for Commodities and Services executed by the Contractor and any State Department, in the absence of a superseding law or regulation requiring a different Contract form. Performance shall include services rendered, obligations due, costs incurred, commodities and deliverables provided and accepted by the Department, programs provided or other commitments authorized under a Contract. A deliverable shall include any tangible product to be delivered as an element of performance under a Contract. The Commonwealth is entitled to ownership and possession of all deliverables purchased or developed with State funds. Contract shall mean the Standard Contract Form issued jointly by ANF, CTR and OSD.
- 1. Contract Effective Start Date.** Notwithstanding verbal or other representations by the parties, or an earlier start date indicated in a Contract, the effective start date of performance under a Contract shall be the date a Contract has been executed by an authorized signatory of the Contractor, the Department, a later date specified in the Contract or the date of any approvals required by law or regulation, whichever is later.
- 2. Payments And Compensation.** The Contractor shall only be compensated for performance delivered and accepted by the Department in accordance with the specific terms and conditions of a Contract. All Contract payments are subject to appropriation pursuant to M.G.L. C. 29, §26, or the availability of sufficient non-appropriated funds for the purposes of a Contract, and shall be subject to intercept pursuant to M.G.L. C. 7A, §3 and 815 CMR 9.00. Overpayments shall be reimbursed by the Contractor or may be offset by the Department from future payments in accordance with state finance law. Acceptance by the Contractor of any payment or partial payment, without any written objection by the Contractor, shall in each instance operate as a release and discharge of the State from all claims, liabilities or other obligations relating to the performance of a Contract.
- 3. Contractor Payment Mechanism.** All Contractors will be paid using the Payment Voucher System unless a different payment mechanism is required. The Contractor shall timely submit invoices (Payment Vouchers - Form PV) and supporting documentation as prescribed in a Contract. The Department shall review and return rejected invoices within fifteen (15) days of receipt with a written explanation for rejection. Payments shall be made in accordance with the bill paying policy issued by the Office of the Comptroller and 815 CMR 4.00, provided that payment periods listed in a Contract of less than forty-five (45) days from the date of receipt of an invoice shall be effective only to enable a Department to take advantage of early payment incentives and shall not subject any payment made within the forty-five (45) day period to a penalty. The Contractor Payroll System, shall be used only for "Individual Contractors" who have been determined to be "Contract Employees" as a result of the Department's completion of an Internal Revenue Service SS-8 form in accordance with the Omnibus Budget Reconciliation Act (OBRA) 1990, and shall automatically process all state and federal mandated payroll, tax and retirement deductions.
- 4. Contract Termination Or Suspension.** A Contract shall terminate on the date specified in a Contract, unless this date is properly amended in accordance with all applicable laws and regulations prior to this date, or unless terminated or suspended under this Section upon prior written notice to the Contractor. The Department may terminate a Contract without cause and without penalty, or may terminate or suspend a Contract if the Contractor breaches any material term or condition or fails to perform or fulfill any material obligation required by a Contract, or in the event of an elimination of an appropriation or availability of sufficient funds for the purposes of a Contract, or in the event of an unforeseen public emergency mandating immediate Department action. Upon immediate notification to the other party, neither the Department nor the Contractor shall be deemed to be in breach for failure or delay in performance due to Acts of God or other causes factually beyond their control and without their fault or negligence. Subcontractor failure to perform or price increases due to market fluctuations or product availability will not be deemed factually beyond the Contractor's control.
- **Written Notice.** Any notice shall be deemed delivered and received when submitted in writing in person or when delivered by any other appropriate method evidencing actual receipt by the Department or the Contractor. Any
- written notice of termination or suspension delivered to the Contractor shall state the effective date and period of the notice, the reasons for the termination or suspension, if applicable, any alleged breach or failure to perform, a reasonable period to cure
- any alleged breach or failure to perform, if applicable, and any instructions or
 - restrictions concerning allowable activities, costs or expenditures by the Contractor during the notice period.
- 5. Confidentiality.** The Contractor shall comply with M.G.L. C. 66A if the Contractor becomes a "holder" of "personal data". The Contractor shall also protect the physical security and restrict any access to personal or other Department data in the Contractor's possession, or used by the Contractor in the performance of a Contract, which shall include, but is not limited to the Department's public records, documents, files, software, equipment or systems.
- 6. Record-keeping And Retention, Inspection Of Records.** The Contractor shall maintain records, books, files and other data as specified in a Contract and in such detail as shall properly substantiate claims for payment under a Contract, for a minimum retention period of seven (7) years beginning on the first day after the final payment under a Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving a Contract. The Department shall have access, as well as any parties identified under Executive Order 195, during the Contractor's regular business hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.
- 7. Assignment.** The Contractor may not assign or delegate, in whole or in part, or otherwise transfer any liability, responsibility, obligation, duty or interest under a Contract, with the exception that the Contractor shall be authorized to assign present and prospective claims for money due to the Contractor pursuant to a Contract in accordance with M.G.L. C. 106, §9-318. The Contractor must provide sufficient notice of assignment and supporting documentation to enable the Department to verify and implement the assignment. Payments to third party assignees will be processed as if such payments were being made directly to the Contractor and these payments will be subject to intercept, offset, counter claims or any other Department rights which are available to the Department or the State against the Contractor.
- 8. Subcontracting By Contractor.** Any subcontract entered into by the Contractor for the purposes of fulfilling the obligations under a Contract must be in writing, authorized in advance by the Department and shall be consistent with and subject to the provisions of these Commonwealth Terms and Conditions and a Contract. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under a Contract. The Department is entitled to copies of all subcontracts and shall not be bound by any provisions contained in a subcontract to which it is not a party.
- 9. Affirmative Action, Non-Discrimination In Hiring And Employment.** The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law. The Contractor commits to purchasing supplies and services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities.
- 10. Indemnification.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, including the Department, its agents, officers and employees against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement or other damages that the State may sustain which arise out of or in connection with the Contractor's performance of a Contract, including but not limited to the negligence, reckless or intentional conduct of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall at no time be considered an agent or representative of the Department or the State. After prompt notification of a claim by the State, the Contractor shall have an opportunity to participate in the defense of such claim and any negotiated settlement agreement or judgment. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph. Any indemnification of the Contractor shall be subject to appropriation and applicable law.
- 11. Waivers.** Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.
- 12. Risk Of Loss.** The Contractor shall bear the risk of loss for any Contractor



COMMONWEALTH TERMS AND CONDITIONS

materials used for a Contract and for all deliverables, Department personal or other data which is in the possession of the Contractor or used by the Contractor in the performance of a Contract until possession, ownership and full legal title to the deliverables are transferred to and accepted by the Department.

13. Forum, Choice of Law And Mediation. Any actions arising out of a Contract shall be governed by the laws of Massachusetts, and shall be brought and maintained in a State or federal court in Massachusetts which shall have exclusive jurisdiction thereof. The

- Department, with the approval of the Attorney General's Office, and the Contractor may agree to voluntary mediation through the Massachusetts Office of Dispute Resolution (MODR) of any Contract dispute and will share the costs of such mediation. No legal or equitable rights of the parties shall be limited by this Section.

14. Contract Boilerplate Interpretation, Severability, Conflicts With Law, Integration. Any amendment or attachment to any Contract which contains conflicting language or has the effect of a deleting, replacing or modifying any printed language of these Commonwealth Terms and Conditions, as officially published by ANF, CTR and OSD, shall be interpreted as superseded by the official printed language. If any provision of a Contract is found to be superseded by state or federal law or regulation, in whole or in part, then both parties shall be relieved of all obligations under that provision only to the extent necessary to comply with the superseding law, provided however, that the remaining provisions of the Contract, or portions thereof, shall be enforced to the fullest extent

- permitted by law. All amendments must be executed by the parties in accordance
- with Section 1. of these Commonwealth Terms and Conditions and filed with the
- original record copy of a Contract as prescribed by CTR. The printed language of the Standard Contract Form, as officially published by ANF, CTR and OSD, which incorporates by reference these Commonwealth Terms and Conditions, shall supersede any conflicting verbal or written agreements relating to the performance of a Contract, or attached thereto, including contract forms, purchase orders or invoices of the Contractor. The order of priority of documents to interpret a Contract shall be as follows: the printed language of the Commonwealth Terms and Conditions, the Standard Contract Form, the Department's Request for Response (RFR) solicitation document and the Contractor's Response to the RFR solicitation, excluding any language stricken by a Department as unacceptable and including any negotiated terms and conditions allowable pursuant to law or regulation.

IN WITNESS WHEREOF, The Contractor certify under the pains and penalties of perjury that it shall comply with these Commonwealth Terms and Conditions for any applicable Contract executed with the Commonwealth as certified by their authorized signatory below:

CONTRACTOR AUTHORIZED SIGNATORY: _____ (signature)

Print Name: _____

Title: _____

Date: _____

(Check One): _____ Organization _____ Individual

Full Legal Organization or Individual Name: _____

Doing Business As: Name (If Different): _____

Tax Identification Number: _____

Address: _____

Telephone: _____ FAX: _____

MASSACHUSETTS CERTIFICATIONS

CERTIFICATE
REQUIREMENT OF REVENUE ENFORCEMENT AND PROTECTION
PROGRAM COMMONWEALTH OF MASSACHUSETTS

In accordance with the provisions of the Revenue Enforcement and Protection Program and the requirements there under as enacted by Sections 35 and 36 of Chapter 233 of the Acts and Resolves of 1983 the CCRTA must obtain an attestation from a provider of goods or services that said provider is in compliance with all laws of the Commonwealth relating to taxes.

According to the law any person or company failing to execute the attestation clause shall not be allowed to obtain a contract.

THE ATTESTATION CLAUSE BELOW MUST BE SUBMITTED WITH YOUR BID.

Note Any questions concerning the law or its implementation may be directed to the Massachusetts Department of Revenue, 200 Arlington Street, Chelsea, MA 02150 TELEPHONE: (617) 887-6367.

REQUIRED ATTESTATION CLAUSE

Pursuant to M.G.L. Ch. 62C, Section 49A I certify under the penalties of perjury that I, to the best knowledge and belief, have filed all state tax returns and paid all state taxes required under the law.

**Social Security Number or Federal
Identification No

* Signature of Individual or Corporate Name

By Corporate Officer (if applicable)

*Approval of a contract or other agreement may not be granted unless this certification clause is signed by the applicant.

**Your Social Security number may be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a contract or other agreement issued, renewed, or extended This request is made under the authority of Mass. G.L.C.62cs. 49a.

CONTRACTOR'S CERTIFICATION
CHILD CARE COMPLIANCE

_____ (The Contractor) hereby certifies that it is in compliance with Chapter 521 of the Acts of 1990, as amended by Chapter 329 of the Acts of 1990, as amended by Chapter 329 of the Acts of 1991, and the regulations, 102 CMR 12.00 promulgated pursuant thereto.

_____ There is a program for child care in compliance with these regulations.

_____ There are fewer than 50 fulltime people employed in this company.

Name of Firm

Signature

Name & Title (please print or type)

Date

Executive Order 481 applies to all state agencies in the Executive Branch, including all executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established.

**CONTRACTOR
CERTIFICATION:**

As evidenced by the signature of the Contractor's Authorized Signatory below, the Contractor certifies under the pains and penalties of perjury that the Contractor shall not knowingly use undocumented workers in connection with the performance of all Executive Branch contracts; that pursuant to federal requirements, the Contractor shall verify the immigration status of all workers assigned to such contracts without engaging in unlawful discrimination; and that the Contractor shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker(s). The Contractor understands and agrees that breach of any of these terms during the period of each contract may be regarded as a material breach, subjecting the Contractor to sanctions, including but not limited to monetary penalties, withholding of payments, contract suspension or termination.

Contractor Authorizing Signature

Date

Print Name

Title: _____

Telephone: _____

Fax: _____

Email: _____

The Contractor is required to sign this Certification only once and may provide a copy of the signed Certification for any contract executed with an Executive Branch Department. A copy of this signed Certification must be attached to the "record copy" of all contracts with this Contractor that are filed with the contracting Department.

Appendix D - Guidance Concerning DBE “Good Faith Efforts”

Good Faith Efforts procedures must be documented on contracts utilizing federal funds that have an established DBE goal. Award requires a bidder/offeror be able to show good faith efforts were performed to meet the goal. A good faith effort is defined as one where the bidder:

1. Documents that it has obtained enough DBE participation to meet the goal; or
2. Documents adequate good faith efforts, even though it did not meet the goal.

This attachment “Guidance Concerning Good Faith Efforts” provides grantees with suggested types of actions they should perform/document to demonstrate good faith efforts.

These efforts must be active steps, which could reasonably be expected to lead to sufficient DBE participation to meet the contract DBE participation goal. Good Faith Efforts require that the bidder consider all qualified DBEs, who express an interest in performing work under the contract.

This means that the bidder cannot reject a DBE as unqualified unless the bidder has sound reasons based on a thorough investigation of the DBE’s capabilities. Further, the DBE’s standing within its industry, membership in specific groups, organizations or associations and political or social affiliation (for example, union vs. non-union employee status) is not legitimate causes for the rejection or non-solicitation of bids in the Contractor’s efforts to meet the contract DBE participation goal.

The following, which is not all inclusive, list types of actions which indicate good faith efforts on the part of a bidder to meet the DBE goal. The extent and type of actions required will vary depending on such things as industry practice; the time available for submitting a bid and the type of contract.

1. Attendance at a pre-bid meeting, if any, scheduled to inform DBEs of subcontracting opportunities under a given solicitation.
2. Advertisement in general circulation media, trade association publications, and minority-focus media.
3. Written notification to capable DBEs that their interest in the contract is solicited.
4. Documentation of efforts to negotiate with DBEs for specific sub-contracts including at a minimum:
 - a. The names, addresses, and telephone numbers of DBEs contacted and the date.
 - b. A description of the information provided to DBEs.
 - c. A statement explaining why additional agreements with DBEs were not reached.
5. For DBE bidders contacted but rejected as unqualified, the reason for that conclusion.
6. Documentation of efforts made to assist the DBEs contacted that needed assistance in obtaining bonding or insurance required by the bidder.
7. Documentation of efforts to utilize the services of small business organizations, community and contractor groups to locate qualified DBEs.
8. Documentation that the bidder has broken out contract work items into economically feasible units in fields where there are available DBE firms to perform the work.
9. Evidence that adequate information was provided to DBEs about the plans, specifications and requirements of the contract, and that information was communicated in a timely manner.
10. Documentation of any efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.

A good video can be found at <http://www.fhwa.dot.gov/federal-aidessentials/catmod.cfm?id=85>