HUMAN SERVICE VEHICLES – Transit Bariatric Vehicles

Request for Bid (RFB)

#510515

Issued by:
The State of Wisconsin
Department of Transportation

Questions and "Or Equal" Product Requests Due by:
4/12/2023 at 2 pm CST

Bids Due by:
04/27/2022 at 2pm CST
Bids must be submitted in eSupplier

For further information regarding this RFB, contact:
Sally Maier at sally.maier@dot.wi.gov

Bid # 510515

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1 GENERAL INFORMATION AND SCOPE

The Wisconsin Department of Transportation, through its Purchasing Unit requests bids to establish a contract for the purchase of Human Service Vehicles through WisDOT for municipalities throughout the state of Wisconsin. The Wisconsin Department of Transportation is acting as agent for a group of private, non-profit organizations and public entities in this transaction in support of federally funded Section 53 programs.

The resulting contract shall be governed by the attached "Standard Terms and Conditions" unless specifically modified in this Request for Bid document. Conditions of bid that include "must" or "shall" describe a mandatory requirement.

1.1 Scope

The Department of Transportation (DOT) intends to use the results of this procurement to purchase a Model Year 2022 or newer. All component parts in the manufacturing of vehicles shall be new.

- Medium Roof Transit Bariatric Rear Load Ramp
- Medium Roof Transit Bariatric Side Load Ramp
- High Roof Transit Bariatric Rear Load Ramp
- High Roof Transit Bariatric Side Load Ramp

1.2 Definitions

The following definitions are used throughout the RFB documents:

- Agency – The Wisconsin Department of Transportation
- Bidder/Vendor – A company or individual submitting a bid response to this RFB
- Contractor – Bidder awarded the contract
- Department – The Wisconsin Department of Transportation
- DOT or WisDOT – The Wisconsin Department of Transportation
- HSV: Human Service Vehicle
- "Or Equal" Product - When not bidding on all particulars as specified, the bidder may offer that product to be an "or equal" product. All "or equal" alternate bids shall be pre-approved by a formal written bid amendment. Any requests must be fully supported by technical data, test results, or other pertinent information or evidence that the substitute offered is equal or better than the specification requirement.
- Purchasing – WisDOT Purchasing Unit
- RFB – Request for Bid
- State: State of Wisconsin
- Sub-Recipient – Organization or agency purchasing the vehicle from the contract

1.3 OVERVIEW OF ADMINISTRATIVE AGENCY

The Department of Administration performs administrative and executive functions for the State of Wisconsin.

1.4 Contract Term

WisDOT intends to utilize the results of this RFB to award a contract. Retain a copy of these bid documents and addenda for your files.

1.4.1 The initial term for this contract will be for a one-year period with four 1-year renewal options. Renewal options must be authorized by a mutual agreement of the Contractor and WisDOT

1.4.2 As required by Wisconsin Statutes, continuance of a contract beyond the limits of funds available shall be contingent upon appropriation of the necessary funds and the termination of the contract by lack of appropriation shall be without penalty to WisDOT. WisDOT does not guarantee to purchase any specific quantity during each contract term.

1.5 Number of Contracts

WisDOT may award to and offer contracts to multiple Vendors or award a single contract to one Vendor for the goods required in this solicitation.

1.6 Endorsements, Testimonials, and Promotional Activities

Any unauthorized reference to or use of the State of Wisconsin, the Great Seal of the State, the Wisconsin Coat of Arms, any agency or other subunits of Wisconsin state government, or any state official or employee, for commercial promotion is strictly prohibited.

1.7 Cooperative Purchasing and Piggybacking

Wisconsin Statutes (s. 16.73, Wis. Stats.) established authority to allow Wisconsin municipalities to purchase from State contracts. For cooperative bidding purposes, a Vendor Agreement is highly desired for this RFB. Please complete DOA 3832 of the Bid Document and return with your bid. Additional units may be purchased by agreeing to extend the contract to other municipalities and state agencies through piggybacking.

1.8 Esupplier registration

Registration on the State of Wisconsin's eSupplier system (http://esupplier.wi.gov) is available free of charge to all businesses and organizations what want to sell to the state. Registration allows a vendor to:

1.8.1. Register for a bidder's list for commodities/services that the vendor wants to sell to the state.

1.8.2. Receive automatic email notifications each time a state agency, including the University of Wisconsin System, posts a request for bid (RFB) or request for proposal (RFP) with an estimated value over $25,000 in their designated commodity/service area(s).

1.8.3. Only vendors with a valid email address at the time the RFB/RFP is posted will receive email notifications of addendums/amendments. Vendors who obtain the RFB/RFP from a third party, though a public notice website (http://publicnotices/wi/gov) or other means assume responsibility for checking for updates on VendorNet to the RFB/RFP.

1.8.4. To obtain information on the state's bidder registration, please visit the eSupplier website at http://esupplier.wi.gov Assistance is available from the eSupplier information center at 1-800-482-7813, or in the Madison Area at 608-264-7898.

2 BID PROCEDURES AND INSTRUCTIONS

2.1 REASONABLE ACCOMMODATIONS

The Department will provide reasonable accommodations, including the provision of informational material in an alternative format, for qualified individuals with disabilities upon request. If you think you need accommodations at a bid opening/vendor conference, contact Sally Maier**, Purchasing Agent, sally.maier@dot.wi.gov or 608-266-8450**.

2.2 BID REQUIREMENTS

Submit the following required materials through eSupplier. Failure to provide these additional documents with your bid submittal may disqualify your bid. Emailed, mailed, or hand delivered bids will not be accepted.

- **2.2.1** Bidder Required Form (DOA 3832)
- **2.2.2** Addendum signature page(s), if applicable
- **2.2.3** Vendor responsibilities for delivery, inspection, and acceptance (Included in this document)
- **2.2.4** Price sheet (Excel document)
- **2.2.5** A copy of the bid with redacted information (see 2.15) if applicable.
- **2.2.6** Bid opportunity list (Included in this document)
- **2.2.7** Signed Federal certifications and clauses (Included in this document)
- **2.2.8** Vehicle information per specification requirements (Attach your own documents)
- **2.2.9** Copy of complete specifications **and** a descriptive brochure or detail for the vehicle bid (Attach your own documents)
- **2.2.10** Manufacture's/Bidder's warranty statement (Attach your own documents)

2.3 BID SUBMISSION

Vendors must submit all bid documents though eSupplier

2.3.1 Bids must be submitted on time via the eSupplier portal by 04/27/2023 at 2pm CST

2.4 METHOD OF AWARD

The bid award will be made to the responsive and responsible bidder with the lowest total unit price for the first year of the contract.

2.5 CALENDAR OF EVENTS

Listed below are important dates and times by which actions related to this Request for Bids (RFB) must be completed. In the event that the State finds it necessary to change any of these dates and times it will do so by issuing a supplement to this RFB.

Date	Event
03/27/2023	Solicitaiton released on eSupplier
04/12/2023	Last day for submitting "Approved Equal" requests and written questions. Due by 2:00 pm CST.
04/14/2023 Estimated	Amendments will be Posted to eSupplier which will include answers to "Approved Equal" requests, answers to questions, and/or revisions to the solicitation
04/27/2023	Bid(s) due date, 2:00 p.m. CST on eSupplier
04/27/2023	Bid(s) opening at 2:30pm CST TEAM INFO LINK, PHONE # and PIN # Audio only - +1 608-571-2209,,383852162# United States, Madison Phone Conference ID: 383 852 162#
08/01/2023	Contract Start Date

2.6 UNIT PRICE

Vendors must submit a total "unit price" in accordance with the specifications, special conditions, and bid document. Enter the unit price for each applicable item on the respective line on the attached "Bid Price Sheet" **APPENDIX H (Excel form).** All prices must be quoted in U.S. dollars.

2.6.1 The quantity of "1 each" listed for the line item on the bid unit price sheet does not necessarily represent the quantity to be ordered, but are for bid unit price evaluation purposes only.

2.6.2 For purposes of calculating the rate for option years for this RFB, include an annual rate increase of 1% each year for the remaining four option years (automatically calculated in the Excel document). **These rates are for evaluation and FTA procurement requirement purposes only** and do not affect or will be totaled to determine the lowest responsible bid price.

2.6.3 Price quoted should include all items of labor, materials, tools, equipment, and other costs necessary to fully complete the manufacture and delivery of the vehicle pursuant to the outlined specifications.

2.6.3.1 It is the intention of these specifications to provide and require a complete vehicle of the type prescribed ready for immediate operation.

2.6.3.2 Any items omitted from the specification that are clearly necessary for the completion and operation of such equipment and its appurtenances shall be considered a portion of such equipment although not directly specified or called for in the specifications.

2.7 ESTIMATED QUANTITIES

Estimations for WisDOT's projected needs are detailed below. These numbers are estimates only and do not guarantee a minimum or maximum number of vehicles ordered off the contract as programs and funding are ongoing and subject to change. Estimates are based on the number of vehicles ordered and delivered from the HSV contract in the past three years.

	Contract Year	**Optional Yr. 1**	**Optional Yr. 2**	**Optional Yr. 3**	**Optional Yr. 4**
Vehicle Type	**August 2023 – July 2024**	**August 2024 – July 2025**	**August 2025 – July 2026**	**August 2026 – July 2027**	**August 2027 – July 2028**
Medium Roof Transit Bariatric Rear Load Ramp	14	14	14	14	14
Medium Roof Transit Bariatric Side Load Ramp	14	14	14	14	14
High Roof Transit Bariatric Rear Load Ramp	12	12	12	12	12
High Roof Transit Bariatric Side Load Ramp	12	12	12	12	12

2.8 ALTERNATE BIDS

Any alternate bid must be in compliance with the Approved Equals and Specifications in 2.12 All approved alternate bids must be submitted on a separate itemized bid sheet, identified as an alternate, and with vendor name and bid number on each page submitted.

2.9 Signed Request for Bid Sheet

Submit with bid a signed and completed Page 1 of this Request for Bid and all certifications required for bid submittal. Bids submitted in response to this RFB must be signed by the person in the vendor's organization who is responsible for the decision as to the prices being offered in the bid or by a person who has been authorized in writing to act as agent for the person responsible for the decision on prices.

By submitting a signed bid, the vendor's signatories certify that in connection with this procurement:

2.9.1 The vendor's organization or an agent of the vendor's organization has arrived at the prices in its bid without consultation, communication or agreement with any other respondent or with any competitor for the purpose of restricting competition

2.9.2 The prices quoted in the bid have not been knowingly disclosed by the vendor's organization or by any agent of the vendor's organization and will not be knowingly disclosed by same, directly or indirectly, to any other respondent or to any competitor, and

2.9.3 No attempt has been made or will be made by the vendor's organization or by any agent of the vendor's organization to induce any other person or firm to submit or not to submit a bid for the purpose of restricting competition.

2.10 MULTIPLE BIDS

Multiple bids from a vendor will be permissible, however each bid must conform fully to the requirements for bid submission. Each such bid must be separately submitted and labeled as Bid #1, Bid #2, etc. on each page included in the response. Alternate acquisition plans do not constitute multiple bids.

2.10.1 Vendor has to submit all document and certificates for each bid submission in separate packets and cannot double up on submitting one packet of required information for multiple bids.

2.10.2 Vendor may have to combine multiple bid documents in order to submit multiple bids in eSupplier. If this is the case, please order separate bids sequentially with a cover page before the start of each new bid (Bid #1, Bid #2).

2.11 INCURRING COSTS

The State of Wisconsin is not liable for any cost incurred by a vendor in the process of responding to this RFB.

2.12 QUESTIONS AND APPROVED EQUAL REQUESTS

Any questions or approved equal requests concerning this RFB must be submitted in writing on or before 2:00 p.m. (CST), 4/12/2023 via eSupplier – **Questions sent directly to WisDOT Transit personnel will not be addressed.**

2.12.1 Vendors are expected to raise any questions, exceptions, or additions they have concerning the RFB document or the attached State of Wisconsin Contract at this point in the RFB process. If a vendor discovers any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in this RFB, the vendor should immediately notify the above-named individual of such error and request modification or clarification of the RFB document.

2.12.2 When not bidding on all particulars as specified, the bidder may offer that product to be an “or equal” product. All “or equal” alternate bids shall be pre-approved by a formal written bid amendment. Any

requests must be fully supported by technical data, test results, or other pertinent information or evidence that the substitute offered is equal or better than the specification requirement.

Failure to provide "or equal" product information by 4/12/2023 before 2 pm (CST) will result in disqualification of the "or equal" alternate bid. The Department of Transportation will be the sole judge of equivalency and acceptability.

2.12.3 In the event that it becomes necessary to provide additional clarifying data or information, or to revise any part of this RFB, supplements or revisions will be posted on eSupplier.

2.12.4 From the date of release of this RFB, until a Letter of Intent is issued, all contacts with Department of Transportation regarding this RFB shall be made through the Purchasing Section. Violation of this condition may be considered sufficient cause for rejection of a proposal, irrespective of any other considerations.

2.12.5 Each bid shall stipulate that it is predicated upon the terms and conditions of this RFB and any supplements or revisions thereof.

2.13 NEWS RELEASES

News releases pertaining to the RFB or to the acceptance, rejection, or evaluation of bids shall not be made without the prior written approval of the State.

2.14 WISCONSIN PUBLIC RECORDS LAW

WisDOT and all records it retains are subject to Wisconsin Public Records law, sec. 19.31, et seq, Wis. Stats. WisDOT will advise bidder request for records it has designated as proprietary or confidential.

2.15 PROPRIETARY AND/OR CONFIDENTIAL INFORMATION

If the bidder designates any information in the bid as proprietary and/or confidential, the bidder must submit, in addition to the copy listed in 2.2, one one copy should be clearly marked as "REDACTED COPY" and submitted in the packet/pdf/file containing the original bid(s).

2.16 ORDER OF PRECEDENCE

In the event of contract award, the contents of the RFB (including attachments), RFB addenda and revisions, the bid response from successful bidder, and additional terms agreed to, in writing, by WisDOT and the contractor shall become part of the contract.

The following priority for contract documents will be used if there are conflicts or disputes:

2.16.1.1 First, contract award document
2.16.1.2 Second, official purchase order
2.16.1.3 Third, bid response as accepted by WisDOT
2.16.1.4 Fourth, WisDOT request for bid

3 BID ACCEPTANCE, EVALUATION AND CONTRACT AWARD

3.1 BID OPENING

A public Bid opening may be held via Teams on 4/27/2023 at 2:30 p.m. CST. The names of all Vendors will be read aloud at that time. All interested parties must contact Sally Maier at sally.maier@dot.wi.gov by 4/26/2023 to receive call-in information.

3.2 BID ACCEPTANCE

Bids which do not comply with instructions or are unable to comply with specifications contained in this RFB may be rejected by the State. The State may request reports on a vendor's financial stability and if financial stability is not substantiated may reject a vendor's bid. The State retains the right to accept or reject any or all bids, or accept

or reject any part of a bid deemed to be in the best interest of the State. The State shall be the sole judge as to compliance with the instructions contained in this RFB.

3.3 BID EVALUATION

Bids will be evaluated by the Department's purchasing agent and program manager to verify that they will meet all specified requirements in this RFB. This verification may include requesting reports on the vendor's financial stability, conducting demonstrations of the vendor's proposed products(s) and/or service(s), and reviewing results of past awards to the vendor by the State of Wisconsin.

3.4 RE-SOLICIT BID

Purchasing reserves the right to reject any or all bids and to re-advertise solicitation if necessary.

3.5 NOTIFICATION OF INTENT TO AWARD

Any vendors who respond to this RFB, with a bid, will be notified in writing of the State's intent to award the contract(s) as a result of this RFB.

3.6 APPEALS PROCESS

The appeals process applies only to those requests for bids for services that result in a contract greater than $50,000. Notices of intent to protest and protests must be made in writing. Protestors should make their protests as specific as possible and should identify Wisconsin Statutes and Wisconsin Administrative Code provisions that are alleged to have been violated.

The written notice of intent to protest the intent to award a contract must be filed with Craig Thompson, Secretary, Wisconsin Dept. of Transportation, Craigm.thompson@dot.wi.gov with a carbon copy to DOTCentralPurchasing@dot.wi.gov. Notice of intent to protest must be received no later than five (5) working days after the notice of intent to award is issued. The written protest must be received no later than ten (10) working days after the notice of intent to award is issued.

The decision of the head of the procuring agency may be appealed to the Secretary of the Wisconsin Dept. of Administration within five (5) working days of issuance, with a copy of such appeal filed with the procuring agency. The appeal must allege a violation of a Wisconsin Statute or a provision of the Wisconsin Administrative Code.

3.6.1 Subsequent protests can be submitted to: Federal Transit Administration, Region V Office, 200 West Adams Street, Suite 320, Chicago, Illinois 60606.

3.7 CONTRACT AWARD

Contracts will be signed between WisDOT and the Vendor after the protest period is over. The Department will send a contract for the Vendor to sign and will return an executed copy.

3.7.1 Vendors cannot accept purchase orders from sub-recipients until contracts are executed by WisDOT.

4 SPECIAL TERMS AND CONDITIONS

4.1 ORDERING

Successful bidders awarded a contract by the Wisconsin Department of Transportation will receive purchase orders from WisDOT Transit Staff and/or sub-recipients as needed during the contract term. There is no set schedule in place for purchase orders to be sent.

4.1.1 Additional ordering from municipalities may occur provided a contract is active. WisDOT approval must be granted prior to the contactor's acceptance of a purchase order.

4.1.2 Purchase orders should be made on a vehicle-by-vehicle basis

4.2 DELIVERY

All documents must show the legal name of the sub-recipient. Below is a general list of required documents that may change depending on funding program and sub-recipient.

4.2.1 When a delivery date cannot be met, vendors will contact WisDOT in writing a minimum of 15 days prior to the expected delivery date. Purchase orders or contracts may be cancelled without any cost or penalty to the ordering agency if the delivery is late or not revised in writing by WisDOT Program Managers and Procurement Maanger.

4.2.2 The vehicle shall be delivered FOB to the destination shown on the purchase order, fully equipped in accordance with the specifications and proposal.

4.2.3 Prior notice of intent to deliver vehicles must be given, at least one day in advance, to the contact person designated by the WisDOT Transit Section on its purchase order, during normal business hours

4.2.3.1 Required delivery documents may change by funding program, type, and sub-recipient, so it is best to check with Transit Staff before vehicle is delivered.

4.2.4 Certificate of Origin/Manufacturer's Certificate for the chassis

4.2.5 Buy America Certificate and Documentation

4.2.5.1. A final list of major components and sub-assemblies made in the U.S. and the calculated percentage for each item of total manufacturer's cost. Supplier can furnish this list, but must list percentages of components in the federal certificates in Appendix F

4.2.5.2. The final assembly location (city, state, country)

4.2.5.3. A list of the actual activities that took place during the final assembly

4.2.5.4. The total cost of final assembly.

4.2.6 FMVSS Certificate and Documentation

4.2.6.1. Show sub-recipient location of FMVSS sticker

4.2.7 Purchasers Certificate

4.2.8 WisDOT Transit Delivery Document Packet

4.2.9 An invoice must be sent to the organization named on the purchase order and WisDOT Transit staff before delivery is made or must be delivered with the vehicle

4.2.9.1. Be sure to list any additional add-on items and registration fees on a **separate invoice sheet.**

4.2.10 Contractor shall complete the Application of Title for sub-recipient (MV-1 or MV-11) and show WisDOT as the lien holder. Secured party number is 039337 and the address is WisDOT Bureau of Transit, Local Roads, Railroads and Harbors. 4822 Madison Yards Way, P.O. Box 7913, Madison, WI 53705..

4.2.10.1. Contractor shall also provide the recipient with a temporary license plate.

4.2.11 The vehicle is to be delivered having been properly serviced, including all lubricants (grease and oil) and fluids filled to the proper level.

4.2.12 Doors shall have been checked and properly adjusted, fittings are all accounted for, and all other mechanical adjustments made, so that the vehicle is fit and able to be put into immediate service.

4.2.13 Ensure engine is in proper operating condition

4.2.14 Ensure lighting (interior and exterior) are in proper operating condition

4.2.15 Ensure heating and air conditioning are in proper operating condition

4.2.16 Check to insure proper operation of all components, accessories, gauges, lights, and mechanical and hydraulic features

4.2.17 At the time of delivery, the fuel tank must be a least one-fourth (1/4) full as indicated on the fuel gauge; if dual fuel tanks are present, the vehicle must have at least one-fourth (1/4) tank in each tank.

4.3 DELIVERY SUPPORT AND DEMONSTRATION

The authorized representative (which may be the truck transport delivery driver) present at the time of delivery must be able to educate the sub-recipient on the vehicle's features and must be able to demonstrate the vehicle's subsystems and equipment.

4.4 SUPPORT DELIVERY DOCUMENTS

The following materials must accompany each delivered vehicle. Appendix E will have additional details on vehicle delivery and a checklist; updated delivery documents may be sent by Program Managers closer to the date of delivery. The omission of any of these materials may result in the vehicle not accepted.

4.4.1. Warranty for vehicle and subsystems (see section 4.4)
4.4.2. Owner's manual
4.4.3. Scaled and dimensioned floor plans
4.4.4. A copy of detailed maintenance and inspection schedule for the vehicle subsystems
4.4.5. A label placed on the inside of the glove compartment or driver storage area of the vehicle giving a telephone number to call for technical assistance regarding the vehicle
4.4.6. Written or video instructions on the use of mobility aid restraints and securement systems
4.4.7. Written instructions on how to deploy and stow ramp that includes details regarding the ramp interlock system
4.4.8. "as built" electrical manual
4.4.9. "as built" parts manual
4.4.10. Alignment report

4.5 INSURANCE REQUIREMENTS

Every contractor and all parties furnishing services or products to the Wisconsin Department of Transportation (WisDOT) or any of its subsidiary companies must provide WisDOT with evidence of the following minimum insurance requirements. In no way do these minimum requirements limit the liability assumed elsewhere in the contract. All parties shall, at their sole expense, maintain the following insurance:

A. Commercial General Liability Insurance including contractual coverage:
The limits of this insurance for bodily injury and property damage.
Combined shall be at least:

Each Occurrence Limit $1,000,000
General Aggregate Limit $2,000,000
Products-Completed Operations Limit $2,000,000
Personal and Advertising injury Limit $1,000,000

B. Business Automobile Liability Insurance:
Should the performance of this Agreement involve the use of automobiles, Contractor shall provide comprehensive automobile insurance covering the ownership, operation and maintenance of all owned, non-

owned and hired motor vehicles. Contractor shall maintain limits of at least $1,000,000 per accident for bodily injury and property damage combined.

C. Workers' Compensation Insurance:

Such insurance shall provide coverage in amounts not less than the statutory requirements in the state where the work is performed, even if such coverages are elective in that state.

D. Employers Liability Insurance:

Such insurance shall provide limits of not less than $500,000 policy limit.

E. Excess/Umbrella Liability Insurance:

Such insurance shall provide additional limits of not less than $5,000,000 per occurrence in excess of the limits stated in (A.), (B.), and (D.) above.

Additional Requirements:

F. Contractor shall require the same minimum insurance requirements, as listed above, of all its contractors, and subcontractors, and these contractors, and subcontractors shall also comply with the additional requirements listed below.

G. The insurance specified in (A), (B), and (E) above shall:

1. Name WisDOT including its directors, officers, employees and agents as additional insureds by endorsement to the policies; and,
2. Provide that such insurance is primary coverage with respect to all insureds and additional insureds.

H. The above insurance coverages may be obtained through any combination of primary and excess or umbrella liability insurance. WisDOT may require higher limits or other types of insurance coverage(s) as necessary and appropriate under the applicable purchase order.

I. Except where prohibited by law, all insurance policies shall contain provisions that the insurance companies waive the rights of recovery or subrogation, by endorsement to the insurance policies, against WisDOT, its subsidiaries, its agents, servants, invitees, employees, co-lessees, co-venturers, affiliated companies, contractors, subcontractors and their insurers.

J. Contractor shall provide certificates and endorsements evidencing the coverages, limits and provisions specified above on or before the execution of the Agreement and thereafter upon the renewal of any of the policies. Contractor shall require all insurers to provide WisDOT with a thirty (30) day advanced written notice of any cancellation, nonrenewal or material change in any of the policies maintained in accordance with this Agreement. Coverage must be placed with carriers with an A. M. Best rating of A- 10 or better.

Mail to:
Wisconsin Department of Transportation
4822 Madison Yards Way, 8th Floor, South Tower
Madison, WI 53705

4.6 WARRANTY

4.6.1. All warranty work shall be at no cost to the sub-recipient or WisDOT and should be conducted so as to minimize the vehicle's out-of-transit service time

4.6.1.1 The sub-recipient shall be notified in writing of all warranties, their coverage and scope at the time of delivery.

4.6.2. An owner's care book shall also be included with each vehicle; a copy of a detailed maintenance and inspection schedule supplied by the respective manufacturers of the vehicle and its subsystems (e.g. wheelchair ramp, etc.) shall be included with each vehicle.

4.6.3. Where accessories are supplied, they must be compatible with the rest of the product warranties.

4.6.4. All warranty work must be performed within a reasonable amount of time after the contractor or his designated dealer services receives the vehicle.

4.6.5. Vehicles delivered by driving them will have the warranty begin at the actual vehicle mileage at the time of final delivery at the sub-recipient's location; dealer is responsible for submitting chassis manufacturers Delayed Warranty Start application.

4.6.6. Sub-recipient shall consult with contractor to locate the nearest repair facility that can provide the repairs.

4.6.7. A complete warranty plan shall be provided at bid submittal and, at minimum, shall address the following warranty activities

4.6.7.1. Extension of the warranty period (i.e., due to lack of parts or information needed to complete the warranty repair).
4.6.7.2. Conditions that cause voiding of the warranty
4.6.7.3. Exceptions and additions to warranty (i.e., normal wear and tear, etc.)
4.6.7.4. Procedures to follow when a warranty defect is detected
4.6.7.5. Repair procedures including repairs performed by the vendor and repairs to be performed by the sub-recipient and how parts are to be supplied and which defective components are to be returned or examined by the vendor.
4.6.7.6. Procedures for filing failure analysis reports of safety-related parts or major components removed from vehicles under the warranty period by the vendor to determine if a fleet defect could affect fleet operation
4.6.7.7. Reimbursement for parts and labor
4.6.7.8. Identification of locations/facilities for warranty repairs
4.6.7.9. Maximum response time for delivery of OEM and non-OEM parts that are not in stock at warrant repair facilities.
4.6.7.10. Each vehicle delivered with warranty cards or such documents as are needed by the owner to obtain warranty services.

4.7 STATE PATROL INSPECTION

All vehicles specified in this document will be operated as "Human Service Vehicles" adhering to state standards covering design, constructions, and equipment of these vehicles as stated in Wisconsin Administrative Code, Chapter Trans 301.

4.7.1. All vehicles are subject to annual HSV inspections performed by the Wisconsin State Patrol (per s. 110.05, Wis. Stats.). The dealer will be responsible for correcting defects or code violations cited by Wisconsin State Patrol Inspector during an initial HSV inspection if the Department concludes that they were present when the vehicle was delivered and did not adhere to Trans 301.

4.8 REBATES

All bid prices are to be net to the Wisconsin Department of Transportation, including any applicable rebates or any price incentives. WisDOT will assign any rebates to the dealer/bidder, but shall only sign any rebate form and shall not be responsible for any further activity in pursuit of the bidder receiving any rebate or incentive.

4.9 FIRM CONTRACT PRICING

Price increases for each optional additional year will be determined at the end of the first year of the contract, and the end of any additional optional year renewals. Any increase in price will be determined by using the Producer Price Index (PPI) line 1413 "Truck and Bus Bodies" from the Bureau of Labor Statistics (BLS) http://www.bls.gov/ppi/

4.9.1. The **ten percent increase** that is programmed into the Price Sheet Excel form is for procurement requirements only and will not be used to calculate future option year prices, only the PPI.

4.9.2. In case of a major industry change, vendor may agree to continue a option year at a different price than determined b PPI

4.9.2.1. Rate must be well documented with manufacturer and vendor evidence and details
4.9.2.2. Rate must undergo a price analysis
4.9.2.3. Rate may not be accepted if it is determined to be unreasonable or not in the best interest for federal funds and our sub-recipients

4.10 OPTIONAL YEAR RENEWALS

Initial contract term shall be for one year, with four 1-year additional optional years. Prices for optional years will be determined as stated in **4.9**.

4.10.1. Vendors must also re-submit all required Federal (including Buy America, FMVSS, TVM, Purchaser's Agreement) and state documents to ensure that any new developments in the vehicles in the later years are still in compliance with federal and state regulations.

4.10.1.1. It should be noted that FTA will require higher percentages of domestic content in all rolling stock vehicles in the next few years that is decided when the first vehicle from each contract is delivered

4.10.1.1.1. 70 percent in FFY2020 and beyond

4.11 CONTRACTOR MAJOR STRUCTURAL CHANGE

The contractor is required to provide the WisDOT Purchasing Section with a minimum of 90 days written advance notice of any planned or potential structural change resulting in a new entry (merger, buyout, acquisition, consolidation, etc.).

The contractor may not assign the contract to the new entry without prior written approval from WisDOT, since the underlying procurement may be affected.

4.12 CONTRACT CHANGES

WisDOT and vendor shall mutually agree when it is necessary to make changes in, additions to, or deletions from the work to be performed or the material to be furnished pursuant to applicable federal standards, laws and regulations, state vehicle regulations and laws, and the provisions of the contract documents.

4.12.1. Any such changes which affect the contract price shall require approval by the Purchasing Unit and Transit Section

4.12.2. Any changes shall require a price analysis to determine if it is better to re-solicit the vehicle or if it is in the best interest of the state and sub-recipients to agree to said price change.

4.12.3. Contract change approval is not guaranteed.

5 PERFORMANCE REQUIREMENTS

5.1 GENERAL PERFORMANCE SPECIFICATIONS

5.1.1. All proposed equipment must be capable of performing at an effectiveness level in accordance with manufacturer's specifications.
5.1.2. All proposed equipment must be capable of performing all operations in accordance with manufacturer's advertised data sheets and technical publications.
5.1.3. ASTM and American Welding Society welding standards and procedures

5.2 STATE SAFETY REQUIREMENTS

All vehicles and equipment must conform to design and construction standards as stated in Trans 301 – Wisconsin Administrative Code. Additional details in vehicle spec section.

5.3 FEDERAL SAFETY REQUIREMENTS

All vehicles and equipment must conform to design and construction standards listed below.

5.3.1. Federal Motor Vehicle Safety Standards (FMVSS), including FMVSS 403 and FMVSS 404 regarding lift interlock devices
5.3.2. 36 CFR Part 1192 and ADA
5.3.3. 49 CFR Part 571
5.3.4. 49 CRR Part 393
5.3.5. SAE J2249
5.3.6. 49 CFR 665
5.3.7. FTA Bus Testing (Altoona Testing). Vendor may submit a hard or digital copy of test with bid.

5.4 STATE SAFETY REQUIREMENTS

All vehicles and equipment must conform to design and construction to the state standards listed below:

- WI Trans Rule 301

6 COST, PAYMENT, AND CONDITION OF SALE INFORMATION

6.1 Pricing

Vendors must fully complete the cost sheet in **APPENDIX F** (Excel form).

6.2 PAYMENT

Depending on program award funding source, payment will be made to vendors by the Wisconsin Department of Transportation or the sub-recipient when the vehicle and vehicle documents are delivered and accepted.

6.2.1. All purchase orders must be issued by or approved by the Wisconsin Department of Transportation

6.2.1.1. Transit Program Managers will inform vendor if payment will be from the Department or from the sub-recipient at the time the purchase order is placed

6.2.1.2. In general, 5311 sub-recipients will pay the vendor 100% cost directly while 5310 sub-recipients will pay WisDOT a local match and WisDOT will pay the vendor 100% directly

6.3 CONDITION OF SALE

Vehicles that have not met all required documents, certifications, and/or specifications will not be eligible for sale by vendor or payment by WisDOT.

7 TERMS AND CONDITIONS

7.1 BASIC STATE TERMS AND CONDITIONS

The State of Wisconsin reserves the right to incorporate standard State contract provisions into any contract negotiated with any proposal submitted responding to this RFB (Standard Terms and Conditions (DOA-3054) and Supplemental Standard Terms and Conditions for Procurements for Services (DOA-3681)) attached below. Failure of the successful proposer to accept these obligations in a contractual agreement may result in cancellation of the award.

7.1.1. State 85.22 funds may be used to purchase vehicles off this contract

7.2 FEDERAL FUNDING AND SPECIAL REQUIREMENTS

Federal grant monies fund this contract, in whole or in part (Section 5311, Section 5310, Section 5307 and Section 5339 – CFDA 20.509, 20.513, 20.507, and 20.526).

7.2.1. As such, agencies receiving such funds and contractors awarded contracts that use such funds must comply with certain Federal certifications and clause requirements.

7.2.1.1. This includes, for purchases of rolling stock over $150,000, compliance with Buy America Act requirements, including pre-award and post-delivery audit requirements and certifications

7.2.1.2. Requirements and certifications applicable under the Federal Motor Vehicle Safety Standard (FMVSS).

7.2.2. It is the contractor's responsibility to be aware of the pertinent certifications and contract clauses, as identified by the Issuing Agency for the instant procurement and ensure compliance with such requirements prior to award and throughout the term of any resultant contract.

7.2.3. A list of the Federal clauses and certifications applicable to this procurement is included at APPENDIX G and the full text of these clauses is available at the National Rural Transit Assistance Program (RTAP) website under "ProcurementPro." The website address is: http://www.nationalrtap.org/home.aspx

7.3 CANCELLATION AND TERMINATION

This contract may be terminated by either party under the following conditions:

7.3.1. WisDOT may terminate the contract at any time as its sole discretion by delivering 15 days written notice to the contractor. If the problem is service performance, contractor will be warned either verbally or in writing of unsatisfactory performance and intent to cancel this contract.

Contractor will be given a period to "cure" the performance. If the performance does not improve, contractor will be given 15 days written notice that the contract will be cancelled.

Upon termination, WisDOT's liability will be limited to the pro rata cost of the services performed as the date of termination.

7.3.2. In the event the contractor terminates the contract, for any reason whatsoever, it will require a written certified letter notification delivered to the WisDOT Purchasing Agent no less than 60 days prior to said termination.

The contractor will, in turn, refund the Department (within 30 days of said termination) all payments made hereunder by the Department to the contractor for work not completed.

7.3.3. If at any time to maintain the required Certifications of Insurance, Permits, Licenses, and Blanket Fidelity Bond, Federal Certifications, and State Certifications shall be cause for contract termination. If the contractor rails to maintain and keep in force the insurance as provided in the Standard Terms and Conditions, WisDOT has the right to cancel and terminate the contract without notice. Please see attachment for mandatory insurance requirements

7.3.4. If at any time the contractor's performance threatens the health and/or safety of WisDOT, WisDOT has the right to cancel and terminate the contract without notice.

7.3.5. If at any time a petition in bankruptcy shall be filed against the contractor and such petition is not dismissed within 90 days, of if a reciver or trustee of contractor's property is appointed and such appointment is not vacated within 90 days, WisDOT has the right, in addition to any other rights of whatsoever nature that it may have at law or inequity, to terminate this contract by giving 90 calendar days' notice in writing of such termination.

7.3.6. Upon cancellation, termination or other expiration of the resulting contract/agreement, each party shall forthwith return to the other all papers, materials, and other properties of the other held by each for purposes of execution of the contract/agreement. In addition, each party will assist the other party in the orderly termination of this contract/agreement and the transfer of all aspects hereof, tangible or intangible, as may be necessary for the orderly, nondisruptive business continuation of each party.

7.4 Certification for Collection of Sales and Use Tax

The State of Wisconsin shall not enter into a contract with a vendor, and reserves the right to cancel any existing contract, if the vendor or contractor has not met or complied with the requirements of s.77.66, Wis. Stats., and related statutes regarding certification for collection of sales and use tax.

7.5 CONFIDENTIALITY

7.5.1. The contractor acknowledges that some of the data and documentation may become privy to the performance of this contract is of a confidential nature. Contractor shall make all reasonable efforts to ensure that it is or its employees and subcontractors do not disseminate such confidential information.

7.5.2. Contractor or its employees may not reuse, sell, or make available, or make use in any format the data researched or compiled for this contract for any venture (profitable or not) outside this contract.

7.5.3. Contractor agrees to observe complete confidentiality with respect to all aspects of any confidential information, proprietary data and/or trade secrets and any parts thereof, whether such contents are the State's or the manufacturer's, bidder's, or distributor's whereby contractor or any contractor's personal

7.5.4. restrictions herein shall survive the termination of this contract for any reason and shall continue in full force and effect and shall be biding upon the contractor or its agents, employees, successors, assigns, subcontractors, or any party claiming an interest in this contract on behalf of or under the rights of contractor following any termination. Contractor shall advise all contractor's agents, employees, successors, assigns, and subcontractors which are engaged by the State of the restrictions, present and continuing, set forth herein. Contractor shall defend and incur all costs, if any, for actions that arise as a result of noncompliance by contractor, its agents, employees, successors, assigns, and subcontractors regarding the restrictions herein.

Bid # 510515

Wisconsin Department of Administration
DOA-3054 (R10/2005)
Ch. 16, 19, 51, Wis. Stats

Division of Agency Services
Bureau of Procurement

Standard Terms And Conditions
(Request For Bids / Proposals)

1.0 SPECIFICATIONS: The specifications in this request are the minimum acceptable. When specific manufacturer and model numbers are used, they are to establish a design, type of construction, quality, functional capability and/or performance level desired. When alternates are bid/proposed, they must be identified by manufacturer, stock number, and such other information necessary to establish equivalency. The State of Wisconsin shall be the sole judge of equivalency. Bidders/proposers are cautioned to avoid bidding alternates to the specifications which may result in rejection of their bid/proposal.

2.0 DEVIATIONS AND EXCEPTIONS: Deviations and exceptions from original text, terms, conditions, or specifications shall be described fully, on the bidder's/proposer's letterhead, signed, and attached to the request. In the absence of such statement, the bid/proposal shall be accepted as in strict compliance with all terms, conditions, and specifications and the bidders/proposers shall be held liable.

3.0 QUALITY: Unless otherwise indicated in the request, all material shall be first quality. Items which are used, demonstrators, obsolete, seconds, or which have been discontinued are unacceptable without prior written approval by the State of Wisconsin.

4.0 QUANTITIES: The quantities shown on this request are based on estimated needs. The state reserves the right to increase or decrease quantities to meet actual needs.

5.0 DELIVERY: Deliveries shall be F.O.B. destination freight prepaid and included unless otherwise specified.

6.0 PRICING AND DISCOUNT: The State of Wisconsin qualifies for governmental discounts and its educational institutions also qualify for educational discounts. Unit prices shall reflect these discounts.

6.1 Unit prices shown on the bid/proposal or contract shall be the price per unit of sale (e.g., gal., cs., doz., ea.) as stated on the request or contract. For any given item, the quantity multiplied by the unit price shall establish the extended price, the unit price shall govern in the bid/proposal evaluation and contract administration.

6.2 Prices established in continuing agreements and term contracts may be lowered due to general market conditions, but prices shall not be subject to increase for ninety (90) calendar days from the date of award. Any increase proposed shall be submitted to the contracting agency thirty (30) calendar days before the proposed effective date of the price increase, and shall be limited to fully documented cost increases to the contractor which are demonstrated to be industrywide. The conditions under which price increases may be granted shall be expressed in bid/proposal documents and contracts or agreements.

6.3 In determination of award, discounts for early payment will only be considered when all other conditions are equal and when payment terms allow at least fifteen (15) days, providing the discount terms are deemed favorable. All payment terms must allow the option of net thirty (30).

7.0 UNFAIR SALES ACT: Prices quoted to the State of Wisconsin are not governed by the Unfair Sales Act.

8.0 ACCEPTANCE-REJECTION: The State of Wisconsin reserves the right to accept or reject any or all bids/proposals, to waive any technicality in any bid/proposal submitted, and to accept any part of a bid/proposal as deemed to be in the best interests of the State of Wisconsin.

Bids/proposals MUST be date and time stamped by the soliciting purchasing office on or before the date and time that the bid/proposal is due. Bids/proposals date and time stamped in another office will be rejected. Receipt of a bid/proposal by the mail system does not constitute receipt of a bid/proposal by the purchasing office.

9.0 METHOD OF AWARD: Award shall be made to the lowest responsible, responsive bidder unless otherwise specified.

10.0 ORDERING: Purchase orders or releases via purchasing cards shall be placed directly to the contractor by an authorized agency. No other purchase orders are authorized.

11.0 PAYMENT TERMS AND INVOICING: The State of Wisconsin normally will pay properly submitted vendor invoices within thirty (30) days of receipt providing goods and/or services have been delivered, installed (if required), and accepted as specified.

Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order including reference to purchase order number and submittal to the correct address for processing.

A good faith dispute creates an exception to prompt payment.

12.0 TAXES: The State of Wisconsin and its agencies are exempt from payment of all federal tax and Wisconsin state and local taxes on its purchases except Wisconsin excise taxes as described below.

The State of Wisconsin, including all its agencies, is required to pay the Wisconsin excise or occupation tax on its purchase of beer, liquor, wine, cigarettes, tobacco products, motor vehicle fuel and general aviation fuel. However, it is exempt from payment of Wisconsin sales or use tax on its purchases. The State of Wisconsin may be subject to other states' taxes on its purchases in that state depending on the laws of that state. Contractors performing construction activities are required to pay state use tax on the cost of materials.

13.0 GUARANTEED DELIVERY: Failure of the contractor to adhere to delivery schedules as specified or to promptly replace rejected materials shall render the contractor liable for all costs in excess of the contract price when alternate procurement is necessary. Excess costs shall include the administrative costs

14.0 ENTIRE AGREEMENT: These Standard Terms and Conditions shall apply to any contract or order awarded as a result of this request except where special requirements are stated elsewhere in the request; in such cases, the special requirements shall apply. Further, the written contract and/or order with referenced parts and attachments shall constitute the entire agreement and no other terms and conditions in any document, acceptance, or acknowledgment shall be effective or binding unless expressly agreed to in writing by the contracting authority.

15.0 APPLICABLE LAW: This contract shall be governed under the laws of the State of Wisconsin. The contractor shall at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct. The State of Wisconsin reserves the right to cancel this contract if the contractor fails to follow the requirements of s. 77.66, Wis. Stats., and related statutes regarding certification for collection of sales and use tax. The State of Wisconsin also reserves the right to cancel this contract with any federally debarred contractor or a contractor that is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.

16.0 ANTITRUST ASSIGNMENT: The contractor and the State of Wisconsin recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Wisconsin (purchaser). Therefore, the contractor hereby assigns to the State of Wisconsin any and all

claims for such overcharges as to goods, materials or services purchased in connection with this contract.

17.0 ASSIGNMENT: No right or duty in whole or in part of the contractor under this contract may be assigned or delegated without the prior written consent of the State of Wisconsin.

18.0 WORK CENTER CRITERIA: A work center must be certified under s. 16.752, Wis. Stats., and must ensure that when engaged in the production of materials, supplies or equipment or the performance of contractual services, not less than seventy-five percent (75%) of the total hours of direct labor are performed by severely handicapped individuals.

19.0 NONDISCRIMINATION / AFFIRMATIVE ACTION: In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01(5), Wis. Stats., sexual orientation as defined in s. 111.32(13m), Wis. Stats., or national origin. This provision 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. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities.

19.1 Contracts estimated to be over twenty-five thousand dollars ($25,000) require the submission of a written affirmative action plan by the contractor. An exemption occurs from this requirement if the contractor has a workforce of less than twenty-five (25) employees. Within fifteen (15) working days after the contract is awarded, the contractor must submit the plan to the contracting state agency for approval. Instructions on preparing the plan and technical assistance regarding this clause are available from the contracting state agency.

19.2 The contractor agrees to post in conspicuous places, available for employees and applicants for employment, a notice to be provided by the contracting state agency that sets forth the provisions of the State of Wisconsin's nondiscrimination law.

19.3 Failure to comply with the conditions of this clause may result in the contractor's becoming declared an "ineligible" contractor, termination of the contract, or withholding of payment.

20.0 PATENT INFRINGEMENT: The contractor selling to the State of Wisconsin the articles described herein guarantees the articles were manufactured or produced in accordance with applicable federal labor laws. Further, that the sale or use of the articles described herein will not infringe any United States patent. The contractor covenants that it will at its own expense defend every suit which shall be brought against the State of Wisconsin (provided that such contractor is promptly notified of such suit, and all papers therein are delivered to it) for any alleged infringement of any patent by reason of the sale or use of such articles, and agrees that it will pay all costs, damages, and profits recoverable in any such suit.

21.0 SAFETY REQUIREMENTS: All materials, equipment, and supplies provided to the State of Wisconsin must comply fully with all safety requirements as set forth by the Wisconsin Administrative Code and all applicable OSHA Standards.

22.0 WARRANTY: Unless otherwise specifically stated by the bidder/proposer, equipment purchased as a result of this request shall be warranted against defects by the bidder/proposer for one (1) year from date of receipt. The equipment manufacturer's standard warranty shall apply as a minimum and must be honored by the contractor.

23.0 INSURANCE RESPONSIBILITY: The contractor performing services for the State of Wisconsin shall:

23.1 Maintain worker's compensation insurance as required by Wisconsin Statutes, for all employees engaged in the work.

23.2 Maintain commercial liability, bodily injury and property damage insurance against any claim(s) which might occur in carrying out this agreement/contract. Minimum coverage shall be

one million dollars ($1,000,000) liability for bodily injury and property damage including products liability and completed operations. Provide motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out this contract. Minimum coverage shall be one million dollars ($1,000,000) per occurrence combined single limit for automobile liability and property damage.

23.3 The state reserves the right to require higher or lower limits where warranted.

24.0 CANCELLATION: The State of Wisconsin reserves the right to cancel any contract in whole or in part without penalty due to nonappropriation of funds or for failure of the contractor to comply with terms, conditions, and specifications of this contract.

25.0 VENDOR TAX DELINQUENCY: Vendors who have a delinquent Wisconsin tax liability may have their payments offset by the State of Wisconsin.

26.0 PUBLIC RECORDS ACCESS: It is the intention of the state to maintain an open and public process in the solicitation, submission, review, and approval of procurement activities.

Bid/proposal openings are public unless otherwise specified. Records may not be available for public inspection prior to issuance of the notice of intent to award or the award of the contract.

27.0 PROPRIETARY INFORMATION: Any restrictions on the use of data contained within a request, must be clearly stated in the bid/proposal itself. Proprietary information submitted in response to a request will be handled in accordance with applicable State of Wisconsin procurement regulations and the Wisconsin public records law. Proprietary restrictions normally are not accepted. However, when accepted, it is the vendor's responsibility to defend the determination in the event of an appeal or litigation.

27.1 Data contained in a bid/proposal, all documentation provided therein, and innovations developed as a result of the contracted commodities or services cannot be copyrighted or patented. All data, documentation, and innovations become the property of the State of Wisconsin.

27.2 Any material submitted by the vendor in response to this request that the vendor considers confidential and proprietary information and which qualifies as a trade secret, as provided in s. 19.36(5), Wis. Stats., or material which can be kept confidential under the Wisconsin public records law, must be identified on a Designation of Confidential and Proprietary Information form (DOA-3027). Bidders/proposers may request the form if it is not part of the Request for Bid/Request for Proposal package. Bid/proposal prices cannot be held confidential.

28.0 DISCLOSURE: If a state public official (s. 19.42, Wis. Stats.), a member of a state public official's immediate family, or any organization in which a state public official or a member of the official's immediate family owns or controls a ten percent (10%) interest, is a party to this agreement, and if this agreement involves payment of more than three thousand dollars ($3,000) within a twelve (12) month period, this contract is voidable by the state unless appropriate disclosure is made according to s. 19.45(6), Wis. Stats., before signing the contract. Disclosure must be made to the State of Wisconsin Ethics Board, 44 East Mifflin Street, Suite 601, Madison, Wisconsin 53703 (Telephone 608-266-8123).

State classified and former employees and certain University of Wisconsin faculty/staff are subject to separate disclosure requirements, s. 16.417, Wis. Stats.

29.0 RECYCLED MATERIALS: The State of Wisconsin is required to purchase products incorporating recycled materials whenever technically and economically feasible. Bidders are encouraged to bid products with recycled content which meet specifications.

30.0 MATERIAL SAFETY DATA SHEET: If any item(s) on an order(s) resulting from this award(s) is a hazardous chemical, as defined under 29CFR 1910.1200, provide one (1) copy of a Material Safety Data Sheet for each item with the shipped container(s) and one (1) copy with the invoice(s).

31.0 PROMOTIONAL ADVERTISING / NEWS RELEASES: Reference to or use of the State of

Wisconsin, any of its departments, agencies or other sub-units, or any state official or employee for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of the State of Wisconsin. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of the contracting agency.

32.0 HOLD HARMLESS: The contractor will indemnify and save harmless the State of Wisconsin and all of its officers, agents and employees from all suits, actions, or claims of any character brought for or on account of any injuries or damages received by any persons or property resulting from the operations of the contractor, or of any of its contractors, in prosecuting work under this agreement.

33.0 FOREIGN CORPORATION: A foreign corporation (any corporation other than a Wisconsin corporation) which becomes a party to this Agreement is required to conform to all the requirements of Chapter 180, Wis. Stats., relating to a foreign corporation and must possess a certificate of authority from the Wisconsin Department of Financial Institutions, unless the corporation is transacting business in interstate commerce or is otherwise exempt from the requirement of obtaining a certificate of authority. Any foreign corporation which desires to apply for a certificate of authority should contact the Department of Financial Institutions, Division of Corporation, P. O. Box 7846, Madison, WI 53707-7846; telephone (608) 267-7577.

34.0 WORK CENTER PROGRAM: The successful bidder/proposer shall agree to implement processes that allow the State agencies, including the University of Wisconsin System, to satisfy the State's obligation to purchase goods and services produced by work centers certified under the State Use Law, s.16.752, Wis. Stat. This shall result in requiring the successful bidder/proposer to include products provided by work centers in its catalog for State agencies and campuses or to block the sale of comparable items to State agencies and campuses.

35.0 FORCE MAJEURE: Neither party shall be in default by reason of any failure in performance of this Agreement in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.

State of Wisconsin
Department of Administration
DOA-3681 (01/2001)
ss. 16, 19 and 51, Wis. Stats.

Division of Agency Services
Bureau of Procurement

Supplemental Standard Terms and Conditions
for Procurements for Services

1.0 ACCEPTANCE OF BID/PROPOSAL CONTENT: The contents of the bid/proposal of the successful contractor will become contractual obligations if procurement action ensues.

2.0 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION: By signing this bid/proposal, the bidder/proposer certifies, and in the case of a joint bid/proposal, each party thereto certifies as to its own organization, that in connection with this procurement:

2.1 The prices in this bid/proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder/proposer or with any competitor;

2.2 Unless otherwise required by law, the prices which have been quoted in this bid/proposal have not been knowingly disclosed by the bidder/proposer and will not knowingly be disclosed by the bidder/proposer prior to opening in the case of an advertised procurement or prior to award in the case of a negotiated procurement, directly or indirectly to any other bidder/proposer or to any competitor; and

2.3 No attempt has been made or will be made by the bidder/proposer to induce any other person or firm to submit or not to submit a bid/proposal for the purpose of restricting competition.

2.4 Each person signing this bid/proposal certifies that: He/she is the person in the bidder's/proposer's organization responsible within that organization for the decision as to the prices being offered herein and that he/she has not participated, and will not participate, in any action contrary to 2.1 through 2.3 above; (or)

He/she is not the person in the bidder's/proposer's organization responsible within that organization for the decision as to the prices being offered herein, but that he/she has been authorized in writing to act as agent for the persons responsible for such decisions in certifying that such persons have not participated, and will not participate in any action contrary to 2.1 through 2.3 above, and as their agent does hereby so certify; and he/she has not participated, and will not participate, in any action contrary to 2.1 through 2.3 above.

3.0 DISCLOSURE OF INDEPENDENCE AND RELATIONSHIP:

3.1 Prior to award of any contract, a potential contractor shall certify in writing to the procuring agency that no relationship exists between the potential contractor and the procuring or contracting agency that interferes with fair competition or is a conflict of interest, and no relationship exists between the contractor and another person or organization that constitutes a conflict of interest with respect to a state contract. The Department of Administration may waive this provision, in writing, if those activities of the potential contractor will not be adverse to the interests of the state.

3.2 Contractors shall agree as part of the contract for services that during performance of the contract, the contractor will neither provide contractual services nor enter into any agreement to provide services to a person or organization that is regulated or funded by the contracting agency or has interests that are adverse to the contracting agency. The Department of Administration may waive this provision, in writing, if those activities of the contractor will not be adverse to the interests of the state.

4.0 DUAL EMPLOYMENT: Section 16.417, Wis. Stats., prohibits an individual who is a State of Wisconsin employee or who is retained as a contractor full-time by a State of Wisconsin agency from being retained as a contractor by the same or another State of Wisconsin agency where the individual receives more than $12,000 as compensation for the individual's services during the same year. This prohibition does not apply to individuals who have full-time appointments for less than twelve (12) months during any period of time that is not included in the appointment. It does not include corporations or partnerships.

5.0 EMPLOYMENT: The contractor will not engage the services of any person or persons now employed by the State of Wisconsin, including any department, commission or board thereof, to provide services relating to this agreement without the written consent of the employing agency of such person or persons and of the contracting agency.

6.0 CONFLICT OF INTEREST: Private and non-profit corporations are bound by ss. 180.0831, 180.1911(1), and 181.0831 Wis. Stats., regarding conflicts of interests by directors in the conduct of state contracts.

7.0 RECORDKEEPING AND RECORD RETENTION: The contractor shall establish and maintain adequate records of all expenditures incurred under the contract. All records must be kept in accordance with generally accepted accounting procedures. All procedures must be in accordance with federal, state and local ordinances.

The contracting agency shall have the right to audit, review, examine, copy, and transcribe any pertinent records or documents relating to any contract resulting from this bid/proposal held by the contractor. The contractor will retain all documents applicable to the contract for a period of not less than three (3) years after final payment is made.

8.0 INDEPENDENT CAPACITY OF CONTRACTOR: The parties hereto agree that the contractor, its officers, agents, and employees, in the performance of this agreement shall act in the capacity of an independent contractor and not as an officer, employee, or agent of the state. The contractor agrees to take such steps as may be necessary to ensure that each subcontractor of the contractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the state

APPENDIX C – VENDOR CHECKLIST FOR DELIVERY

The Wisconsin Department of Transportation will approve properly submitted invoices for payment upon receipt of written vehicle acceptance and required delivery documents from sub-recipient. Sub-recipient will

Before Delivery

	Make an appointment with sub-recipient to arrange time and place of delivery
	Send invoice and communicate via email delivery date to Transit Section Program Manager, Procurement Manager, and sub-recipient at least 1 day before delivery

Delivery Day – Vehicle shall be fully equipped and in accordance with specifications and proposal

	Instruct sub-recipient on operation of vehicle and equipment
	Show sub-recipient FMVSS sticker location
	Provide sub-recipient and Transit Staff Post-Delivery FMVSS Documents
	Provide sub-recipient and Transit Staff Post-Delivery Buy America Documentation
	Provide sub-recipient and Transit Staff Certificate of Origin/Manufacturer's Certificate for the chassis
	Provide sub-recipient and Transit Staff Post-Delivery Purchasers Certificate
	Provide sub-recipient and Transit Staff copy of wheel alignment
	Provide sub-recipient all required warranties, user manuals, and training materials
	Complete Application for Title for sub-recipient (MV1 or MV11) and show WisDOT as a lien holder. Secured Party number 039337. Address is 4822 Madison Yards Way, P.O. Box 7913, Madison, WI 53705. Send copy to Transit Staff as well.
	Provide sub-recipient with a temporary license plate
	Remind sub-recipients about the requirement to have State Patrol inspect their HSV before their first plate renewal
	Gas tank should be at least ¼ full
	Arrange for correction of any identified defects or issues

Post Delivery

	Assure any identified defects have been corrected
	Work with sub-recipient and WisDOT staff to receive prompt payment for vehicle

inspect the vehicle upon delivery and contact Vendor directly to correct deficiencies.

APPENDIX D – Pre-Award Federal Certifications

INSTRUCTIONS

Complete all applicable certifications and return with your bid submission. All applicable certifications must be signed. Blank certifications that are required will result in a non-responsive bid.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS FOR TRANSIT VEHICLE MANUFACTURERS (TVM)

The Contractor, subrecipient, 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 CFR Part 26 in the award and administration of this DOT-assisted Contract. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the recipient seems 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 bidding as non-responsible.

Each Subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

Pursuant to Title 49, Code of Federal Regulations, Part 26.49, as a condition of being authorized to respond to this solicitation, the bidder on behalf of the Transit Vehicle Manufacturer, must certify by completing the form DBE Approval Certification, that the TVM has on file with the Federal Transportation Administration (FTA) an approved or not disapproved annual disadvantaged business enterprise (DBE) subcontracting participation goal.

DBE Approval Certification

I hereby certify that the Transit Vehicle Manufacturer included in this bid has complied with the requirements of 49 CFR 26, Participation by Disadvantaged Business Enterprises in DOT Programs, and that its goals have not been disapproved by the Federal Transit Administration.

Manufacturer's Name

Individual's Name | Title

Authorized Signature | Date

BUY AMERICA

This procurement is subject to Federal law which makes the purchase of American made products a requirement. The law is found under 49 U.S.C. 5323(j), and the related regulations are written under Title 49 of the Code of Federal Regulations, Part 661. The law and regulations establish a general requirement as well as certain exceptions.

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, include microcomputer equipment, software, and small purchases (currently less than $100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

Buy American Vendor Requirement

A vendor who wishes to respond to this request for bids must submit with the bid a certificate (or certificates) covering all of the vehicles offered. There are two types of certifications:

If the vehicles and related equipment that are offered are made in the U.S. <u>or</u> if the foreign content and final assembly location fall within the limits of the exception allowed by 49 U.S.C. 5323(j), complete the:

"Certification of Compliance with 49 U.S.C. 5323(j)"

If the vehicles and related equipment are not made in the U.S., but a vendor believes that the vehicles offered may possibly comply with the exceptions from "Buy America" that are set forth under 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D), complete the:

"Certification of Non-Compliance with 49 U.S.C. 5323(j) "Exceptions to "Buy America"

Exceptions can be granted only by the headquarters of the Federal Transit Administration upon request by the Wisconsin Department of Transportation. Vehicles and related equipment that do not comply with "Buy America" can only be purchased under a FTA approved exception. A vendor which anticipates noncompliance and submits a Certification of Non-Compliance will need to later be able to justify a request for an exception

CERTIFICATE OF COMPLIANCE WITH BUY AMERICA ROLLING STOCK REQUIREMENTS

The bidder hereby certifies that it will comply with the requirements of Section 49 U.S.C. Section 5323(j)(2)(C), and the applicable regulations of 49 C.F.R. § 661.11:

Company's Name

Individual's Name | Title

Authorized Signature | Date

For each vehicle supplied for this contract, the vendor attests that (CHECK ONE BOX)	
	The subcomponents, as cost, are of U.S. origin or manufacture, is manufactured within the U.S., and will **exceed** the required Buy America percentages at the time of delivery. (70% FFY 2020+) **Final assembly (city and state)**: _____
	The subcomponents, as cost, are of U.S. origin or manufacture, is manufactured within the U.S., but will be **less than** the Buy America percentages at the time of delivery. (65% FFY 2018 and 2019, 70% FFY 2020+) **Final assembly (city and state):** _____
	The vehicle contains subcomponents of domestic origin, however, the vehicle is NOT manufactured in the U.S. and attests that the U.S. content of subcomponents, by cost, is ____ %

CERTIFICATE OF NON-COMPLIANCE WITH BUY AMERICA ROLLING STOCK REQUIREMENTS

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but may qualify for an exemption to the requirement pursuant to 49 U.S.C. Section 5323(j)(2)(A), 5323(j)(2)(B), or and Section 5323(j)(2)(D), and the applicable regulations in 49 C.F.R. § 661.7.

Company's Name

Individual's Name | Title

Authorized Signature | Date

The proposer will also provide a detailed list of all the major components and subassemblies (see list below) of the vehicle and the calculated percentage for each item of total manufacturer's cost that was made in the United States. The proposer will make available to the Contracting Officer, upon request, any and all costs and other documentation to support this listing in order to comply with 49 C.F.R. Part 661. The list of items is as follows:

Engines, transmissions, front axle assemblies, rear suspension assemblies, air compressor and pneumatic systems, generator/alternator and electrical systems, steering system assemblies, front and rear air bake assemblies, heating systems, passenger seats, driver's seat assemblies, window assemblies, entrance and exit door assemblies, door control systems, destination sign assemblies, interior lighting assemblies, front and rear end cap assemblies, front and rear bumper assemblies, specialty steel (structural steel tubing, etc.), aluminum extrusions, aluminum, steel or fiberglass exterior panels, interior trim, flooring, floor coverings, fire hoses, and wheelchair assemblies.

The manufacturer's information must also include the proposed final assembly location, a list of activities that will take place during final assembly, the proposed total cost of final assembly.

Manufactures must submit documentation of the domestic content for each vehicle type. These documents should contain the required list of items under 49 C.F.R. part 661 and the additional information that is needed to satisfy all federal pre and post-delivery audit requirements. See Buy America Handbook as a reference. https://www.transit.dot.gov/regulations-and-guidance/buy-america/buy-america-handbook

This list will be requested at least two times during the procurement process: (1) Prior to award of the contract; and, (2) within thirty (30) days following the manufacturer's assembly of the first vehicle awarded in the base contract. Subsequent post-delivery "Buy America" audit listings for the contract options will be provided by the proposer awarded the contract, if requested

PURCHASER'S REQUIREMENTS

49 C.F.R 663 - Subpart B requires that the products bid are the same as described in the bid solicitation specifications and that the proposed manufacturer is a responsible manufacturer with the capability to produce a bus that meets the specifications.

Company's Name

Individual's Name | Title

Authorized Signature | Date

FMVSS

49 C.F.R. 663 - Subpart D requires that the vehicles to be provided will comply with the relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety administration in Title 49 of the Code of Federal Regulations, Part 571 or that the vehicles will not be subject to FMVSS regulations.

The manufacturer's self-certification information of compliance or a statement from the manufacturer of exemption from compliance must be submitted with the bid

PRE-AWARD FMVSS COMPLIANCE CERTIFICATION

The bidder hereby certifies that the vehicles to be provided: _____ **(the general description of vehicles**) will comply with the relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in Title 49 of the Code of Federal Regulations, part 571 and that it has submitted the manufacturer's self-certification information with the bid as required by Title 49 C.F.R, Part 663 – Subpart D.

_____

Company's Name

_____ _____

Individual's Name Title

_____ _____

Authorized Signature Date

PRE-AWARD CERTIFICATION OF FMVSS INAPPLICABILITY

The bidder hereby certifies that the vehicles to be provided: _____ (general description of vehicles) will not be subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in Title 49 Code of Federal Regulations, Part 571 and that it has submitted the manufacturer's statement of exemption with the bid.

_____

Company's Name

_____ _____

Individual's Name Title

_____ _____

Authorized Signature Date

BUS TESTING

For Low-Floor Vans, Minibuses, Medium Buses, Low-Floor Medium Buses and Large Buses Not Originally Built as School Buses

This procurement will use federal funds provided by the Federal Transit Administration (FTA), which makes the purchase of these vehicles subject to the bus testing requirements under 49 C.F.R., Part 665. Copies relevant federal regulations are attached to provide background information on this and other FTA requirements.

A vendor, whose response to this request for bids includes the above-mentioned types of vans and buses, must submit with the bid a completed Certificate of Compliance with the bus testing requirements and a copy of the test report.

CERTIFICATE OF COMPLIANCE WITH 49 C.F.R. PART 665 – BUS TESTING

The bidder hereby certifies that these low-floor vans and buses being offered in response to this request for bids are in compliance with the regulations in 49 C.F.R., Part 665 and that a copy of the test report or documentation that vehicles qualify for consideration under grandfathering has been provided with the bid.

Company's Name

Individual's Name | Title

Authorized Signature | Date

LOBBYING - 31 U.S.C. 1352, 49 C.F.R. Part 19 & 49 C.F.R. Part 20

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 C.F.R. part 20, New Restrictions on Lobbying. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Certification for Contracts, Grants, Loans, and Cooperative Agreements (To be submitted with each bid or offer exceeding $100,000).

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to 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 this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL Disclosure Form to Report Lobbying, in accordance with its instructions (as amended by Government-wide Guidance for New Restrictions on Lobbying 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)

3. The undersigned shall require that the language of this certification be included in the award documents for all subaward at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure. [Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure or failure.]

CERTIFICATE OF COMPLIANCE WITH LOBBYING

The contractor hereby certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

Company's Name

Individual's Name | Title

Authorized Signature | Date

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (Non-Procurement) 49 C.F.R. PART 29 and EXECUTIVE ORDER 12549

Instructions for Certification

1. By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the state of Wisconsin may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the state of Wisconsin if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier, covered transaction, participant, persons, lower tier covered transaction, principal, proposal and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 C.F.R. Part 29]. You may contact the State of Wisconsin for assistance in obtaining a copy of those regulations

5. The prospective lower tier participant agrees by submitting this bid that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the state of Wisconsin.

6. The prospective lower tier participant further agrees by submitting this bid that it will include the clause title –Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-Procurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the state of Wisconsin may pursue available remedies including suspension and/or debarment

"Certification Regarding Debarment, Suspension , Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction "

(1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its principals [as defined at 49. C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this bid.

Company's Name	
Individual's Name	Title
Authorized Signature	Date

APPENDIX E - Federal Clauses

for

Federal Contracts

Prepared by the Wisconsin Department of Transportation Bureau of Transit, Local Roads, Railroads and Harbors

October 3, 2022

SPECIAL NOTIFICATION REQUIREMENTS FOR STATES

FTA Master Agreement

Federal grant monies (insert federal grant agreement amount) fund this contract, in whole or in part (Section 53XX – CFDA 20.5XX). As such, agencies receiving such funds and contractors awarded contracts that use such funds must comply with certain Federal certifications and clause requirements. This includes, for purchases of rolling stock over $150,000, compliance with Buy America Act requirements, including pre-award and post-delivery audit requirements and certifications, as well as requirements and certifications applicable under the Federal Motor Vehicle Safety Standard (FMVSS). It is the contractor's responsibility to be aware of the pertinent certifications and contract clauses, as identified by the Issuing Agency for the instant procurement and ensure compliance with such requirements prior to award and throughout the term of any resultant contract. The full text of these clauses is available at the National Rural Transit Assistance Program (RTAP) website under "ProcurementPro." The website address is: http://www.nationalrtap.org/ .

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 18

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.

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35	PROHIBITION ON PROVIDING OR USING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT	No

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1. BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j)
49 CFR Part 661

Applicability to Contracts
The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than $150,000).

Flow Down Requirements: The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The $150,000 threshold applies only to the grantee contract, subcontracts under that amount are subject to Buy America.

Mandatory Clause/Language: The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA-funded contracts, but does not specify the language to be used. The following language has been developed by FTA.

Buy America - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than $150,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 60% domestic content for FY2016 and FY2017, a minimum 65% domestic content for FY2018 and FY2019 and a minimum 70% domestic content for FY2020 and beyond.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date	
Name	
Signature	
Company Name	
Title	

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date	
Name	
Signature	
Company Name	
Title	

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date	
Name	
Signature	
Company Name	
Title	

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date	
Name	
Signature	
Company Name	
Title	

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2. BUS TESTING

49 U.S.C. 5318(e)
49 CFR Part 665

Applicability to Contracts: The Bus Testing requirements pertain only to the acquisition of Rolling Stock/Turnkey.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases.

Flow Down Requirement: The Bus Testing requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

Model Clause/Language: Clause and language therein are merely suggested. 49 CFR Part 665 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors. Bus Testing Certification and language therein are merely suggested.

Bus Testing - The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.

2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS
The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date	
Name	
Signature	
Company Name	
Title	

3. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS

49 U.S.C. 5323
49 CFR Part 663

Applicability to Contracts: These requirements apply only to the acquisition of Rolling Stock/Turnkey.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases.

Flow Down Requirement: These requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

Model Clause/Language: Clause and language therein are merely suggested. 49 C.F.R. Part 663 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors.

Buy America certification is mandated under FTA regulation, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. 663.13.

Specific language for the Buy America certification is mandated by FTA regulation,

"Buy America Requirements--Surface Transportation Assistance Act of 1982, as amended,"

49 C.F.R. 661.12, but has been modified to include FTA's Buy America requirements codified at 49 U.S.C. A 5323(j).

Pre-Award and Post-Delivery Audit Requirements - The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

(1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

(3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS
FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT

(To be submitted with a bid or offer exceeding the small purchase threshold for Federal assistance programs, currently set at $150,000.)

Certificate of Compliance

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 C.F.R. 661.11:

Date	
Name	
Signature	
Company Name	
Title	

Certificate of Non-Compliance

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.

Date	
Name	
Signature	
Company Name	
Title	

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4. LOBBYING

31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20

Applicability to Contracts: The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over $100,000.

Flow Down Requirement: The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

Mandatory Clause/Language: Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A. Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of $50,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding $100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to 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 this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq* .)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq., apply* to this certification and disclosure, if any.

Date	
Name of Contractor's Authorized Official	
Signature of Contractor's Authorized Official	
Company Name	
Title of Contractor's Authorized Official	

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5. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

CFR part 180
CFR part 1200
CFR § 200.213
CFR part 200 Appendix II (I)
Executive Order 12549
Executive Order 12689

Background and Applicability

A contract award (of any tier) in an amount expected to equal or exceed $25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.

Flow Down

Recipients, contractors, and subcontractors who enter into covered transactions with a participant at the next lower level, must require that participant to: (a) comply with subpart C of 2 C.F.R. part 180, as supplemented by 2 C.F.R. part 1200; and (b) pass the requirement to comply with subpart C of 2 C.F.R. part 180 to each person with whom the participant enters into a covered transaction at the next lower tier.

Debarment, Suspension, Ineligibility and Voluntary Exclusion

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 ay 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 Recipeint. If it is later determined by the Recipient that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Recipient, 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.

Date	
Name	
Signature	
Company Name	
Title	

6. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

Applicability to Contracts: The Disadvantaged Business Enterprise (DBE) program provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all U.S. DOT- assisted contracting activities. A formal clause such as that below **must** be included in all contracts and subcontracts above the micro-purchase level ($10,000 except for construction contracts over $2,000).

Clause Language

Each contract the **Recipient** signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following Federal Clause language:

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. WisDOT's DBE transit goal for **FFY 2023-2025 is 1.61%**. A separate contract specific goal ☐ **has or** ☐ **has not** been established for this procurement.

b. The **RECIPIENT**, 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 CFR Part 26 in the award and administration of this U.S. DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the **RECIPIENT** deems appropriate, which may include, but is not limited to:

   i. Withholding monthly progress payments
   ii. Assessing sanctions
   iii. Liquidated damages, and/or
   iv. Disqualifying the contractor from future bidding as non-responsible.

c. The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains written consent from the **RECIPIENT**.

d. The contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the DBEs as listed in its written documentation of its commitment to the **RECIPIENT**.

e. The contractor is required to pay subcontractors for satisfactory performance of their contracts no later than 10 calendar days from receipt of each payment the **RECIPIENT** makes to the contractor. The contractor may withhold payment to a subcontractor if, within 10 calendar days of receipt of that progress payment, the contractor provides written notification to the subcontractor and the **RECIPIENT** documenting "just cause" for withholding payment. The contractor is not allowed to withhold retainage from payments due subcontractors.

f. The contractor will be required to report its DBE participation obtained throughout the period of performance.

g. The contractor shall not terminate a DBE subcontractor listed in its written documentation of its commitment to the **RECIPIENT** to use a DBE subcontractor (or an approved substitute DBE firm) without the **RECIPIENT's** prior written consent per 49 CFR Part 26.53(f). This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

h. The contractor must promptly notify the **RECIPIENT** whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work. The contractor must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work under contract as the DBE that was terminated, to the extent needed to meet the contract goal established for the procurement. The good faith efforts shall be documented by the contractor.

i. The contractor may provide written consent only if the **RECIPIENT** agrees, for reasons stated in the concurrence document, that it has good cause to terminate the DBE Firm. For purposes of this paragraph, good cause includes the following circumstances:

   i. The listed DBE subcontractor fails or refuses to execute a written contract.
   ii. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor.
   iii. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.
   iv. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
   v. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
   vi. **RECIPIENT** determined that the listed DBE subcontractor is not a responsible contractor;
   vii. The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
   viii. The listed DBE is ineligible to receive DBE credit for the type of work required;
   ix. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
   x. Other documented good cause that compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

j. Before transmitting to the **RECIPIENT** its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the **RECIPIENT**, of its intent to request to terminate and/or substitute, and the reason for the request.

Commercially Useful Function Monitoring

Per 49 CFR 26.55 A DBE performs a commercially useful function (CUF) when the DBE is responsible for execution of their work under the contract and the DBE is carrying out its responsibilities by actually performing, managing, and supervising their work. A DBE firm does not perform a CUF if the DBE role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

On federal aid contracts, the signature of the Project Manager on the DT1582 Completion Certificate serves as certification that the Project Engineer and/or project staff effectually monitored the DBE work performance and contract records to verify that the DBE firms were responsible for the execution of their work under the contract having performed a CUF.

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7. FLY AMERICA REQUIREMENTS

49 U.S.C. §40118
41 CFR Part 301-10

Applicability to Contracts

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under 10,000. These requirements do not apply to micro-purchases; except for construction contracts over $2,000.

Flow Down Requirements: The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Model Clause/Language: The relevant statutes and regulations do not mandate any specified clause or language. FTA proposes the following language.

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

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8. CHARTER BUS REQUIREMENTS

49 U.S.C. 5323(d)
49 CFR Part 604

Applicability to Contracts

The Charter Bus requirements apply to the following type of contract: Operational Service Contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases.

Flow Down Requirements: The Charter Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

Model Clause/Language: The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

Charter Service Operations - The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

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9. SCHOOL BUS REQUIREMENTS

49 U.S.C. 5323(F)
49 CFR Part 605

Applicability to Contracts: The School Bus requirements apply to the following type of contract: Operational Service Contracts.

Flow Down Requirements: The School Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

Model Clause/Language: The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

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

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10. CARGO PREFERENCE REQUIREMENTS

46 U.S.C. 1241
46 CFR Part 381

Applicability to Contracts: The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases; except for construction contracts over $2,000.

Flow Down Requirements: The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

Model Clause/Language: The MARAD regulations at 46 CFR 381.7 contain suggested contract clauses. The following language is proffered by FTA.

Cargo Preference - Use of United States-Flag Vessels - 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 leading 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.) 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.

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11. SEISMIC SAFETY REQUIREMENTS

42 U.S.C. 7701 et seq. 49
CFR Part 41

Applicability to Contracts: The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases; except for construction contracts over $2,000.

Flow Down Requirements: The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

Model Clauses/Language: The regulations do not provide suggested language for third-party contract clauses. The following language has been developed by FTA.

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 Seismic Safety Regulations 49 CFR 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.

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12. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.
2 CFR Part 1201

Applicability to Contracts: The Energy Conservation requirements are applicable to all contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases; except for construction contracts over $2,000.

Flow Down Requirements: The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

Model Clause/Language: No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA.

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.

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13. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

Applicability to Contracts: The Clean Water requirements apply to each contract and subcontract which exceeds $150,000.

Flow Down Requirements: The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

Model Clause/Language: While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended, the following language developed by FTA contains all the mandatory requirements.

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding $50,000 financed in whole or in part with Federal assistance provided by FTA.

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14. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325
18 CFR 18.36 (i)
49 CFR 633.17

Applicability to Contracts: Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases; except for construction contracts over $2,000.

Flow Down Requirement: FTA does not require the inclusion of these requirements in subcontracts.

Model Clause/Language: The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 18 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's

records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at $250,000.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

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

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 18 CFR 18.39(i)(11).

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

REQUIREMENTS FOR ACCESS TO RECORDS AND REPORTS BY TYPES OF CONTRACT

	Operational Service Contract	**Turnkey Contract**	**Construction Contract**	**Arch. or Engineering Contract**	**Rolling Stock Contract**	**Professional Service Contract**
State Grantees						
Contracts below Simplified Acquisition Threshold (Small Purchase) ($250,000)	None	Those imposed on state pass thru to Contractor	None	None	None	None
Contracts above $100,000/Capital Projects	None unless[1] non-competitive award	Those imposed on state pass thru to contractor	Yes, if non-competitive award or if funded thru[2] 5307, 5309, 5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
Non-State Grantees						
Contracts below Simplified Acquisition Threshold (Small Purchase) ($250,000)	Yes	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
Contracts above $100,000/Capital Projects	Yes	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes

Sources of Authority:49 USC 5325 (a), 49 CFR 633.17, 18 CFR 18.36 (i)

15. FEDERAL CHANGES

2 CFR Part 1201

Applicability to Contracts: The Federal Changes requirement applies to all contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases; except for construction contracts over $2,000.

Flow Down Requirement: The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Model Clause/Language: No specific language is mandated. The following language has been developed by FTA.

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

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16. BONDING REQUIREMENTS

Applicability to Contracts: For those construction or facility improvement contracts or subcontracts exceeding $250,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certifies check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

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. Payment bond amounts required from Contractors are as follows:

(1) 50% of the contract price if the contract price is not more than $1 million;

(2) 40% of the contract price if the contract price is more than $1 million but not more than $5 million; or

(3) $2.5 million if the contract price is more than $5 million.

d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

Flow Down Requirement: Bonding requirements flow down to the first tier contractors.

Model Clauses/Language: FTA does not prescribe specific wording to be included in third party contracts. FTA has prepared sample clauses as follows:

Bid Bond Requirements (Construction)

(a) Bid Security

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

(b) Rights Reserved

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

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of (Recipient), shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense (Recipient) for the damages occasioned by default, then the undersigned bidder agrees to

indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) whole.

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

Performance and Payment Bonding Requirements (Construction)

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

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).

2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than $1 million.

(ii) Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or

(iii) Two and one half million if the contract price is more than $5 million.

2. If the original contract price is $5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

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

(a) The following situations may warrant a performance bond:

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).

2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

3. Substantial progress payments are made before delivery of end items starts.

4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).

2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than $1 million;

(ii) Forty percent of the contract price if the contract price is more than $1 million

but not more than $5 million; or

(iii) Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

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

Patent Infringement Bonding Requirements (Patent Indemnity)

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

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

17. CLEAN AIR

42 U.S.C. 7401 et seq
40 CFR 15.61
2 CFR Part 1201

Applicability to Contracts: The Clean Air requirements apply to all contracts exceeding $150,000, including indefinite quantities where the amount is expected to exceed $150,000 in any year.

Flow Down Requirement: The Clean Air requirements flow down to all subcontracts which exceed $150,000.

Model Clauses/Language: No specific language is required. FTA has proposed the following language.

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FTA.

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18. RECYCLED PRODUCTS

42 U.S.C. 6962
40 CFR Part 247
Executive Order 12873

Applicability to Contracts: The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures $10,000 or more of one of these items during the fiscal year, or has procured $10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases $10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was $10,000.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases.

Flow Down Requirement: These requirements flow down to all to all contractor and subcontractor tiers.

Model Clause/Language: No specific clause is mandated, but FTA has developed the following language.

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

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19. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

Background and Application

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, et seq. and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 18 CFR 18.36(i)(5). The Acts apply to any construction contract over $2,000. 40 USC 3142(a), 29 CFR 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or

repair, including painting and decorating." 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (see 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

The clause language is drawn directly from 29 CFR 5.5(a) and any deviation from the model clause below should be coordinated with counsel to ensure the Acts' requirements are satisfied.

Clause Language

Davis-Bacon and Copeland Anti-Kickback Acts

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

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

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officershall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the

Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all

interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The Recipeint shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Recipient may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Recipient for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is

approved.

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

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract

by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

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20. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Background and Application

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, et seq. The Act applies to grantee contracts and subcontracts "financed at least in part by loans or grants from … the [Federal] Government." 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 18 CFR 18.36(i)(6). Although the original Act required its application in any construction contract over $2,000 or non-construction contract to which the Act applied over $2,500 (and language to that effect is still found in 18 CFR 18.36(i)(6)), the Act no longer applies to any "contract in an amount that is not greater than $100,000." 40 USC 3701(b)(3)(A)(iii).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ "laborers or mechanics on a public work." These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed "commercial items." 40 USC 3707, 41 USC 403 (12). A grantee that contemplates entering into a contract to procure a developmental or unique item should consult counsel to determine if the Act applies to that procurement and that additional language required by 29 CFR 5.5(c) must be added to the basic clause below.

The clause language is drawn directly from 29 CFR 5.5(b) and any deviation from the model clause below should be coordinated with counsel to ensure the Act's requirements are satisfied.

Clause Language

Contract Work Hours and Safety Standards

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** - The (write in the name of the grantee) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

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21. EQUAL EMPLOYMENT OPPORTUNITY

41 CFR §60-1.4

Applicability to Contracts: Applicable to all contracts except micro-purchases (except for construction contracts over $2,000.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases.

Flow Down Requirement: Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

Model Clause/Language: Federal Requirements and Guidance. The Recipient agrees to prohibit, and assures that each Third Party Participant will prohibit, discrimination on the basis of race, color, religion, sex, or national origin, and:

(a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq*.,

(b) Facilitate compliance with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and as further amended by Executive Order 13672, "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity," July 21, 2014,

(c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 13.a of this Master Agreement, and

(d) Follow Federal guidance pertaining to Equal Employment Opportunity laws and regulations, and prohibitions against discrimination on the basis of disability,

Specifics. The Recipient agrees:

(a) Prohibited Discrimination. As provided by Executive Order 11246, as amended, and as specified by U.S. Department of Labor regulations, to ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their:

1. Race,
2. Color,
3. Religion,
4. National origin,
5. Disability,
6 . Age,
7 . Sexual origin,
8. Gender identity, or
9. Status as a parent, and

(b) Affirmative Action. Take affirmative action that includes, but is not limited to:

1. Recruitment advertising, recruitment, and employment,
2. Rates of pay and other forms of compensation,
3. Selection for training, including apprenticeship, and upgrading, and
4. Transfers, demotions, layoffs, and terminations, but

(c) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer," and

Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures that each Third Party Participant will comply, with:

(a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and

(b) Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note.

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22. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts: Applicable to all contracts

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases; except for construction contracts over $2,000.

Flow Down Requirement: Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

Model Clause/Language: While no specific language is required, FTA has developed the following language.

No Obligation by the Federal Government.

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

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23. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C. 3801 et seq.
49 CFR Part 31 18 U.S.C. 1001
49 U.S.C. 5307

Applicability to Contracts: These requirements are applicable to all contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases; except for construction contracts over $2,000.

Flow Down Requirement: These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Model Clause/Language: These requirements have no specified language, so FTA proffers the following language.

Program Fraud and False or Fraudulent Statements or Related Acts.

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

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

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

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24. TERMINATION

2 CFR Part 1201
2 CFR 200
FTA Circular 4220.1F

Applicability to Contracts: All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of $10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be affected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is $250,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

Flow Down Requirement: The termination requirements flow down to all contracts in excess of $10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

Model Clause/Language: FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

a. Termination for Convenience (General Provision) The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government'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 (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.

b. 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 (Recipient) may terminate this contract for default. Termination shall be affected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for 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 (Recipient) 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 (Recipient), 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.

c. Opportunity to Cure (General Provision) The (Recipient) 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 (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. 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 (Recipient) may terminate this contract for default. The (Recipient) 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 Recipient.

g. 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 (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) 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 (Recipient).

h. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure 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 provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient 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 Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor 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 the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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 the Recipient.

i. Termination for Convenience or Default (Architect and Engineering) The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) 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 Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the 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 Recipient may complete the work by contact or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that 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 Recipient.

j. Termination for Convenience of Default (Cost-Type Contracts) The (Recipient) may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the (Recipient) 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 (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) 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 (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the (Recipient), 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 (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

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25. PRIVACY ACT

5 U.S.C. 552

Applicability to Contracts: When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases; except for construction contracts over $2,000.

Flow Down Requirement: The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

Model Clause/Language: The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA.

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

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26. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.

Applicability to Contracts: The Civil Rights Requirements apply to all contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases; except for construction contracts over $2,000.

Flow Down Requirement: The Civil Rights requirements flow down to all third-party contractors and their contracts at every tier.

Model Clause/Language: The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shortened the lengthy text.

Civil Rights - The following requirements apply to the underlying contract:

The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq ., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following:

employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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27. BREACHES AND DISPUTE RESOLUTION

2 CFR Part 1201
FTA Circular 4220.1F

Applicability to Contracts: All contracts in excess of $250,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down: The Breaches and Dispute Resolutions requirements flow down to all tiers.

Model Clauses/Language: FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the Recipient. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Recipient.

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 Recipient shall be binding upon the Contractor and the Contractor shall abide be the decision.

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

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

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided

by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) 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.

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28. PATENT AND RIGHTS IN DATA

2 CFR Part 1201

37 CFR Part 401
49 CFR Part 19

Applicability to Contracts: Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases; except for construction contracts over $2,000.

Flow Down Requirement: The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

Model Clause/Language: The FTA patent clause is substantially similar to the text of 49 C.F.R. Part 19, Appendix A, Section 5, but the rights in data clause reflects FTA objectives. For patent rights, FTA is governed by Federal law and regulation. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding research grants. This model clause, with larger rights as a standard, is proposed with the understanding that this standard could be modified to FTA's needs.

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. **Rights in Data** - This following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government 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.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, 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 in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "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.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

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

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added 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 that 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 the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree 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 Purchaser or 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. Neither the Purchaser nor 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.

(e) 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.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause , provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, 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 provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e. , a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. **Patent Rights** - This following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

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29. TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS

49 U.S.C. § 5310, § 5311, and § 5333
29 CFR Part 215

Applicability to Contracts: The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases, except for construction contracts over $2,000.

Flow Down Requirement: These provisions are applicable to all contracts and subcontracts at every tier.

Model Clause/Language: Since no mandatory language is specified, FTA had developed the following language. Transit Employee Protective Provisions. (1) The Contractor agrees to comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.

§ 5310(a)(2) for Elderly Individuals and Individuals with Disabilities

- If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.

§ 5311 in Nonurbanized Areas

- If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

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30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1F

Applicability to Contracts: The incorporation of FTA terms applies to all contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases; except for construction contracts over $2,000.

Flow Down Requirement: The incorporation of FTA terms has unlimited flow down.

Model Clause/Language: FTA has developed the following incorporation of terms language:

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

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31. DRUG AND ALCOHOL TESTING

49 U.S.C. §5331
49 CFR Part 655

Applicability to Contracts: The Drug and Alcohol testing provisions apply to Operational Service Contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases, except for construction contracts over $2,000.

Flow Down Requirements: Anyone who performs a safety-sensitive function for the recipient or subrecipient is required to comply with FTA regulation 49 CFR 655 "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations" and DOT regulation, 49 CFR Part 40 "Procedures for Transportation Workplace Drug and Alcohol testing Programs".

Explanation of Model Clause/Language

Federal regulations 49 CFR 655 includes the following elements. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with 49 CFR Part 655. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

Explanation of Model Contract Clauses

Drug and Alcohol Testing

The contractor agrees to:

(a) Establish and implement a drug and alcohol testing program that complies with Federal Transit Administration (FTA) regulation, 49 CFR Part 655 "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations" and US DOT regulation, 49 CFR Part 40 "Procedures for Transportation Workplace Drug and Alcohol Testing Program".

(b) Participate in the Drug and Alcohol Testing Consortium administered by WisDOT's approved Third Party Administrator that complies with 49 CFR Part 655.

(c) Provide documentation and reports necessary to establish its compliance with Part 655, as amended, and permit any authorized representative of the United States Department of Transportation or its operating administrations and/or the State of Wisconsin, Department of Transportation or its authorized agents, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 as amended and review the testing process.

32. SAFE OPERATION OF MOTOR VEHICLES
23 U.S.C. part 402
Executive Order No. 13043
Executive Order No. 13513
U.S. DOT Order No. 3902.10

Applicability to Contracts

The Safe Operation of Motor Vehicles requirements apply to all federally funded third party contracts. In compliance with Federal Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project. Additionally, recipients are required by FTA to include a Distracted Driving clause that addresses distracted driving, including text messaging in each of its third party agreements supported with Federal assistance.

Flow Down Requirements: The Safe Operation of Motor Vehicles requirements flow down to all third party contractors at every tier.

Model Clause/Language: There is no required language for the Safe Operation of Motor Vehicles clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

Safe Operation of Motor Vehicles Requirements -

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 A-60 rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or AGENCY.

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

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33. ADA ACCESS
49 USC 531 (d)

Applicability to Contracts: The ADA Access Requirements apply to all contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under $10,000. These requirements do not apply to micro-purchases; except for construction contracts over $2,000.

Flow Down Requirement: The ADA Access Requirements flow down to all third party contractors and their contracts at every tier.

Model Clause/Language: ADA Access. The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination and ensures equal opportunity and access for persons with disabilities.

Access Requirements for Persons with Disabilities

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

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34. VETERANS EMPLOYMENT

FTA Circular 4220.1F (Chapter IV)
49 USC §5325(K)

Applicability to Contracts: The Veterans Employment provisions apply to all construction contracts.

Veterans Employment. Recipients and subrecipients of Federal financial assistance under this chapter 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 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 former employee.

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35. PROHIBITION ON PROVIDING OR USING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Section 889

Consistent with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 (Aug. 13, 2018), CONTRACTOR must not: (a) provide "covered telecommunications equipment or services" (as that term is defined in Section 889 of the Act) as part of its performance under this Contract, if such equipment or services will be used as a substantial or essential component of any system or as critical technology as part of any system; or (b) use such covered telecommunication equipment or services as a substantial or essential component of any system or as critical technology as part of any system, regardless of whether that use is in connection with performance of work under this Contract, subject only to the exception that covered telecommunications equipment or services may be provided or used if the equipment or services cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.