

**REQUEST FOR PROPOSAL  
COUNTY OF LEWIS**

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**RFP  
for  
Bus Stop Shelters**

Date: September 24, 2021

To Whom It May Concern:

Lewis County is currently seeking proposals for interested and qualified vendors for the engineering, fabrication, and delivery of six (6) bus stop shelters.

All proposals to be mailed to: Cassandra Moser, Clerk of the Board  
County Courthouse, 2nd Floor, Room 225  
7660 North State Street  
Lowville, New York 13367

or delivered in person between the hours of 8:30 A.M. and 4:30 P.M., Monday through Friday.  
**All proposals must be received on or before 2:00 p.m. on Friday, October 29th, 2021.  
Late proposals will not be considered.**

The successful Supplier will be required to comply with all federal, state and local laws and regulations. This includes, but is not limited to, all applicable Equal Employment Opportunities laws and U.S. Department of Transportation Disadvantaged Business Enterprise regulations as outlined in the RFP.

Lewis County reserves the right to forego any formalities and reject any or all proposals, at its discretion, subject to the rules and regulations set forth by Lewis County, NY; the Federal Transit Administration; and the New York State Department of Transportation. Firms or individuals whose names appear on the U.S. General Services Administration's list of ineligible contractors will not be considered.

Lewis County, New York, affirmatively assures that no Supplier will be discriminated against on the basis of race, color, sex, age, disability, religion, ancestry, marital status, national origin, birth or sexual orientation. Lewis County is an Equal Opportunity Employer.

The Request for Proposal, the proposal and any addenda, will become a permanent part of the contract. **This RFP can be found on and downloaded from the Lewis County Website: [www.lewiscounty.org](http://www.lewiscounty.org)**

Sincerely,  
Casandra Buell  
Lewis County Department of Planning & Community Development  
7660 North State Street  
Lowville, NY 13367  
(315) 376-5919

## **INTRODUCTION:**

Lewis County has determined that it is desirable to solicit proposals from qualified suppliers (Hereafter “the Supplier”) to furnish prefabricated bus stop shelters (Hereafter “shelters”) as outlined in the Scope of Services for the above project. This RFP seeks to identify qualified suppliers to provide the shelters outlined in this document.

### **Goals and Objectives:**

Lewis County encourages all qualified suppliers, including Disadvantaged Business Enterprises (DBEs) and non-DBE women and minority owned firms, to submit a proposal. This project is funded by the New York State Modernization and Enhancement Program.

Lewis County is interested in seeking proposals from a single entity which is capable of providing quality shelters that will be installed by local municipalities.

**Bids are due by 2:00 PM EST on October 29<sup>th</sup>, 2021**

Successful bidder will agree to complete the project within the required guidelines as well as all other applicable state and federal regulations.

## **SPECIFICATIONS:**

### **SPECIFIC REQUIREMENTS:**

1. The Supplier agrees to provide shelters to the County as an independent supplier and not as an employee, as those terms are understood for New York and Federal law purposes.
2. The Supplier agrees to provide for, secure, and/or be solely responsible for any and all required fees, permits, Workers Compensation coverage, Unemployment Insurance, Disability Insurance, Social Security contributions, income tax withholding and any other insurance or taxes, including but not limited to Federal and New York taxes, for any persons performing services pursuant to a subsequent agreement, including the Supplier, and any employees of the Supplier. The Supplier agrees to indemnify the County and hold the County harmless from any claims, suits, losses, or damages, including reasonable attorney’s fees, resulting from any failure on the part of the Supplier to satisfy its obligations as stated herein.
3. The Supplier acknowledges and agrees to purchase any and all necessary liability insurance to protect against claims brought against the County, which may arise from the provision of services under a subsequent agreement. The Supplier agrees to indemnify the County and hold the County harmless from any claims (including but not limited to claims under Labor Law Section 240, if applicable), suits, losses, or damages resulting from or relating to any services provided by the Supplier and/or equipment or materials used by the Supplier, or any other person performing services pursuant to a subsequent agreement. The Supplier shall be liable to the County for any loss, damage or destruction of any property, materials, goods, documents, or other items, including reasonable attorney’s fees, resulting from or related to the negligence, or other wrongful acts of the Supplier, the Supplier’s employees, or any other person

performing services pursuant to a subsequent agreement.

4. The Supplier agrees to provide all equipment, materials and personnel necessary to the performance of a subsequent agreement unless otherwise specified in the agreement. Any failure of equipment or any inability of any person, due to illness or otherwise, to perform the services agreed to shall be the responsibility of the Supplier, and the Supplier shall, at its own expense, take such measures as are necessary to ensure that the agreed services are provided.

5. The Supplier agrees to document and maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of a subsequent agreement. Expenditures shall be documented and maintained in separate and complete fiscal accounts (in accordance with generally accepted accounting principles) and the Supplier shall turn over, upon demand by the County, all such documentation to the County.

6. The Supplier shall maintain statistical records as may be required by the County and relevant State or Federal agencies. All summaries, statistics and other records and reports shall be maintained or submitted in a manner satisfactory to the County and/or the relevant State or Federal department or agency.

7. The Supplier agrees to maintain program service records required by the County, State, or Federal Government, and agrees that a program and facilities review, including meetings with consumers, review of service records, review of service policy and procedural issuances, review of staffing and job descriptions and meetings with any staff directly or indirectly involved in the provision of services may be conducted upon request by appropriate County, State, or Federal personnel and other persons duly authorized by the County at any reasonable time.

8. The Supplier shall have consumer satisfaction and grievance procedures in place for consumers to report their satisfaction or who are dissatisfied with the shelters provided by the Supplier. Records of surveys, complaints, and other consumer feedback shall be made available for review as requested by the County.

9. The Supplier and the County shall observe and require the observance of applicable County, State, and Federal requirements, including HIPAA Compliance, relating to the confidentiality of records and information, and compliance with State and County Sexual Harassment laws and policies.

**SCOPE OF SERVICES:**

**GENERAL SCOPE OF SERVICES:**

Lewis County is seeking to purchase and receive six (6) prefabricated bus stop shelters. The scope of services is specific to the engineering, fabrication, and delivery of the shelters only; and does not include site installation or site design. Lewis County anticipates awarding a 5-year contract to order a minimum of six (6) bus stop shelters in 2021/2022 and up to six (6) additional shelters.

## **DESIGN REQUIREMENTS:**

The work specified includes the engineering, fabrication and delivery of one (1) distinct style of bus stop shelters, glazed hip style, in two (2) sizes, 5' x 10' and 5' x 12', depending on the delivery location, and shall comply with ADA standards. Each shelter delivery shall include all necessary fasteners, installation instructions (including concrete pad recommendations), and required delivery materials (fork truck or pallet jack truck). Delivery costs should be detailed separately for each shelter. NYS stamped engineered drawings should be included in the cost of the shelters.

Each shelter, regardless of the dimensions, shall be engineered to the following baseline standards:

- Structures and all elements should meet or exceed a useful life of 10 years.
- Structures should be certified to meet or exceed minimum wind and snow load requirements as specified in the latest International Building Code.
- Structures should consist of at least four (4) posts capable of being secured to a six (6) inch concrete pad (not requiring a pored footing).
- Structures must have four sides with one (1) ADA opening for a door
- Dark Bronze Anodized Aluminum Finish (or equivalent)
- Hip Roof with Bronze Structured Polycarbonate and 2.5" Fascia with Integral Gutter
- ¼" Clear Tempered Safety Glass
- 5' Partial Length Wall Mounted Bench with Backrest
- 36" Commercial Door
- Bottom Perimeter Aluminum Wind Skirts (unless already fully enclosed)
- Wall Mounted 10 Gallon Metal Trash Receptacle
- Solar Lighting Package
- Solar Powered USB Port
- 4' x 6' Non-Lit Advertising Display Box for Side Wall

## **Quantity and Delivery:**

Each shelter should be quoted according to the following dimensions and delivery locations:

(1) - 5'x12' Aluminum Structure  
Town of Diana Highway Department  
5952 Old State Road Ext.  
Harrisville, NY 13648

(1) - 5'x10' Aluminum Structure  
Village of Lyons Falls DPW  
3907 High Street  
Lyons Falls, NY 13368

(1) - 5'x10' Aluminum Structure  
Lewis County  
5252 Outer Stowe Street  
Lowville, NY 13367

(2) - 5'x10' Aluminum Structures  
Village of Lowville  
7701 Forest Ave  
Lowville, NY 13367

(1) - 5'x10' Aluminum Structure  
Village of Copenhagen  
9915 State Route 12  
Copenhagen, NY 13626

Shelters should be individually crated or packaged together. Fast and timely delivery is important to this project and will be part of the evaluation criteria.

### **INSTALLATION:**

The scope of this RFP does not include site design or installation. As such, the shelters should be designed for ease of installation on a concrete base, with adjustable posts accommodating up to a 5% grade change from one end of the structure to the other (both front to back and side to side). Proposals must include full installation instructions, and clarity of instructions will be included in the evaluation of all proposals.

### **Anticipated Timeline**

The project timeline is as follows:

- Issuance of Request for Proposals: September 24, 2021
- Deadline for Request for Proposal Questions: October 15, 2021 (4:00 PM)
- Proposals Due: October 29, 2021 (2:00 PM)
- Notice of Award: December 8, 2021
- Delivery: No later than May 31, 2022

### **SUBMISSION REQUIREMENTS:**

#### **PROPOSAL CONTENTS**

To be considered responsive, each proposal shall contain the following:

1. Letter of Transmittal (detailed below)
2. Statement of Qualifications and Proposal (detailed below)
3. Required Forms and Certifications
4. A full cost schedule

#### **LETTER OF TRANSMITTAL**

This brief letter should include the name, title, email address and telephone number of the contact person during period of proposal evaluation. The letter should be signed by a person authorized to commit the Supplier to the terms of the proposal.

#### **STATEMENT OF QUALIFICATIONS AND PROPOSAL**

The statement of qualifications and proposal shall include the following information:

- A description of your organization including but not limited to specific credentialing,

accreditation, and professional affiliations your organization has in the areas related to our proposal.

- Design renderings to include front and side views
- Detailed descriptions of all materials used in each product, including material type, color, size, durability, and any treatments (such as weatherizing or anti-graffiti coatings). Standard product warranties should also be listed for each shelter component.
- A detailed description of the delivery approach to include lead time from notice to proceed, how the items will be crated or packaged, the approximate crate dimensions, and any delivery information/requirements for the receiver.

### **AWARD OF CONTRACT:**

The Award may be made to the most responsible bidder whose proposal is determined to be in the best interest of Lewis County, and deemed to best serve the County's needs and requirements, based on the evaluation of all information provided.

### **Evaluation Criteria:**

Each proposal will be evaluated on the basis of the following factors, which are ranked in order of significance:

- Price
- Delivery schedule and approach
- Quality of product in meeting specifications
- Qualifications and prior experience

Bidders are advised that, in the event that the County receives an adequate number of proposals, which, in the opinion of the County Manager, require no clarifications and/or supplementary information, such proposals may be evaluated without further discussion. Hence, it is incumbent upon bidders to submit the most complete proposal possible in the first instance, so that to the greatest extent possible, further clarification will not be necessary.

Lewis County reserves the right to:

1. Reject any and all proposals received in response to this RFP.
2. Select proposals for contract award or for negotiations, other than those with the lowest price.

### **Award Notification:**

Suppliers will be notified in writing of the successful award after formal acceptance by the Lewis County Legislature.

### **CONTRACT PERIOD:**

Lewis County anticipates entering into a 5-year contract with the awardee to order six (6) bus stop shelters in 2021/2022 and up to six (6) shelters in the years following.

## **GENERAL INFORMATION:**

### **A. INQUIRIES:**

If there are questions pertaining to this RFP, they must be received by **October 15th, 2021**, and be sent in writing to the Planning and Community Development Department at the below address:

Casandra Buell  
Director, Planning and Community Development  
7660 N. State Street  
Suite 324; Courthouse  
Lowville, NY 13367  
[casandrabuell@lewiscounty.ny.gov](mailto:casandrabuell@lewiscounty.ny.gov)

Responses to any questions will be made in writing and will be posted on the County's website. It will be the responsibility of the Proposer to check the website for answers to questions and new information.

**To be considered, the proposal must be received no later than 2:00 p.m. on Friday, October 29th, 2021. No proposals will be accepted after the designated time. Failure to do so may result in the rejection of the proposal as being unresponsive.**

### **B. LATE PROPOSALS:**

Proposals received in the Planning Department Office *after* the date and time prescribed shall not be considered for contract award and shall be returned, unopened, to the Supplier.

**NOTE:** Any delay due to traffic, weather, mail or express delivery is not an exception to the deadline for receipt of proposals. Please plan accordingly.

### **C. NON-COLLUSION STATEMENT and SEXUAL HARASSMENT AFFIRMATION:**

A signed Non-Collusion Statement *shall be* returned with your proposal. A signed affirmation certifying compliance with Sexual Harassment policy and laws *shall be* returned with your proposal.

### **D. OPENING OF PROPOSALS:**

Under the Request for Proposals process, sealed offers will be received and opened in the Legislative Chamber. At and after opening, proposals WILL NOT be part of the public record and subject to disclosure but will be kept confidential until after the award. When such award is completed, proposals will be available for public inspection, subject to redaction of proprietary information.

### **E. PROPOSAL CONTENT:**

All information required by these Specifications must accompany the proposal or Bidder may be disqualified.

### **F. ADDENDA:**

Addenda are written instruments issued by the County prior to the date for receipt of offers which modify or interpret the specification document by addition, deletion, clarification or correction.

Addenda will be mailed, emailed or faxed to all who are known by the County to have received a complete set of specification documents. Copies of addenda will be made available for inspection at the Planning and Community Development Department and on the Lewis County website.

No addendum will be issued later than forty-eight (48) hours prior to the date and time for the receipt of offers, except an addendum withdrawing the RFP, or addendum including postponement. Bidders shall ascertain prior to submitting their offer that they have received all Addenda issued, and they acknowledge receipt of addenda on an enclosed form.

**G. PROPOSAL RECEIPT BY A THIRD PARTY:**

The County of Lewis shall not be held responsible for the completeness or accuracy of any documents received by a Supplier that were **NOT** directly issued to that Supplier by the Director of Planning and Community Development for Lewis County or its Legal Agent. Any Supplier submitting a proposal based on incomplete or inaccurate information resulting from documentation received from any third party shall not have cause for relief from award or completion of a contract in accordance with the official documents on file with Lewis County.

It is **STRONGLY** suggested that all Suppliers interested in participating in this proposal, contact the Director of Planning for Lewis County directly to assure they have received the most accurate and up to date material concerning this contract.

The County does not offer or supply anyone the list of people that have obtained a copy of these RFP specifications for the project prior to the opening of the RFP. **NO EXCEPTIONS ARE MADE TO THIS POLICY.**

**H. CONFLICTING TERMS:**

The requirements provided in the “specification” portion of these documents shall govern in any conflict with any other language provided in the general “Terms and Conditions” or any other boilerplate type information. Any conflict between the specification language and any boilerplate language will be resolved in favor of the specification language.

**I. PROTEST AND APPEAL PROCEDURES**

Interested parties aggrieved by a solicitation or the award of any resulting contract, may file written notice of protest with the Lewis County Manager at 7660 North State Street, Lowville, New York 13367. At a minimum, such protests shall include: 1) name of protestor; 2) solicitation project name and description; and 3) statement of grounds for protest (reference specific text in the Request for Proposal). The decision of the Lewis County Manager is final and is not subject to appeal.

The Lewis County Manager or his designee shall determine the merits of said protest. He or she shall set a time and place for hearing of the protest and shall advise all competitors that a protest has been filed. The County Manager may receive evidence and legal arguments from any interested party but shall not be bound by the rules of evidence nor formal procedure. Unless otherwise directed by the County Manager, issues will be decided based on written evidence and

written arguments. All documents received by the County Manager shall be stamped with date and time received and logged into the protest file folder. The County Manager shall promptly issue his findings and conclusions to the protesting party in writing and shall advise the Lewis County Planning & Community Development Department and all interested parties.

Issues addressing the adequacy of the request for proposals, including without limitation the instructions, general conditions and specifications and scope of work must be received by the County Manager no later than three (3) business days before the proposal due date. Thereafter, such issues are deemed waived by all interested parties. Where the County Manager decides that a protest lacks merit, all interested parties shall be so advised in writing and the evaluation and award process will continue.

Notice of protest against an award must be received by the County Manager within five (5) business days immediately following the award. Where notice of protest against the award is received prior to the entry into the contract for the relevant procurement, and Lewis County has not made a finding that procurement is urgently needed or performance will be unduly delayed or delay will result in undue harm to Lewis County, the execution of the contract will be deferred until the County Manager passes upon the issues presented by the protest.

Where the County Manager decides that the protest lacks merit, the contract may be executed after five (5) business days have elapsed commencing with the first day following the date of the County Manager's decision. The County Manager's decision shall be in written form. Notice of decision shall be served upon all interested parties by certified mail.

**REQUEST FOR PROPOSAL  
COUNTY OF LEWIS**

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**Bus Stop Shelters**

**GENERAL TERMS AND CONDITIONS FOR SEALED BIDS  
AND REQUESTS FOR PROPOSALS**

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1. Each Bid/RFP shall be enclosed in a sealed envelope and must be mailed or delivered so as to be received prior to the time set in the advertisement for opening Bid/RFP. **Said sealed envelope shall have the information identifying the RFP and date and time of opening. This information must be affixed to the outermost packaging to be easily identified by management personnel as a sealed Bid/RFP.**
2. Bid/RFP shall be submitted on the Supplier's own forms, unless otherwise indicated in the Bid/RFP specifications, or Bid/RFP will not be considered. Bid/RFP must be typed or printed in ink. Original autograph signatures in ink are required. Facsimile or rubber stamp signatures will not be accepted.
3. Any change in wording or interlineations by Supplier of the inquiry as published by the County of Lewis shall be reason to reject the proposal of such Supplier, or in the event that such change in the Invitation to Bid/RFP is not discovered prior to entering into contract, to void the contract entered into pursuant to such Bid/RFP. Any additional information that the Supplier desires to add to the Bid/RFP shall be written on a separate sheet of paper, attached to and submitted with the formal sealed Bid/RFP, to be read at the formal Bid/RFP opening.
4. **AWARDS.** The contract may be awarded to the lowest responsible and responsive bidder complying with the provisions of the Invitation for Bid/RFP. In determining whether a bid proposal is lowest and responsive, and the bidder responsible, the following may be considered by the County: a) Ability to perform the service required within the specified time; b) Reputation, judgment and experience; c) The quality of performance in previous contracts; d) Previous compliance with laws, as well as employment practices; e) Financial ability to perform the contract; f) The quality, availability and adaptability of the supplies or the contractual services to the particular use required; g) Ability to provide maintenance and service; h) Whether the bidder is in arrears to the County, in debt on contract, is a defaulter on surety to the County or whether the bidder's taxes or assessments are delinquent; i) The resale value and life cycle costs of the items; j) Such other information as identified in the Purchasing Policy Manual having bearing on the decision to make the award. The County reserves the right to reject any and all bids and to waive any informality in bids received whenever such rejection or waiver is in the interest of the County. The County also reserves the right to reject the bid of a bidder who has previously failed to perform properly. The County may award bids by line item, category, or on an all or none basis.
5. Suppliers are to furnish all information requested in the Bid/RFP invitation form. The County will consider only those documents and information contained in the proposal.

Incorporation by reference to other documents or information previously submitted by the Supplier in other matters will not be considered. Bid/RFPs in non-compliance with these requirements will be subject to rejection.

6. All documentation required by specifications shall be submitted by the Supplier as part of its sealed Bid/RFP at the time of Bid/RFP opening.

7. This Executory Clause shall be a part of any agreement entered into pursuant to the Bidding or Request For Proposal procedure:

“This Contract shall be deemed executory only to the extent of funds appropriated by the Lewis County Board of Legislators and available for the purposes of this Agreement; and no liability on account thereof shall be incurred by Lewis County beyond the amount of such funds.”

8. No taxes are to be billed to the County of Lewis. Bid/RFPs shall not include any Federal, State, or local excise, sales, transportation, or other tax, unless Federal or State law specifically levies such tax on purchases made by a political subdivision.

9. The successful Supplier shall comply with all laws, rules, regulations, and ordinances of the Federal Government, the State of New York and any other political subdivisions or regulatory body which may apply to its performance under this contract.

10. The successful Supplier to whom a Bid/RFP is awarded shall indemnify and hold harmless the County of Lewis and its agents and employees from and against all claims, damages, losses, causes of action, or expenses, including reasonable attorney fees, arising out of or resulting from such Supplier’s performance pursuant to a Bid/RFP.

11. The successful Supplier to whom a Bid/RFP is awarded shall not assign, transfer, convey, sublet or otherwise dispose of a contract or the successful Supplier’s right, title or interest therein, or the successful Supplier’s power to execute such contract to any other person, supplier or corporation without the express prior written consent of Lewis County, in accordance with New York State General Municipal Law, Section 109.

12. A Bid/RFP submitted is firm and irrevocable for a period of sixty (60) days from the date and time of the Bid/RFP opening. If a contract is not awarded within the sixty (60) day period, a Supplier to whom the Bid/RFP has not been awarded, may withdraw his Bid/RFP by serving written notice of his intention to the County of Lewis. Upon withdrawal of the Bid/RFP, pursuant to this paragraph, the County of Lewis will forthwith return the Supplier’s security deposit.

13. The base Bid/RFP shall remain firm and any other charges bid or proposed shall also remain firm, for delivery of services or goods described in the Bid/RFP.

14. In executing a Bid/RFP, the Supplier affirms that all of the requirements of the specifications are understood and accepted by the Supplier, and that the prices quoted include all

required materials and services. The County will not be responsible for any errors or omissions on the part of the Supplier in preparing his Bid/RFP. In case of error in extension of prices in the Bid/RFP, the unit price will govern.

15. The Supplier shall be fully accountable for his or its performance under a Bid/RFP, or any contract entered into pursuant to a Bid/RFP, and agree that he, she, or its officers, will answer under oath all questions relevant to the performance thereof and to any transaction, act or omission had, done or omitted in connection therewith if called before any Judicial, County or State officer or agency empowered to investigate the Supplier or his performance.

16. All Bid/RFPs must be accompanied by a duly executed Non-Collusion Statement in order to be considered.

17. The apparent silence of this specification as to any details or the omission from it of a detailed description concerning any point shall be interpreted as meaning only the best commercial and/or professional practices are to prevail and that only materials and workmanship of the first quality are to be used. It is understood and agreed that any item offered or furnished shall be new, in current production and in first class condition, that all containers shall be new and suitable for storage or shipment, and that prices include standard commercial packaging.

18. In the event any Governmental restrictions may be imposed which would necessitate alteration of the material, quality, workmanship or performance of any item offered on this Bid/RFP prior to delivery, it shall be the responsibility of the successful Supplier to notify the County of Lewis at once, indicating in his letter the specific regulation which requires such alterations. The County reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the contract.

19. Discrimination - The successful Supplier agrees:

(A) That in the hiring of employees for the performance of work under this contract, no Supplier, nor any person acting on behalf of such Supplier, shall by reason of race, creed, color, sex, national origin, age, disability, marital status, Military Veteran status or arrest record, discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates. Lewis County is an Equal Opportunity Employer.

(B) That no Supplier, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance or work under a contract on account of race, creed, color, sex, national origin, age, disability, marital status or Military Veteran status.

(C) That a contract may be canceled or terminated by the County of Lewis and all monies due, or to become due, may be forfeited for a violation of the terms and conditions of a contract.

20. Joint Bid/RFPs will not be accepted. For purposes of the specifications, the term joint Bid/RFP shall include, but is not limited to, any Bid/RFP submitted jointly by two or more Suppliers in the name of partnership, joint venture or other legal entity formed for the purpose of submitting such a Bid/RFP or to be formed for the purpose of entering into a contract pursuant to

such Bid/RFP.

21. Requests for interpretation of specifications should be addressed in writing, or by e-mail to the County Manager and must be received on or before September 10, 2019. Any and all interpretations and supplemental instructions will be made in the form of written addenda to the specification. The County will make every reasonable effort to notify specification holders when an addendum is issued, and all addenda will be available for inspection at least twenty-four (24) hours prior to a Bid/RFP opening (except notices of Bid/RFP postponement or cancellation, which may be made up the scheduled Bid/RFP opening time). Failure of any Supplier to receive such addendum shall not relieve the Supplier from any obligation under this Bid/RFP. Any and all addenda shall become part of the Bid/RFP and contract.

22. If requested in writing by the County of Lewis, Supplier must present within forty-eight (48) hours, satisfactory evidence of the ability to perform and possession of the necessary facilities, personnel, experience, monetary resources and insurance to comply with specifications and otherwise provide the County with sufficient grounds to believe that it is likely, beyond a reasonable doubt, that the Supplier can provide the commodities and/or service(s) specified.

23. The successful Supplier(s) shall be notified by means of a contract award letter and/or purchase order that the Bid/RFP has been accepted. The mailing of either award letter or a valid purchase order shall constitute a contract between Lewis County and the successful Supplier(s).

24. When required by Lewis County, the successful Supplier shall execute a standard form Agreement with Lewis County which incorporates all the terms and conditions of the contract between the parties. Such Agreement shall be executed within fourteen (14) days of notification, by which time the Supplier shall also have supplied all required bonds and insurance.

25. A contract resulting from Bid/RFP solicitation will constitute the entire and integrated Agreement between the parties. No other terms or conditions will become part of an Agreement unless they are approved in writing by both parties and attached to an Agreement or Addendum.

26. Payments will be made by the County after goods and/or services have been rendered and are complete. Payment will be made upon submittal of a complete invoice. If a Purchase Order is required, the Purchase Order must also be properly completed and submitted with invoice to insure payment. Any claim against the Supplier may be deducted by the County from any money due him in the same or other transactions. Any delivery of product or service which does not meet the requirements of the contract may be rejected or accepted on an adjusted price basis as determined by the County. In any case where a question of non-performance of a contract arises, payment may be withheld in whole or in part at the discretion of the County as compensation for any loss, damage, or cost incurred by the County as a result of said non-performance.

27. **Insurance:** Any bond(s) and/or insurances required must be on a form acceptable to Lewis County, and must be issued only by companies licensed to do business in New York State by the New York State Commissioner of Insurance. Insurance policies must name Lewis County as "Additional Insured". Certified checks or standard form letters of credit may be submitted in

lieu of a bond, subject to acceptance by Lewis County as to sufficiency and form.

1. Policy Commencement

Insurance shall be procured by the successful bidder before commencing any work. Insurance shall be obtained and be in effect no later than fourteen (14) days after notice of award is received and the insurance shall be maintained without interruption for the duration of the contract, and shall be in the kinds and amounts as specified herein pursuant to the Standard Insurance Certificate.

2. Proof of Insurance

a. One copy of the policy and/or binder shall be filed with the Lewis County Director of Planning;

b. All insurance shall be executed by an insurance company/agency or broker who is licensed by the Insurance Department of the State of New York. County of Lewis to be named as additional insured;

c. All certificates of insurance shall be endorsed verbatim:

“In the event of any alteration, non-renewal, interruption or cancellation of the policies of insurance, the insured and the insurer shall give at least forty-five (45) days advance written notice of any of the alteration, non-renewal, interruption or cancellation. Said notice to be made in writing to the Clerk of the Board, Lewis County, 7660 N. State Street, Lowville, NY 13367, before such said alteration, non-renewal, interruption or cancellation shall be effective.”

28. Supplier shall agree to indemnify and hold harmless the County of Lewis and its agents, employees and volunteers against all claims arising or resulting from work performed, materials handled and services rendered or to be rendered to the County of Lewis under any contract or agreement executed by the County of Lewis and the Supplier.

29. Unless the Supplier specifically notes otherwise, a proposal shall be to furnish all items/services exactly as specified, in complete conformance to all terms, conditions and specifications. Any exception proposed by a Supplier must be clearly noted in unambiguous writing and submitted with the proposal at Bid/RFP opening. Unless otherwise specifically noted, the County will execute a contract based solely on its terms, conditions and specifications.

30. The complete legal name of the supplier or corporation shall be used when executing Bid/RFP documents. Do not abbreviate. If a corporation, use the name as it appears on the corporate seal.

31. Safety Procedures - A Supplier who contracts with Lewis County agrees to adopt and utilize the safety policies and programs of the County of Lewis in the performance of its contract with the County and to abide by its terms, together with any other State or Federal safety guidelines and/or regulations. The Supplier shall acknowledge a copy of the safety policies and programs of Lewis County. The Supplier shall not deviate from said policies and programs or substitute its own safety program unless approved by the County supervisor(s) of the project, said supervisors being so designated in the contract document.

32. **Conflicts of Interest:** In executing and submitting this Bid/RFP, the bidder represents and warrants that no person who is an elected official, officer, or employee of Lewis County, nor any person whose salary is payable, in whole or in part, by the County, or any corporation, partnership or association in which such official, officer or employee is directly or indirectly interested, shall have a financial interest, direct or indirect, in the contract to be awarded hereunder or in the proceeds thereof, unless such person completes and submits a Disclosure Form, on a form acceptable to the County, disclosing their interest or seeks a formal opinion from the Lewis County Ethics Board as to whether or not a conflict of interest exists. For a breach or violation of such representations or warranties, the County shall have the right to annul this Agreement without liability entitling the County to recover all monies paid hereunder and Supplier shall not make claim for, or be entitled to recover, any sum or sums otherwise due under any contract awarded hereunder.

**REQUEST FOR PROPOSAL  
COUNTY OF LEWIS**

-----  
**Bus Stop Shelters**

**TO: Casandra Buell, Director of Planning & Community Development, Lewis County**

**THE UNDERSIGNED PROPOSES TO PROVIDE THE GOODS AND SERVICES** required as set forth in the referenced Request for Proposal. If successful, the Bidder hereby agrees to furnish the goods and services in accordance with all terms, conditions and specifications contained within referenced Request for Proposal, at prices submitted in referenced specifications. I certify that I am authorized to sign this proposal, myself or on behalf of the company or firm I represent, and to enter into a binding contract with Lewis County. This signed proposal will become part of a binding contract after award by the Lewis County Legislature to the successful bidder.

**NOTE: By signing and submitting the proposal form for consideration by the Lewis County Legislature, the Supplier acknowledges they have read, understood, and agree to all aspects of the specifications as presented without reservation or alteration.**

|                                |                            |
|--------------------------------|----------------------------|
| Legal name of firm/corporation | Authorized Signature       |
| Address                        | Typed Name                 |
| City/State/Zip                 | Title                      |
| Date                           | Telephone No.      Fax No. |

**DO NOT WRITE BELOW THIS LINE (FOR COUNTY USE ONLY)**

.....

\_\_\_\_\_  
CHAIRPERSON, LEWIS COUNTY LEGISLATURE

\_\_\_\_\_  
RESOLUTION NO.

\_\_\_\_\_  
DATE

**YOU MUST RETURN THIS SHEET WITH YOUR PROPOSAL**

**REQUEST FOR PROPOSAL  
COUNTY OF LEWIS**

-----  
**Bus Stop Shelters**

**NON-COLLUSION FORM**

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, as to its own organization, under penalty or perjury, that to the best of his or her knowledge and belief:

1. The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
3. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit, a bid for the purpose of restricting competition.
4. No person, broker or selling agent has been employed or retained by the bidder to solicit or secure this award upon an agreement or upon an understanding for a commission, percentage, a brokerage fee, contingent fee or any other compensation. The bidder further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties.

In compliance with this invitation for bids, and subject to the conditions thereof, the undersigned offers and agrees, if this bid is accepted within sixty (60) days from the date of opening, to furnish any and all of the items upon which prices are submitted.

|                                |                      |         |
|--------------------------------|----------------------|---------|
| _____                          |                      |         |
| Legal name of firm/corporation | Authorized Signature |         |
| _____                          |                      |         |
| Address                        | Typed Name           |         |
| _____                          |                      |         |
| City/State/Zip                 | Title                |         |
| _____                          |                      |         |
| Date                           | Telephone No.        | Fax No. |

**YOU MUST RETURN THIS SHEET WITH YOUR PROPOSAL**

**REQUEST FOR PROPOSAL  
COUNTY OF LEWIS**

-----  
**Bus Stop Shelters**

**AFFIRMATION STATEMENT ON SEXUAL HARASSMENT**

In compliance with State Finance Law § 139-1, the undersigned bidder hereby certifies and affirms under penalty of perjury:

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bide each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law.

|                                |                      |         |
|--------------------------------|----------------------|---------|
| _____                          |                      |         |
| Legal name of firm/corporation | Authorized Signature |         |
| _____                          |                      |         |
| Address                        | Typed Name           |         |
| _____                          |                      |         |
| City/State/Zip                 | Title                |         |
| _____                          |                      |         |
| Date                           | Telephone No.        | Fax No. |

**Note:** Pursuant to State Finance Law §139-1 3., if the Bidder cannot make the foregoing certification and, such bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor.

**YOU MUST RETURN THIS SHEET WITH YOUR BID**

## **NEW YORK STATE REQUIRED CLAUSES**

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

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the

benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REOUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non- discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

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

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

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

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials

or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

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

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

Development pertaining hereto.

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

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

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

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

**SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

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

**19. OMNIBUS PROCUREMENT ACT OF 1992 (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS).** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

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

NYS Department of  
Economic Development  
Division for Small Business  
Albany, New York  
12245 Telephone:  
518-292-5100  
Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

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

NYS Department of Economic Development  
Division of Minority and Women's  
Business Development 633 Third  
Avenue  
New York,  
NY 10017  
212-803-  
2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

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

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

**21. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**22. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**23. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this

agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**24. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**25. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

## **FEDERALLY REQUIRED CLAUSES**

### **Fly America Requirements**

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

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

### **Charter Bus Requirements**

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

Contractor shall comply with 49 USC 5323(d) and (g) and 49 CFR 604, which state that recipients and subrecipients of FTA assistance may provide charter service for transportation projects that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws (except as permitted by 49 CFR 604.2), or under 23 U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, “Charter Service,” 49 CFR part 604, the terms and conditions of which are incorporated herein by reference.

### **School Bus Requirements**

School Bus Requirements – Applicability – Operational Service Contracts. These requirements do not apply to micro-purchases (\$3,500 or less, except for construction contracts over \$2,000).

Pursuant to 69 USC 5323(f) or (g) as amended by MAP-21, 23 USC 133, 23 USC 142, and 49 CFR 605, recipients and subrecipients of FTA assistance shall not engage in school bus operations exclusively for 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 shall not use federally funded equipment, vehicles, or facilities. Violations. If a Recipient or any Third Party Participant that has operated school bus service in violation of FTA’s School Bus laws and regulations, FTA may: (1) Require the Recipient or Third Party Participant to take such remedial measures as FTA considers appropriate, or (2) Bar the Recipient or Third Party Participant from receiving Federal transit funds.

### **Energy Conservation**

All Contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000). Contractor shall comply with mandatory standards and policies relating to

energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

### **Clean Water**

Applicability – All Contracts and Subcontracts over \$150,000.

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

### **Lobbying**

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

### **Access to Records and Reports**

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

The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the

simplified acquisition threshold currently set at \$150,000.

3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

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

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

6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

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

### **Federal Changes**

All Contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000). Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

### **Clean Air**

Applicability – All contracts over \$150,000.

1. Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

2. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

### **Recycled Products**

All contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the current or previous fiscal year using Federal funds. The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962),

including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

### **Contract Work Hours & Safety Standards Act**

Applicability – Contracts over \$150,000

1. Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in para. (1) of this section, contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in para. (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in para. (1) of this section.
3. Withholding for unpaid wages and liquidated damages - the recipient shall upon its own action or upon written request of USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours & Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in para. (2) of this section.
4. Subcontracts - Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

### **No Government Obligation to Third Parties**

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

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

to identify the subcontractor who will be subject to its provisions.

### **Program Fraud and False or Fraudulent Statements or Related Acts**

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

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

### **Termination**

Applicability – All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$150,000.

1. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.
2. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for

convenience.

3. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions.

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

4. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

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

6. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

7. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

8. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time

specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. the recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the recipient resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work.

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

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.

. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall

- (1) immediately discontinue all services affected (unless the notice directs otherwise), and
- (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient.

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

j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice of termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any

property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract 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 contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

### **Government Wide Debarment and Suspension (Non Procurement)**

The Recipient agrees to the following: (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1

U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," <http://https.www.sam.gov,.proxy1.semalt.design> if required by U.S. DOT regulations, 2

C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <http://https.www.sam.gov,.proxy1.semalt.design> if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel,

### **Contracts Involving Federal Privacy Act Requirements**

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

1. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express

consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

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

### **Civil Rights Requirements**

**Applicability** – All contracts except micro-purchases (\$3,500 or less, except for construction contracts over

\$2,000) The following requirements apply to the underlying contract:

The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing.

Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA’s “Nondiscrimination” statute): (1) FTA’s “Nondiscrimination” statute prohibits discrimination on the basis of:

(a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and (2) The FTA “Nondiscrimination” statute’s prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,

b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin,

(2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b)

U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, “Guidelines for the enforcement of Title VI,

Civil Rights Act of 1964,” 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,

c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246, Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note,

(c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer".

3. Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246, Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note,

d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as “Disadvantaged Business Enterprises” (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of MAP-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third party contracts exceeding \$250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of

being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49

C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49

C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq.,

(2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under MAP-21 and previous legislation,

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian

Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of “employer,” (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. part 37, (b) U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27, (c) U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e)

U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35, (f) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36, (g) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630,

(h) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. part 64, Subpart F, (i)

U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. part 1194, and (j) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2,

i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following: 1) Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” August 11, 2000, 42 U.S.C.

§ 2000d-1 note, and (2) U.S. DOT Notice, “DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Persons,” 70 Fed. Reg. 74087, December 14, 2005,

j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.

k. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

### **Breaches and Dispute Resolution**

All contracts over \$150,000

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient's authorized representative. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient's CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C.

§ 3729.

Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved.

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

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the recipient and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

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

### **Transit Employee Protective Provisions**

Contracts for transit operations except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

Public Transportation Employee Protective Arrangements. The Recipient agrees that 49 U.S.C. § 5333(b) requires employee protective arrangements to be in place as a condition of award of FTA assistance made available or appropriated for FTA programs involving public transportation operations. U.S. DOL recognizes the following categories of

arrangements:

(1) U.S. DOL Certification. When its Project involves public transportation operations and is financed with funding made available or appropriated for 49 U.S.C. §§ 5307, 5309, 5312, 5337, or 5339, as amended by Map-21, or former 49 U.S.C. §§ 5308, 5309, 5312, or other provisions of law as required by the Federal Government, U.S. DOL must provide a Certification of employee protective arrangements before FTA may provide financial assistance for the Project. Therefore, the Recipient understands and agrees, and assures that any Third Party Participant providing public transportation operations will agree, that: (a) It must carry out the Project as provided in its U.S. DOL Certification, which contains the terms and conditions that U.S. DOL has determined to be fair and equitable to protect the interests of any employees affected by the Project, (b) It must comply with 49 U.S.C. § 5333(b), and any future amendments thereto, (c) It will follow the U.S. DOL guidelines, “Guidelines, Section 5333(b), Federal Transit Law,” 29 C.F.R. part 215, except as U.S. DOL determines otherwise in writing, (d) It must comply with the terms and conditions of the U.S. DOL certification of public transportation employee protective arrangements for the Project, which certification is dated as identified on the Underlying Agreement, including: 1 Alternative comparable arrangements U.S. DOL has specified for the Project, 2 Any revisions

U.S. DOL has specified for the Project, or 3 Both, and (e) It must comply with the following documents and provisions incorporated by reference in and made part of the Underlying Agreement for the Project: 1 The U.S. DOL certification of public transportation employee protective arrangements for the Project, which certification is dated as identified on the Underlying Agreement, 2 The documents cited in that U.S. DOL certification for the Project, 3 Any alternative comparable arrangements that U.S. DOL has specified for the Project, and 4 Any revisions that U.S. DOL has specified for the Project,

(2) Special Warranty. When its Project involves public transportation operations, and is financed with funding made available or appropriated for 49 U.S.C. § 5311, as amended by Map-21, for former 49 U.S.C. § 5311 in effect in FY 2012, or a previous fiscal year, or for section 3038 of TEA-21, as amended by section 3039 of SAFETEA- LU, U.S. DOL will provide a Special Warranty for those projects, including projects under the Tribal Transit Program. Therefore, the Recipient understands and agrees, and assures that any Third Party Participant providing public transportation operations will agree, that: (a) It must comply with Federal transit laws, specifically 49 U.S.C. § 5333(b), (b) Follow the U.S. DOL guidelines, “Guidelines, Section 5333(b), Federal Transit Law,” 29 C.F.R. part 215, except as U.S. DOL determines otherwise in writing,

(c) It will comply with the U.S. DOL Special Warranty for its Project that is most current on the date when it executed the Underlying Agreement, and documents cited therein, including: 1 Any alternative comparable arrangements U.S. DOL has specified for the Project, 2 Any revisions U.S. DOL has specified for the Project, or 3 Both, and (d) It will comply with the following documents and provisions incorporated by reference in and made part of the Underlying Agreement: 1 The U.S. DOL Special Warranty for its Project, 2 Documents cited in that Special Warranty, 3 Alternative comparable arrangements U.S. DOL specifies for the Project, and 4 Any revisions that U.S. DOL has specified for the Project, and (3) Special Arrangements for 49 U.S.C. § 5310 Projects. The Recipient understands and agrees, and assures that any Third Party Participant providing public transportation operations will agree, that although pursuant to 49 U.S.C. § 5310, and former 49 U.S.C. §§ 5310 or 5317, FTA has determined that it was not “necessary or

appropriate” to apply the conditions of 49 U.S.C. § 5333(b) to Subrecipients participating in the program to provide public transportation for seniors (elderly individuals) and individuals with disabilities, FTA reserves the right to make the following exceptions: (a) FTA will make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and (b) FTA reserves the right to make other exceptions as it deems appropriate.

### **Disadvantaged Business Enterprise**

Contracts over \$3,500 awarded on the basis of a bid or proposal offering to use DBEs 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%. The recipient’s overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.

- a. The contractor shall not discriminate on the basis of race, color, religion, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- b. If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.
- c. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor’s receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor’s work by the recipient and contractor’s receipt of the partial retainage payment related to the subcontractor’s work.
- e. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

**Prompt payment**

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

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

**Incorporation of Federal Transit Administration (FTA) Terms**

All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

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

**Drug and Alcohol Abuse and Testing**

Operational service contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

The Contractor agrees to comply with the following Federal substance abuse regulations: a. Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 C.F.R. Part 32, that implements the Drug-Free Workplace Act of 1988 as amended, 41 U.S.C. §§ 8103 et seq., and 2 CFR part 182, b. Alcohol Misuse and Prohibited Drug Use. FTA Regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 USC 5331, as amended by Map-21, 49 CFR part 40, 49 USC chapter 53, 49 CFR Part 655, to the extent applicable.

**Other Federal Requirements**

The following requirements are not federal clauses.

**Full and Open Competition**

In accordance with 49 U.S.C. § 5325(a) all procurement transactions shall be conducted in a manner that provides full and open competition.

**Prohibition Against Exclusionary or Discriminatory Specifications**

Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory

specifications.

**Conformance with ITS National Architecture**

Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 and as amended by MAP-21 23 U.S.C. § 517(d), note and follow the provisions of FTA Notice, “FTA National Architecture Policy on Transit Projects,” 66 Fed. Reg.1455 etseq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

**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.

**Notification of Federal Participation**

To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

**Interest of Members or Delegates to Congress**

No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

**Ineligible Contractors and Subcontractors**

Any name appearing upon the Comptroller General’s list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General’s list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

**Other Contract Requirements**

To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those provisions attached hereto, and shall comply with the recipient’s Procurement Guidelines, available upon request from the recipient.

**Compliance with Federal Regulations**

Any contract entered pursuant to this solicitation shall contain the following provisions:

All USDOT- required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as 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.

### **Real Property**

Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by FAST Act, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### **Access to Services for Persons with Limited English Proficiency**

To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

### **Environmental Justice**

Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1)

Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low- Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

### **Environmental Protections**

Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other

federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

### **Geographic Information and Related Spatial Data**

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

### **Geographic Preference**

All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as proposed to be amended in 2 CFR Part 1201 ).

### **Organizational Conflicts of Interest**

The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient:

(a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

### **Federal Single Audit Requirements for State Administered Federally Aid Funded Projects Only**

Non Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, "Audits of States, Local Governments, and Non Profit Organizations" (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable). Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptroller's Office and the U.S. Governmental Accountability Office (GAO).

Non Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

### **Veterans Preference**

Veterans Preference. As provided by 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:

- (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and
- (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

### **Safe Operation of Motor Vehicles**

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

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

### **Catalog of Federal Domestic Assistance (CFDA) Identification Number**

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

### **CFDA number for the Federal Transportation Administration**

Nonurbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable) agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures

of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF- SAC by CFDA number, and inclusion of the prefix “ARRA” in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

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