HARBOR TRANSIT MULTI-MODAL TRANSPORTATION SYSTEM

INVITATION FOR BIDS

Purchase of Bulk Liquefied Petroleum Gas (LPG)

Issue date:

Monday, October 3, 2022

Bid due date and time:

Monday, October 24, 2022 10:00 A.M. (EDT)

Contact Information:

Tom Burghardt, Operations Supervisor
440 North Ferry Street
Grand Haven, Michigan 49417
Email: tburghardt@harbortransit.org

Table of Contents

SECTION 1. PROJECT DESCRIPTION AND SPECIFICATIONS 4
SECTION 2. SUBMISSION INSTRUCTIONS FOR PROPOSERS 6
SECTION 3. EVALUATION OF BIDS 8
SECTION 4. TERMS & CONDITIONS 9
SECTION 5. FEDERAL TRANSIT ADMINISTRATION REQUIRED CLAUSES 13
SECTION 6. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION 40
SECTION 7. ACKNOWLEDGEMENT FORM FOR TERMS & CONDITIONS 41
SECTION 8. CERTIFICATION REGARDING LOBBYING 42
SECTION 9. BID PROTEST PROCEDURES 43
SECTION 10. PRICE PROPOSAL FORM 44
SECTION 11. CHECKLIST FOR BID SUBMISSION 45
SECTION 12. NO BID REPLY FORM 46
CONTRACT AGREEMENT 47

PUBLIC NOTICE

Harbor Transit Multi-Modal Transportation System

INVITATION FOR BIDS (IFB) FOR
LIQUIFIED PETROLEUM GAS

Date Issued: Monday, October 3, 2022
Deadline: Monday, October 24, 2022 10:00 A.M. (EDT)

The Harbor Transit Multi-Modal Transportation System ("Harbor Transit") is issuing a Invitation for Bids (IFB) from qualified vendors to provide bulk Liquefied Petroleum Gas (LPG) from December 1, 2022 through November 30, 2023.

Questions or requests for clarification regarding the IFB will be accepted via email only until **Friday, October 14, 2022 @ 12:00PM (EDT)** to procurement@harbortransit.org via email. Answers to submitted questions will be posted on **Wednesday, October 19, 2022** at harbortransit.org for all interested proposers to review prior to submitting proposals.

Proposals shall consist of the original and two additional copies of the following:

1) A cover letter with the Proposer's company, contact name, address, website, phone and email;
2) A signed Certification Regarding Debarment & Suspension;
3) A signed Acknowledgement for Terms & Conditions and Required FTA Clauses;
4) A signed Certification Regarding Lobbying;
5) A completed Pricing Proposal Sheet that must include breakdowns for all associated costs;
6) Three (3) references of similar served provided in the past five (5) years; and
7) Material/Product specifications.

The successful Bidder shall acknowledge receipt of and compliance with all applicable FTA Contract Clauses. The full IFB is found at harbortransit.org.

Sealed bids must be clearly labeled on the outside LPG Proposal and submitted to: Tom Burghardt, Operations Supervisor, 440 North Ferry Street, Grand Haven, Michigan 49417, procurement@harbortransit.org, by **the deadline of 10:00 AM (EDT), Monday, October 24, 2022** at which time the bids will be opened and read aloud. Late proposals will be rejected. Bidders are invited – but not required – to attend the bid opening.

Bids are irrevocable for a period of ninety (90) days from the date of the bid opening and shall not be withdrawn, modified or altered after the bid opening. In the event of default by the selected vendor, HARBOR TRANSIT may accept an alternate bids from a responsible Proposer. HARBOR TRANSIT reserves the right to accept or reject any and all bids, to waive irregularities/informalities in the bids received, or to rebid, or, in the best interest of the Authority, to select an individual contractor for each facility outlined in the agreement.

HARBOR TRANSIT is an Equal Employment Opportunity (EEO) organization.

SECTION 1

PROJECT DESCRIPTION AND SPECIFICATIONS

1. **BACKGROUND**. The Harbor Transit Multi-Modal Transportation System ("Harbor Transit") operates a public transportation system in Northwest Ottawa County and is located at 440 Ferry Street, Grand Haven, Michigan.

2. **PURPOSE**. HARBOR TRANSIT has entered into the alternative fuel market and is expanding its propane powered vehicle fleet. Consequently, HARBOR TRANSIT is seeking a qualified supplier(s) to provide bulk Liquefied Petroleum Gas (LPG) from December 1, 2022 thru November 30, 2023.

   HARBOR TRANSIT makes no representations, warranties or agreements with respect to this Invitation for Bids ("IFB"). In addition, HARBOR TRANSIT makes no commitment to purchase any products or services or take any other action, including but not limited to, awarding a contract to the Supplier submitting the low responsive and responsible bid. HARBOR TRANSIT reserves the right to amend or cancel this IFB at any time for any or no reason. All amendments to this IFB shall be in writing.

3. **LPG**. The Bidder shall provide a detailed description of their LPG product. The product shall be HD-5 grade propane and meet the requirements of ASTM D-1835 for an alternative automotive fuel application. Bidder must include, as applicable, technical specifications, material safety data sheets and any other relevant material.

4. **USAGE**. HARBOR TRANSIT presently has eight propane power vehicles in their fleet. The fleet will use approximately 45,000 gallons for this twelve (12) month contract obligation. The quantity indicated is **not a guaranteed** maximum or minimum. HARBOR TRANSIT shall not be obligated to purchase any specific quantity. In the event LPG usage exceeds the stated quantity, the contract expiration date shall prevail.

5. **STORAGE CAPACITY**. A 1000 gal capacity LPG storage tank, located at the Operations Center, 440 North Ferry Street, Grand Haven, Michigan 49417.

6. **PRODUCE QUALITY**. HARBOR TRANSIT is committed to the principal of zero defects and will insist on that same commitment on the part of the Bidder. The Bidder shall make adequate provisions to ensure that the parts, materials and workmanship meets or exceeds the specifications of this IFB. The Bidder shall establish and maintain quality control procedures throughout the entire contract year.

7. **WARRANTY**. The Bidder must provide details of its warranty policies and procedures. The Bidder shall replace any materials within the warranty period that fail due to defect in material resulting from normal use. Deficient materials shall be replaced at no additional cost to HARBOR TRANSIT.

8. **CUSTOMER SERVICE**. The successful bidder shall respond to HARBOR TRANSIT's inquiries within one business day of receipt of contract.

9. **DELIVERY**. Title and risk of loss shall not pass from the Bidder until LPG has been received and accepted. Mere acknowledgement by HARBOR TRANSIT of receipt shall not be deemed as acceptance of LPG. If acceptance is revoked, BIDDER bears the risk of loss thereafter.

Bidder shall provide and install equipment for the length of the contract required to remotely monitor LPG level in the tank and delivered optimally to insure tank does not go below 20% of capacity. On rare occasions, emergency deliveries during weekends or after normal business hours may be required. Bidder must have the ability to accommodate these emergencies at no additional cost to HARBOR TRANSIT. Emergency deliveries optimally shall be received four (4) hours from notification by HARBOR TRANSIT. Bidders must include with their submission a delivery schedule if it differs from this IFB request.

10. **MINIMUM REQUIREMENTS FOR PRICING**. Bids shall include all requested deliverables as indicated in Section 10 – Specifications on the Price Proposal Form. Delivery shall be F.O.B. destination and at no additional charge to HARBOR TRANSIT. Bidder shall include delivery response time for normal and emergency deliveries on the Price Proposal Form.

Prices quoted shall be a **firm fixed price** from date of contract. HARBOR TRANSIT shall receive the benefit of any decrease in price that may occur. Any increase in contract or price revisions shall be based on industry price changes and supported by adequate detail to document same. Any cost revisions shall not be allowed or implemented without prior consent of HARBOR TRANSIT, in which case revision shall take effect 30 days after the revisions are approved.

SECTION 2

SUBMISSION INSTRUCTIONS FOR PROPOSERS

1. Sealed bids MUST be received by the due date and time specified in this IFB. Bids received after the due date and time will not be considered.

2. Sealed envelopes containing the bid response must be labeled with the bid name, due date and firm name; submit one (1) original and two (2) additional copies of the bid. The original must be marked original.

3. HARBOR TRANSIT assumes no responsibility for errant delivery of proposals, including those relegated to a courier agent who fails to deliver in accordance with the time and receiving point specified.

4. This IFB does not commit HARBOR TRANSIT to award a contract.

5. HARBOR TRANSIT will not pay Bidders for costs associated with preparing responses to this IFB.

6. No email or facsimile bids will be considered.

7. Bidders agree to and acknowledge all IFB specifications, terms, and conditions and indicate an ability to perform by submission of its Proposal.

8. Submitted Proposals shall be valid for at least ninety (90) days.

IFB REQUIREMENTS

Proposing firms must include the minimum information in their sealed proposals.

1. Cover Letter

   The proposal must include a cover letter identifying the proposing firm, mailing address, contact person, telephone number, website address, and email address. The cover letter must be signed by the individual who is authorized to negotiate and execute a contract on behalf of the proposing firm.

2. Proposal

   The proposal shall include a listing of all associated pricing summarized in the Section 10 Pricing Proposal Form.

   Include Disadvantaged Business Enterprise (DBE) certification (if applicable). The Disadvantaged Business Enterprise program is explained on the Michigan Department of Transportation (MDOT) website. www.michigan.gov/mdot/0,4616,7-151-9625_21539---,00.html

   Contractor will be required to comply with all Equal Employment Opportunity laws.

All Bidders will be required to certify that they are not on the Federal Excluded List of Ineligible Contractors. HARBOR TRANSIT reserves the right to reject any bid if the contractor fails to comply:

A. Business Organization/Bidder. State the full name and address of your organization, years in business and if applicable, the branch office or other subordinate element that will perform or assist in performing the work. Indicate whether you operate as an individual, partnership or corporation; if as a corporation includes the state in which you are incorporated.

B. Prior Experience. Proposals submitted shall include three (3) references of similar Contracts that your firm has performed in the past 5 years.

3. The following completed/signed forms and certifications, the forms for which are included in this Invitation for Bids:

a. Signed and Completed Bid
b. Certification Regarding Debarment & Suspension
c. Acknowledgement From for Terms & Conditions & FTA Required Clauses
d. Certification Regarding Lobbying
e. Pricing Proposal Sheet
f. Material Specification
g. Proof of Insurance, as required for this contract
h. Submitted checklist

Sealed bids must be delivered by the due date and time to:

Thomas Burghardt
Operations Supervisor
Harbor Transit
440 North Ferry Street
Grand Haven, Michigan 49417
Email: tburghardt@harbortransit.org

SECTION 3

EVALUATION OF BIDS

SELECTION CRITERIA

HARBOR TRANSIT is seeking a "best value" proposal for the purchase of LPG Gas.

This contract will be awarded to that responsible bidder whose bid, conforming to this solicitation, will be most advantageous to HARBOR TRANSIT. HARBOR TRANSIT reserves the right to accept or reject any and all bids, waive informalities and minor irregularities in bids, or to enter into negotiations with the preferred bidder.

Upon approval of project award by HARBOR TRANSIT, the selected vendor will be sent a Notice of Award/Notice to Proceed for approval and signature. The original form is to be returned promptly to the Authority and the contractor is to keep a copy of the form. Work may not proceed until contractor signs the Notice to Proceed. Work will commence per contracted term after a signed Notice to Proceed. Non-successful Proposers will be notified of HARBOR TRANSIT's selection of a vendor.

SECTION 4

TERMS & CONDITIONS

DURATION OF PROJECT & AGREEMENT: The project will commence per contracted term with HARBOR TRANSIT's Notice of Award/Notice to Proceed.

CONTRACT CHANGES: Additions, deletions or modifications to this project and agreement may be made only with written agreement between HARBOR TRANSIT and the selected contractor.

DISPUTES: Except as other provided in this agreement, any dispute concerning a question of fact arising under the agreement which is not disposed of by agreement shall be decided by HARBOR TRANSIT, which shall put its decision in writing and mail or otherwise furnish a copy to the contractor. In connection with any appeal proceeding under this clause, the contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute thereunder, the contractor shall proceed diligently in accordance with the agreement and in accordance with HARBOR TRANSIT's decision.

This clause does not preclude consideration of law questions in connection with decisions provided for in this clause, provided that nothing in this agreement shall be construed as making final the decision of an administrative official, representative or board on a question of law.

INDEMNIFICATION: The contractor agrees to indemnify and hold HARBOR TRANSIT, its officers, agents, employees and/or trustees, harmless from and against any and all claims or causes of action brought against HARBOR TRANSIT and from any and all damages, losses, expenses, attorney fees, costs and liabilities sustained by HARBOR TRANSIT arising out of any claimed defect in the goods and services provided by the contractor. The contractors' obligation under this paragraph shall include the obligation to indemnify and hold HARBOR TRANSIT harmless for negligence, whether active, passive or concurrent, in the performance of HARBOR TRANSIT's duties and obligations pursuant to this project and agreement.

COVENANT AGAINST GRATUITIES: The contractor warrants that it has not offered or given gratuities (in the form of entertainment, gifts or otherwise) to any official or employee of HARBOR TRANSIT with a view toward securing favorable treatment in the awarding, amending, or evaluating this project and agreement.

ASSIGNABILITY RIGHTS: The contractor shall not assign this contract – wholly or in part – without the written consent of HARBOR TRANSIT. No assignment shall relieve the contractor of any obligations under the contract.

LIABILITY INSURANCE: The contractor shall maintain such insurance as will protect it from claims under Worker's Compensation Acts and other employee benefits acts, from claims for damages because of bodily injury, including death, to its employees and all others and from claims for damages to property; any and all of which may arise out of result from the contractor's operations under this agreement, or from any subcontractor or anyone directly or indirectly employed by either or them. Proposers shall provide proof of insurance with the submission of their proposal.

LICENSING & PERMITTING: The contractor shall be licensed. Additionally, the contractor awarded the project will be required to file any permitting, as required, for this project.

CONTRACT TERMS: The contract between HARBOR TRANSIT and the contractor shall become effective upon signing and shall remain in force until at which time the contract has expired, or until notice of termination in writing is given by the other party as provided herein. HARBOR TRANSIT reserves the right to terminate contract at any time if successful bidder fails to meet requirements stated in this proposal.

The contract shall terminate absolutely and without further obligation at such time as appropriated and otherwise unobligated funds are no longer available to satisfy the obligations under this contract.

WRITTEN STANDARDS OF CONDUCT: HARBOR TRANSIT employees, officers, agents, immediate family members and committee or Board members are prohibited from: participating in the selection, award, or administration of a contact supported by FTA funds if a conflict of interest, real or apparent is involved; and soliciting or accepting gifts, gratuities, favors or anything of consequential value from current or potential contractors or parties to sub agreements that could influence purchasing decisions. HARBOR TRANSIT employees or agents with a potential conflict of interest shall remove themselves from the procurement in question.

TAXES: HARBOR TRANSIT is exempt from all federal excise tax and state and local sales, use and fuel; Seller certifies any such taxes are not included in the prices shown her in; however, the contractor shall pay all taxes required by law. HARBOR TRANSIT cannot exempt others from tax.

COMPLIANCE WITH LAWS: The contractor will comply with all State, Federal, and local laws and regulations.

CANCELLATION FOR CAUSE: If either party shall refuse, fail or be unable to perform or observe any of the terms or conditions of the contract for any reason, then the party claiming such failure shall give the other party a written notice of such breach. If, within thirty (30) days from such notice, the failure has not been corrected, the injured party may cancel the contract effective thirty (30) days after notice of cancellation.

HARBOR TRANSIT reserves the right to terminate the contract immediately in the event that the contractor discontinues or abandons operations; is adjudged bankrupt, or is reorganized under any bankruptcy law; or fails to keep in force any required insurance policies or bonds.

Failure of the contractor to comply with any section or part of the contract will be considered grounds for immediate termination of the contract by HARBOR TRANSIT without penalty to HARBOR TRANSIT. HARBOR TRANSIT shall pay for services rendered up to the point of termination. Notwithstanding anything to the contrary contained in the contract between HARBOR TRANSIT and the successful Bidder, HARBOR TRANSIT may, without prejudice to any other rights it may have, terminate the contract for convenience and without cause, by giving thirty (30) days written notice to the successful contractor. If the termination clause is used by HARBOR TRANSIT, the successful contractor will be paid by HARBOR TRANSIT for all scheduled work completed satisfactorily by the successful contractor up to the termination date set forth in the written termination notice.

CONDITION OF MATERIALS: It is understood and agreed that any materials delivered to or acquired by HARBOR TRANSIT shall be new, of latest design, and in first quality condition, unless specified otherwise in this IFB.

REJECTION OF SUBMISSIONS/CANCELLATION OF INVITATION FOR BIDS: HARBOR TRANSIT reserves the right to reject any or all proposals, to waive any irregularity or informality in a proposal, and to accept or reject any item or combination of items, when to do so would be to the advantage of HARBOR TRANSIT. It is also within the rights of HARBOR TRANSIT to reject proposals that do not contain all elements and

information requested in this document. HARBOR TRANSIT reserves the right to cancel this IFB at any time. HARBOR TRANSIT will not be liable for any cost/losses incurred by the bidders throughout this process, including reimbursement for any costs for the preparation of proposals in response to this IFB.

DISADVANTAGE BUSINESS ENTERPRISE (DBE), EEO AND NON-DISCRIMINATION: HARBOR TRANSIT seeks and encourages DBE participation on projects and contracts that use federal funds that have an established DBE goal. HARBOR TRANSIT is an Equal Opportunity Employer, and does not discriminate on the basis of race, religion, color, sex, national origin, age, or disability. Bidders are required to disclose any sub-contracts for this project that will be completed by certified DBE firms.

WRITTEN PROTEST PROCEDURES: A written protest must clearly articulate the procedure or decision being protested and the reason(s) for the protest. Any interested party may file a protest with HARBOR TRANSIT upon one or more of the following grounds: (1) HARBOR TRANSIT has failed to comply with applicable Federal or State law; (2) HARBOR TRANSIT has failed to comply with its procurement procedures; (3) HARBOR TRANSIT has failed to comply with the terms of this solicitation; (4) HARBOR TRANSIT has issued improperly restrictive or discriminatory specifications.

Bid protests must be made in writing (electronical submission of protests will not be accepted) and submitted to:

Harbor Transit
440 North Ferry Street
Grand Haven, Michigan 49417

All protests must be filed within ten (10) business days of HARBOR TRANSIT's decision. The Transportation Director or designee will review the written protest and provide a written response to the protestor.

The protestor can appeal HARBOR TRANSIT's decision/response to HARBOR TRANSIT, provided that the appeal is filed with the Transportation Director or designee within ten (10) business days of HARBOR TRANSIT's decision.

In the event of an appeal, HARBOR TRANSIT will make the final decision on the protest. All protests will be forwarded to the Federal Transit Administration for its information.

PROJECT COORDINATION: The contractor shall employ and assign only qualified and competent personnel to perform any service or task involved in this project. The contractor shall designate one such person as a Project Manager, and the Project manager shall be deemed to be the contractor's authorized representative, who shall be authorized to receive and accept any and all communications from HARBOR TRANSIT. HARBOR TRANSIT shall name a Project Manager who shall be authorized to generate, receive and accept communication as an authorized representative of HARBOR TRANSIT. The contractor hereby agrees to replace any personnel or sub-contractor, at no cost or penalty to HARBOR TRANSIT, if HARBOR TRANSIT reasonably determines that the performance of any sub-contractor or personnel is unsatisfactory.

ACCURACY OF WORK: The contractor shall be responsible for the accuracy of the work performed and shall promptly correct its errors and omissions without additional compensation. Acceptance of the work by HARBOR TRANSIT will not relieve the contractor of the responsibility for subsequent correction of errors, the clarification of any ambiguities, or the costs associated with any additional work caused by negligent acts, errors, or omissions by the contractor or latent defects in the products sold by the contractor.

APPROPRIATION OF FUNDS: The initial contract and any continuation contract(s) shall terminate immediately and absolutely at any such time as there are no appropriated and otherwise unencumbered funds available to satisfy HARBOR TRANSIT's obligations under said contract(s).

DRUG-FREE WORKPLACE: By submission of a Proposal, the contractor certifies that the provisions "Drug-free Workplace Act", have been complied with in full. The contractor further certifies that:

1. A drug-free workplace will be provided for the contractor's employees during performance of the contract; and

2. Each contractor who hires a sub-contractor to work in a drug-free workplace shall secure from that sub-contractor the following written certification:

3. As part of the subcontracting agreement with (contractor's name), (Sub-contractor's name) certifies to the contractor that a drug-free workplace will be provided for the sub-contractor's employees during the performance of this Contract pursuant to Paragraph (7) of Sub-section (b) of Code Section 50-24-3.

4. The Contractor further certifies that he will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the Contract.

PAYMENT TERMS: Payment shall be made monthly, or at the end of each project, within 30 days of the submittal of a correct invoice for goods received or work performed. If applicable, expenses shall be billed at cost without markup, and must be supported by actual receipts. Mileage and per diem rates, if applicable, shall not exceed the federal rates. Proposers may suggest other payment terms for consideration. Under no circumstances will payment be advanced prior to work or services provided.

PROMPT PAYMENT: 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 HARBOR TRANSIT. 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 HARBOR TRANSIT. This clause applies to both DBE and non-DBE subcontracts.

Additionally, the prime contractor is required to maintain records and documents of payment to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for HARBOR TRANSIT's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by HARBOR TRANSIT or DOT. This clause applies to both DBE and non-DBE subcontracts.

Failure of the contractor to comply with this requirement is cause for breach of contract, resulting in the subcontractor being paid directly and the amount deducted from the retainage owed to the prime contractor.

IFB CONSTITUTES BINDING CONTRACT: The specifications, requirements and terms and conditions contained in this IFB will constitute a binding contract between the Proposer and HARBOR TRANSIT upon

the acceptance of the Proposal by HARBOR TRANSIT. Any changes to the terms or requirements of this Contract must be documented in the Award of Contract/Notice to Proceed.

SECTION 5

FEDERAL TRANSIT ADMINISTRATION REQUIRED CLAUSES

FLY AMERICA REQUIREMENTS
49 USC 40118
41 CFR Part 301-10

Applicability to Contracts

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

Flow Down Requirements

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

Model Clause/Language

The relevant statutes and regulations do not mandate any specified clause or language. FTA proposes the following language.

Fly America Requirements

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

CARGO PREFERENCE REQUIREMENTS
46 USC 55305
46 CFR Part 381

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

The MARAD regulations at 46 CFR 381.7 contain suggested contract clauses. The following language is proffered by FTA.

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

ENERGY CONSERVATION REQUIREMENTS

42 USC 6321 et seq.
49 CFR Part 622, subpart C

Applicability to Contracts

The Energy Policy and Conservation requirements are applicable to all contracts.

Energy Conservation - The Recipient agrees to, and assures that its subrecipients, if any, will comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6201 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance as required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. part 622, subpart C.

Flow Down

These requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Model Clause/Language

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. Recipients can draw on the following language for inclusion in their federally funded procurements.

CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

33 U.S.C. 1251

Applicability to Contracts

The Clean Air and Clean Water Act requirements apply to each contract and subcontract exceeding $150,000. Each contract and subcontract must contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Flow Down

The Clean Air Act and Federal Water Pollution Control Act requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Model Clause/Language

Recipients can draw on the following language for inclusion in their federally funded procurements.

The Contractor agrees:

1) It will not use any violating facilities;

2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"

3) It will report violations of use of prohibited facilities to FTA; and

4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401-7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

ACCESS TO RECORDS AND REPORTS

49 USC 5325(g)
2 CFR 200.333
49 CFR 633

Applicability to Contracts

The record keeping and access requirements apply to all contracts funded in whole or in part with FTA funds. Under 49 U.S.C. § 5325(g), FTA has the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

Flow Down

The record keeping and access requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Model Clause/Language

There is no required language for record keeping and access requirements. Recipients can draw on the following language for inclusion in their federally funded procurements.

Access to Records and Reports

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

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

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

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

FEDERAL CHANGES

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

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

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

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

RECYCLED PRODUCTS

42 U.S.C. 6962
40 CFR Part 247
2 CFR part 200.322

Applicability to Contracts
The Resource Conservation and Recovery Act, as amended, (42 U.S.C. § 6962 *et seq.),* requires States and local governmental authorities to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. Recipients are required to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000.

Flow Down
These requirements extend to all third-party contractors and their contracts at every tier and sub-recipients and their subcontracts at every tier where the value of an EPA designated item exceeds $10,000.

Model Clause/Language
There is no required language for preference for recycled products. Recipients can draw on the following language for inclusion in their federally funded procurements.

Recovered Materials

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

The No Obligation clause applies to all third party contracts that are federally funded.

Flow Down

The No Obligation clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Model Clause/Language

There is no required language for the No Obligations clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

No Federal Government Obligation to Third Parties.

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

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

49 USC 5323(1) (1)
31 USC 3801-3812
18 USC 1001
49 CFR Part 31

Applicability to Contracts

The Program Fraud clause applies to all third-party contracts that are federally funded.

Flow Down

The Program Fraud clause extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Model Clause/Language

There is no required language for the Program Fraud clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

Program Fraud and False or Fraudulent Statements or Related Acts

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

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

TERMINATION

2 CFR 200.339
2 CFR part 200, Appendix II (B)

Applicability to Contracts

All contracts in excess of $10,000 must address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement.

Flow Down

For all contracts in excess of $10,000, the Termination clause extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Model Clause/Language

There is no required language for the Terminations clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

Termination for Convenience (General Provision)

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

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

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the AGENCY may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the AGENCY that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the AGENCY, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

Opportunity to Cure (General Provision)

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

If Contractor fails to remedy to AGENCY'S satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from AGENCY setting forth the nature of said breach or default, AGENCY shall have the

right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude AGENCY from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach

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

Termination for Convenience (Professional or Transit Service Contracts)

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

Termination for Default (Supplies and Service)

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

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

Termination for Default (Transportation Services)

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

If this contract is terminated while the Contractor has possession of AGENCY goods, the Contractor shall, upon direction of the AGENCY, protect and preserve the goods until surrendered to the AGENCY or its agent. The Contractor and AGENCY shall agree on payment for the

preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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

Termination for Default (Construction)

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

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

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of AGENCY, acts of another contractor in the performance of a contract with AGENCY, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. The Contractor, within [10] days from the beginning of any delay, notifies AGENCY in writing of the causes of delay. If, in the judgment of AGENCY, the delay is excusable, the time for completing the work shall be extended. The judgment of AGENCY shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract.

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

Termination for Convenience or Default (Architect and Engineering)

The AGENCY may terminate this contract in whole or in part, for the AGENCY'S convenience or because of the failure of the Contractor to fulfill the contract obligations. The AGENCY shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1)

immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the AGENCY 's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. AGENCY has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

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

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

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

Termination for Convenience or Default (Cost-Type Contracts)

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

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

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

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

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

Background and Applicability

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

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

Flow Down

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

Model Clause/Language

There is no required language for the Debarment and Suspension clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

Debarment, Suspension, Ineligibility and Voluntary Exclusion

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

in this federally funded contract and are not presently declared by any Federal department or agency to be:

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

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

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

CIVIL RIGHTS LAWS AND REGULATIONS

Applicability to Contracts

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

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

2. Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 *etseq.* and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.

3. Nondiscrimination on the Basis of Age. The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 *etseq.,* and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 *et seq.,* and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

4. Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 *et seq.,* prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

Flow Down

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

Model Clause/Language

Every federally funded contract must include an Equal Opportunity clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

Civil Rights and Equal Opportunity

The AGENCY is an Equal Opportunity Employer. As such, the AGENCY agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the AGENCY agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000 *et seq.,* and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.,* U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.,* the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.,* and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

VIOLATION AND BREACH OF CONTRACT

2 CFR 200.326
2 CFR part 200, Appendix II (A)

Applicability to Contracts

All contracts in excess of the Simplified Acquisition Threshold (currently set at $150,000) shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Flow Down

The Violations and Breach of Contracts clause flow down to all third-party contractors and their contracts at every tier.

Model Clauses/Language

FTA does not prescribe the form or content of such provisions. The provisions developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts. Recipients can draw on these examples for inclusion in their federally funded procurements.

Rights and Remedies of the AGENCY

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

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;

2. The right to cancel this Contract as to any or all of the work yet to be performed;

3. The right to specific performance, an injunction or any other appropriate equitable remedy; and

4. The right to money damages.

For purposes of this Contract, breach shall include [AGENCY to define, if applicable].

Rights and Remedies of Contractor

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

Remedies

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

Disputes

Example 1: Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of AGENCY'S [title of employee]. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide be the decision.

Example 2: The AGENCY and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the AGENCY and the Contractor's organization.

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

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

Performance during Dispute

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

Claims for Damages

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

Remedies

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

Rights and Remedies

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

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

Background and Applicability

The Disadvantaged Business Enterprise (DBE) program applies to FTA recipients receiving planning, capital and/or operating assistance that will award prime contracts (excluding transit vehicle purchases) exceeding $250,000 in FTA funds in a Federal fiscal year. All FTA recipients above this threshold must submit a DBE program and overall triennial goal for DBE participation. The overall goal reflects the anticipated amount of DBE participation on DOT-assisted contracts. As part of its DBE program, FTA recipients must require that each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA assisted transit vehicle procurements, certify that it has complied with the requirements of 49 C.F.R. § 26.49. Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved at the time of solicitation, are eligible to bid.

FTA recipients must meet the maximum feasible portion of their overall goal using race-neutral methods. Where appropriate, however, recipients are responsible for establishing DBE contract goals on individual DOT-assisted contracts. FTA recipients may use contract goals only on those

DOT-assisted contracts that have subcontracting responsibilities. *See* 49 C.F.R. § 26.51(e). Furthermore, while FTA recipients are not required to set a contract goal on every DOT-assisted contract, they are responsible for achieving their overall program goals by administering their DBE program in good faith.

FTA recipients and third party contractors can obtain information about the DBE program at the following website locations:

Federal Transit Administration website, Disadvantaged Business Enterprise:

www.transit.dot.gov/dbe

Department of Transportation website, Disadvantaged Business Enterprise Program:

www.transportation.gov/civil-rights/disadvantaged-business-enterprise

Flow Down

The DBE contracting requirements flow down to all third-party contractors and their contracts at every tier. It is the recipient's and prime contractor's responsibility to ensure the DBE requirements are applied across the board to all subrecipients/contractors/subcontractors. Should a subcontractor fail to comply with the DBE regulations, FTA would look to the recipient to make sure it intervenes to monitor compliance. The onus for compliance is on the recipient.

Clause Language

For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

> The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT- assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
>
> (1) Withholding monthly progress payments;
>
> (2) Assessing sanctions;
>
> (3) Liquidated damages; and/or
>
> (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

As an additional resource, recipients can draw on the following language for inclusion in their federally funded procurements.

Overview

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

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;

2. Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;

4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE's;

5. Help remove barriers to the participation of DBEs in DOT assisted contracts;

6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and

7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

This Contract is subject to 49 C.F.R. part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. The AGENCY shall make all determinations with regard to whether or not a Bidder/Offeror is in compliance with the requirements stated herein. In assessing compliance, the AGENCY may consider during its review of the Bidder/Offeror's submission package, the Bidder/Offeror's documented history of non- compliance with DBE requirements on previous contracts with the AGENCY.

Contract Assurance

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

DBE Participation

For the purpose of this Contract, the AGENCY will accept only DBE's who are:

1. Certified, at the time of bid opening or proposal evaluation, by the *[certifying agency or the Unified Certification Program (UCP)];* or

2. An out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an agency whose DBE certification process has received FTA approval; or

3. Certified by another agency approved by the AGENCY.

DBE Participation Goal

The DBE participation goal for this Contract is set at *NO GOAL %.* This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling **not less than** *NO GOAL %* of the total Contract price. Failure to meet the stated goal at the time of proposal submission may render the Bidder/Offeror non-responsive.

Proposed Submission

Each Bidder/Offeror, as part of its submission, shall supply the following information:

1. A completed **DBE Utilization Form** (see below) that indicates the percentage and dollar value of the total bid/contract amount to be supplied by Disadvantaged Business Enterprises under this Contract.

2. A list of those qualified DBE's with whom the Bidder/Offeror intends to contract for the performance of portions of the work under the Contract, the agreed price to be paid to each DBE for work, the Contract items or parts to be performed by each DBE, a proposed timetable for the performance or delivery of the Contract item, and other information as required by the **DBE Participation Schedule** (see below). No work shall be included in the Schedule that the Bidder/Offeror has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE. If awarded the Contract, the Bidder/Offeror may not deviate from the DBE Participation Schedule submitted in response to the bid. Any subsequent changes and/or substitutions of DBE firms will require review and written approval by the AGENCY.

3. An original **DBE Letter of Intent** (see below) from each DBE listed in the **DBE Participation Schedule.**

4. An original **DBE Affidavit** (see below) from each DBE stating that there has not been any change in its status since the date of its last certification.

Good Faith Efforts

If the Bidder/Offeror is unable to meet the goal set forth above (DBE Participation Goal), the AGENCY will consider the Bidder/Offeror's documented good faith efforts to meet the goal in determining responsiveness. The types of actions that the AGENCY will consider as part of the Bidder/Offeror's good faith efforts include, but are not limited to, the following:

1. Documented communication with the AGENCY'S DBE Coordinator (questions of IFB or IFB requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion);
2. Pre-bid meeting attendance. At the pre-bid meeting, the AGENCY generally informs potential Bidder/Offeror's of DBE subcontracting opportunities;
3. The Bidder/Offeror's own solicitations to obtain DBE involvement in general circulation media, trade association publication, minority-focus media and other reasonable and available means within sufficient time to allow DBEs to respond to the solicitation;
4. Written notification to DBE's encouraging participation in the proposed Contract; and
5. Efforts made to identify specific portions of the work that might be performed by DBE's.

The Bidder/Offeror shall provide the following details, at a minimum, of the specific efforts it made to negotiate in good faith with DBE's for elements of the Contract:

1. The names, addresses, and telephone numbers of DBE's that were contacted;
2. A description of the information provided to targeted DBE's regarding the specifications and bid proposals for portions of the work;
3. Efforts made to assist DBE's contacted in obtaining bonding or insurance required by the Bidder or the Authority.

Further, the documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted when a non-DBE subcontractor was selected over a DBE for work on the contract. 49 C.F.R. § 26.53(b) (2) (VI). In determining whether a Bidder has made good faith efforts, the Authority may take into account the performance of other Bidders in meeting the Contract goals. For example, if the apparent successful Bidder failed to meet the goal, but

meets or exceeds the average DBE participation obtained by other Bidders, the Authority may view this as evidence of the Bidder having made good faith efforts.

Administrative Reconsideration

Within five (5) business days of being informed by the AGENCY that it is not responsive or responsible because it has not documented sufficient good faith efforts, the Bidder/Offeror may request administrative reconsideration. The Bidder should make this request in writing to the AGENCY'S *[Contact Name].* The *[Contact Name]* will forward the Bidder/Offeror's request to a reconsideration official who will not have played any role in the original determination that the Bidder/Offeror did not document sufficient good faith efforts.

As part of this reconsideration, the Bidder/Offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Offeror will have the opportunity to meet in person with the assigned reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The AGENCY will send the Bidder/Offeror a written decision on its reconsideration, explaining the basis for finding that the Bidder/Offeror did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Termination of DBE Subcontractor

The Contractor shall not terminate the DBE subcontractor(s) listed in the **DBE Participation Schedule** (see below) without the AGENCY'S prior written consent. The AGENCY may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the reason for the request. The Contractor shall give the DBE five days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE and immediately notify the AGENCY in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement. Failure to comply with these requirements will be in accordance with Section 8 below (Sanctions for Violations).

Continued Compliance

The AGENCY shall monitor the Contractor's DBE compliance during the life of the Contract. In the event this procurement exceeds ninety (90) days, **it will be the responsibility of the Contractor to submit quarterly written reports to the AGENCY that** summarize the total DBE value for this Contract. These reports shall provide the following details:

- DBE utilization established for the Contract;
- Total value of expenditures with DBE firms for the quarter;
- The value of expenditures with each DBE firm for the quarter by race and gender;

- Total value of expenditures with DBE firms from inception of the Contract; and
- The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

Reports and other correspondence must be submitted to the DBE Coordinator with copies provided to the *[Agency Name]* and *[Agency Name2].* Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful Bidder/Offeror shall permit:

- The AGENCY to have access to necessary records to examine information as the AGENCY deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder/Offeror and other DBE parties entered into during the life of the Contract.

- The authorized representative(s) of the AGENCY, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.

- All data/record(s) pertaining to DBE shall be maintained as stated in Section [insert reference to record keeping requirements for the Project.]

Sanctions for Violations

If at any time the AGENCY has reason to believe that the Contractor is in violation of its obligations under this Agreement or has otherwise failed to comply with terms of this Section, the AGENCY may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

- Suspension of any payment or part due the Contractor until such time as the issues concerning the Contractor's compliance are resolved; and

- Termination or cancellation of the Contract, in whole or in part, unless the successful Contractor is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS
FTA Circular 4220.1F

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Flow Down

The incorporation of FTA terms has unlimited flow down.

Model Clause/Language

FTA has developed the following incorporation of terms language:

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

SAFE OPERATION OF MOTOR VEHICLES

23 USC 402
Executive Order No. 13043
Executive Order No. 13513
US DOT Order No. 3902.10

Applicability to Contracts

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

Flow Down Requirements

The Safe Operation of Motor Vehicles requirements flow down to all third-party contractors at every tier.

Model Clause/Language

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

Safe Operation of Motor Vehicles

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles,

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

Distracted Driving

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

PRIVACY ACT

5 USC 552

Applicability to Contracts

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

Flow Down

The Federal Privacy Act requirements flow down to each third-party contractor and their contracts at every tier.

Model Clause/Language

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

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

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

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

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

ACCESS REQUIREMENT FOR PERSONS WITH DISABILITIES (ADA)

49 USC 5301

29 USC 794
42 USC 12101

ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES (ADA)

The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The Contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *etseq.,* which requires the provision of accessible facilities and services, and with the following Federal regulations, including any amendments thereto:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

(3) Joint U.S. Architectural and Transportation Barriers Compliance Board/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;

(4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

(5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

(6) U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

(7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

(8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and

(9) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and any implementing requirements FTA may issue.

SECTION 6

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

As required by U.S. Department of Transportation regulations on Government and Suspension at 49 CFR 29.510, the Contractor certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction; violation of Federal or state anti-trust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

(3) Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, state or local)) with the commission of any of the offenses listed in paragraph (2) of this certification.

(4) Have not within three-year period preceding this contract had one or more public transactions (Federal, state, or local) terminated for cause of default.

The contractor certifies that if it becomes aware of any later information that contradicts the statements of paragraphs (1) through (4) above, it will promptly inform FTA. Should the contractor be unable to certify to the statements of paragraphs (1) through (4) above, it shall acknowledge on its signature page and provide a written explanation to FTA.

_____

Signature of Authorized Individual

_____

Title

SECTION 7

ACKNOWLEDGEMENT FORM FOR TERMS & CONDITIONS

AND REQUIRED FTA CLAUSES

I have received, read, understand and agree to comply with the Terms & Conditions and the Required FTA Clauses included in the Harbor Transit Multi-Modal Transportation System's Invitation for Bid (IFB)for **Purchase of Bulk Liquefied Petroleum Gas** that was issued October 3, 2022.

I understand that failure to acknowledge or comply with any of these terms, conditions, or requirements will deem our firm unresponsive to this IFB or result in our default of the contract after its execution.

Date:_____

Printed Name of Authorized Representative:

_____

Signature of Authorized Representative:

_____

Name of Firm:

_____

Address, City, State:

_____

SECTION 8

CERTIFICATION REGARDING LOBBYING

(Applies to all contracts and subcontracts of $100,000 or more at any tier under a Federal grant.)

As required by U.S. Department of Transportation regulations restricting lobbying at 31 U.S.C. 1352, 2 C.F.R. 200.450, 2 C.F.R. part 200 appendix II (J), 49 C.F.R. part 20, the undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, or an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

Signature of Contractor's Authorized Official_____

Name & Title of Contractor's Authorized_____

Date_____

SECTION 9

BID PROTEST PROCEDURES

OPERATING PROCEDURES

BID PROTEST PROCEDURES

Protests may be made by prospective bidders or proposers whose direct economic interest would be affected by award of a contract or by failure to award a contract. Harbor Transit will consider all protests requested in a timely manner regarding the award of a contract, whether submitted before or after an award. All protests are to be submitted in writing to:

Harbor Transit
440 North Ferry Street
Grand Haven, Michigan 49417
Attention: Director of Transportation

Protest submissions should be concise, logically arranged, and clearly state the grounds for protest. A protest must include at least the following information:

(a) Name, address, and telephone number of protester;
(b) Identification of contract solicitation number;
(c) A detailed statement of the legal and factual grounds of the protest, including copies of relevant documents; and
(d) A statement as to what relief is requested.

Protests must be submitted to Harbor Transit in accordance with these procedures and time requirements. The protest must be complete and contain all issues that are relevant to Bid or Proposal criteria.

SECTION 10

PRICE PROPOSAL FORM

PRICE PROPOSAL FORM

(This form must accompany your bid)
Liquefied Petroleum Gas (LPG)

Description of Material	Est. Gallons Per Contracted twelve (12) Month Period	Price/Gallon
LPG per specification	45,000	$_____

This price is guaranteed for a period of _____ months.

The undersigned certifies that he or she offers to furnish materials in strict accordance with the requirements of this bid including the Terms and Conditions, Specifications, Bid Form and has reviewed any questions and answers posted on the Harbor Transit website on or after Monday, October 4, 2021, and the prices quoted are correct. Please ensure that any and all additional fees are included in your price per gallon bid. This bid may not be withdrawn for a period of ninety (90) days from the due date noted above.

WARRANTY INFORMATION

Details:_____

_____

BIDDER INFORMATION

Company Name:_____

Address:_____

_____

Email Address:_____

Phone Number:_____

Printed Name of Authorized Representative:_____

Title:_____

Signature:_____

SECTION 11

CHECKLIST FOR BID SUBMISSION

SUBMITTAL CHECKLIST

Submittal to: Harbor Transit, 440 N. Ferry Street, Grand Haven, Michigan 49417.

Deadline: October 24, 2022 10:00 am (EDT) *(A bid will be automatically rejected if it is received after the stated deadline.)*

All forms/Certifications below MUST be completed and included when you submit your Bid Package:

- One (1) Original and Two (2) copies of the Bid Package
- Completed Price Proposal Page(s) (Signed)
- Business Organization Information
- Material/Product Specifications
- Three (3) references of similar service provided in the past 5 years
- Addendum(s) (as issued)
- Debarment and Suspension Certification for Prospective Contractors
- Submittal Checklist

See Sections 1 and 2 for more detailed information on bid submission and format.

SUBMITTED BID CONTAINS ALL COMPLETED FORMS/CERTIFICATIONS AS LISTED ABOVE

Authorized Signature_____

Date_____

SECTION 12

NO BID REPLY FORM

BULK LIQUEFIED PETROLEUM GAS

To assist us in obtaining good competition on our Invitation for Bids, we ask that each firm that has received an invitation, but does not wish to propose, state their reason(s) below and return in a clearly marked envelope, or to procurement@harbortransit.org via email. If mailed, please include "ATT: LPG IFB on the outside of the envelope.

This information will not preclude receipt of future invitations unless you request removal from the Bidders' List by indicating below.

Unfortunately, we must offer a "No Bid" at this time because:

____1. We do not wish to participate in the bid process.

____2. We do not wish to propose under the terms and conditions of the Invitation for bids document. Our objections are:

_____

_____

____3. We do not feel we can be competitive.

____4. We do not provide the services on which Bids are requested.

____5. Other: _____

_____

___We wish to remain on the Bidders' list for these services.

___We wish to be removed from the Bidders' list for these services.

_____ _____

FIRM NAME SIGNATURE

HARBOR TRANSIT MULTI-MODAL TRANSPORTATION SYSTEM

CONTRACT AGREEMENT

This Agreement made this ___ day of _____, 2022, between Harbor Transit Multi-Modal Transportation System; herein called the "Authority" and/or "Harbor Transit: and _____ herein called the "Contractor" and/or "Seller".

In consideration of the mutual promises and agreements hereinafter set forth, the parties agree to undertake, carry out and perform this Contract in accordance with the terms and conditions as set forth herein, and as follows:

1. The Contract Documents:
   The Contract Documents consist of this Agreement, the complete "Invitation for Bids", and the "Bidder Proposal". These form the Contract and all are fully a part of the Contract as if attached to this Agreement or reported herein.

2. The Performance:
   The Contractor shall furnish pursuant to the terms and conditions of this Contract labor and material listed in the attached specifications.

3. Time of Commencement and Completion:
   The Contractor shall perform under this Contract from the date hereof until the 30th day of November 2022 or a later date if extended by mutual consent of the parties.

4. Independent Contractor:
   The Contractor is employed by Harbor Transit as an Independent Contractor and has and retains the right to exercise full control and supervision of the services including compliance with Social Security, withholding and all other regulations governing such matters. The Contractor agrees to indemnify, defend and save harmless the Authority, its agents, officers and members of the Board of Harbor Transit Multi-Modal Transportation System against any and all loss, damage or expense which Harbor Transit may suffer by reason of liability imposed by law upon Harbor Transit or Contractor for damages because of bodily injury, including death at any time resulting there from sustained by any person or persons, or on account of damage to property due to the fault of the Contractor, its sub-contractors or their employees, agents or any other person under the direct or indirect control or supervision of the Contractor.

5. Contractor's Financial Responsibilities:
   Any costs due to the fault of the Contractor, sub-contractor, or anyone directly employed by them either for making good of defective work, disposal of material wrongly supplied, making good of damage to property, or excess costs from material or labor, or otherwise shall be borne by this Contractor, and Harbor Transit may withhold money due the Contractor to cover any such costs.

6. Assignment:
   The Contractor shall not assign or transfer any interest in this Agreement or delegate its performance of duties except on prior written approval of the Authority, which approval shall not be unreasonably withheld. Consent to assign, transfer or delegate any interest or performance

of this Contract shall not be construed to relieve the Contractor of any responsibility for the fulfillment of this Agreement.

7. Payments:
The Authority shall pay the Contractor for the performance of work in current funds per price stated in the "Bidders Proposal" upon completion and acceptance by Harbor Transit. The Contractor shall invoice each item against a Harbor Transit Purchase Order and all invoices for the calendar month shall be payable by the fifteenth day of the following month.

No payment will be made to the Contractor for material not delivered to Harbor Transit's premises, unless otherwise agreed to in writing by Harbor Transit.

Neither payment made under the Contract or used by Harbor Transit for labor and material provided shall be evidence of performance of the Contract, either in whole or in part, nor shall such payment, final or otherwise, be construed to relieve the Contractor from its obligation to make good any defects arising or discovered in its performance within the period of its guarantee, nor shall Harbor Transit be deemed to waive any specific obligation the Contractor may assume as to its performance.

8. Testing:
At any time if it is determined by an independent testing firm analysis that equipment delivered and installed is substandard, Harbor Transit reserves the right to discontinue shipments and shall not be obligated to pay for such substandard shipment already delivered. The Contractor agrees to pay all costs incurred by Harbor Transit to provide test on equipment delivered and installed found not meet the specifications.

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

10. Termination for Default:
Harbor Transit reserves the right to cancel all or any part of the work covered by this Agreement and/or Purchase Order if Seller does not make deliveries as specified in the schedules or fails to make progress as to endanger performance of the work and does not correct such failure after receipt of written notice from Harbor Transit specifying such failure, or if Seller breaches any of the terms hereof, including the warrants of Seller. Should cancellation be made for cause, Harbor Transit reserves the right to purchase elsewhere and if additional costs are incurred, such costs are to be at the Seller's expense. The Seller shall be liable for any other damages suffered by Harbor Transit as a result of any breach by the Seller in the performance of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives, as of the day first above written.

VENDOR

_____

Title Date

WITNESS:

_____

HARBOR TRANSIT

_____

Board President Date

_____

Board Secretary Date