



Amendment of Solicitation

Date of Issuance: 5/9/2023

Solicitation No. 3450005018

Requisition No. 23-TP-0193

Amendment No. 1

Hour and date specified for receipt of offers is changed: No Yes, to: _____ 3:00 PM CST

Pursuant to OAC 260:115-7-30(d), this document shall serve as official notice of amendment to the solicitation identified above. Such notice is being provided to all suppliers to which the original solicitation was sent.

Suppliers submitting bids or quotations shall acknowledge receipt of this solicitation amendment prior to the hour and date specified in the solicitation as follows:

- (1) Sign and return a copy of this amendment with the solicitation response being submitted; or,
- (2) If the supplier has already submitted a response, this acknowledgement must be signed and returned prior to the solicitation deadline. All amendment acknowledgements submitted separately shall have the solicitation number and bid opening date printed clearly on the front of the envelope.

ISSUED BY and RETURN TO:

U.S. Postal Delivery:

CRYSTAL WILLIAMS
Contracting Officer

or

Personal or Common Carrier Delivery:

405 – 588-3397
Phone Number

CJWILLIAMS@ODOT.ORG
E-Mail Address

,OK -

Description of Amendment:

a. This is to incorporate the following:

This amendment is to correct the evaluation criteria, answers to questions received and to include FTA Contract Clause Requirements. Please see attached. Please return signed with solicitation response.

b. All other terms and conditions remain unchanged.

Supplier Company Name (PRINT)

Date

Authorized Representative Name (PRINT)

Title

Authorized Representative Signature

Questions and Answers

1. Q1. Please confirm if response is to address criteria D. Evaluation – D.1.0, in or in criteria F. Checklist. In Item F. Checklist there is reference to D.1.2.1; D.1.2.2; D.1.2.3; and D.1.2.4 to be included in the response, however these numbered criteria are not in the RFP.

D. EVALUATION

D.1. Evaluation Criteria

D.1.1. The RFP will be evaluated on the following criteria: compliance with specification, cost, qualification and experience.

D.1.2. To be considered for award, the Respondent must provide the following information on its experience:

D.1.2.1. Detailed summary (no more than 2 pages) describing its action plan;

D.1.2.2. Contact information for a former/current client and date of work for one (1) project of similar scope and size;

D.1.2.3. Respondent's organizational chart; and

D.1.2.4. Three (3) professional letters of recommendation.

2. Do you require a Cap Form 255 as part of the response? **NO**
3. Does ODOT anticipate this transit planning RFP to include FTA 5311 and 5310 Triennial Reviews?
If needed yes.
4. What does ODOT anticipate for the first priority task order?
We currently are not sure but whatever is needed pertaining FTA related services.
5. Line-item D.1.1.5, it states "documentation of a minimum of three (3) years of experience in repairing and maintaining projects of similar scope and size" on page 15. Can you explain or clarify what is meant by "repairing and maintaining"? **Has been Removed from solicitation**
6. Is there an incumbent for this project? If so, can you provide the name? **An Open Records Request needs to be submitted for this information.**
7. What is the budget of the contract? **We do not release the budget information.**

8. Exhibit B form, Attachment D6, Federal Highway Administration Contract Requirements should this be a Federal Transit Administration Contract Requirements form (page 16)? If so, will the correct form be forwarded? **No, FHA & FTA Contract requirements should be included.**
9. Is there a form or document to be submitted in reference to line-item D.1.1.6. Cost (page 15)? **Yes, The Solicitation Request is where you show Cost.**
10. Will ODOT share more information about some of the anticipated tasks or work to come out of this on-call? **It could be anything pertaining to FTA related services.**
11. What type of NEPA support does ODOT anticipate needing through this on-call?
We have subrecipients that receive federal funds for facility buildings and NEPA is part of the process when doing construction.
12. Is ODOT planning to select multiple teams for this on-call? **NO**
13. Does ODOT anticipate support for tribal transit programs? **YES**
14. Section B.6.2. states "... the DEPARTMENT will only accept billings for completed and accepted job sites." Would ODOT confirm that the selected consultant may invoice monthly for services provided in the prior month for payment as no job sites like a construction site appears within the requested scope? **Yes, invoices can be submitted monthly for services provided.**
15. Section B.12.3. states "The submitted Response is based upon the materials required by the Response Documents without exception." Given that this appears in the Special Provisions which control in conflict with the General Provisions, would ODOT confirm whether a proposer may include exceptions to general contract terms in its proposal for discussion upon selection such as suggested by A.12.2.?
A letter can be submitted for whichever contract terms you take exception to.
16. Are subconsultants required to complete any of the proposal exhibits/forms? If so, which forms?
NO

FTA CONTRACT CLAUSES – OPERATIONS/MANAGEMENT

A. No Federal Government Commitment or Liability to Third Parties

B.A.1. Except as the Federal Government expressly consents in writing, the Contractor agrees that:

B.A.1.1. The Federal Government does not and shall not have any commitment or liability related to the Underlying Agreement, to any Third Party Participant at any tier, or to any other person or entity that is not a party (FTA or the Contractor) to the Underlying Agreement, and

B.A.1.2. Notwithstanding that the Federal Government may have concurred in or approved any Solicitation or Third Party Agreement at any tier that may affect the Underlying Agreement, the Federal Government does not and shall not have any commitment or liability to any Third Party Participant or other entity or person that is not a party (FTA or the Contractor) to the Underlying Agreement.

B. False or Fraudulent Statements or Claims.

B.B.1. Civil Fraud. The Contractor acknowledges and agrees that:

B.B.1.1. Federal laws, regulations, and requirements apply to itself and its Underlying Agreement, including 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.

B.B.1.2. By executing the Underlying Agreement, the Contractor certifies and affirms to the Federal Government the truthfulness and accuracy of any claim, statement, submission, certification, assurance, affirmation, or representation that the Contractor provides to the Federal Government.

B.B.1.3. The Federal Government may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, and other applicable penalties if the Contractor presents, submits, or makes available any false, fictitious, or fraudulent information.

B.B.2. Criminal Fraud. The Contractor acknowledges that 49 U.S.C. § 5323(l)(1) authorizes the Federal Government to impose the penalties under 18 U.S.C. § 1001 if the Contractor provides a false, fictitious, or fraudulent claim, statement, submission, certification assurance, or representation in connection with a federal public transportation program under 49 U.S.C. chapter 53 or any other applicable federal law.

C. Access to Contractor and Third Party Participant Records.

B.C.1. The Contractor agrees and assures that each Subcontractor, if any, will agree to:

B.C.1.1. Provide, and require its Third Party Participants at each tier to provide, sufficient access to inspect and audit records and information related to its Award, the accompanying Underlying Agreement, and any Amendments thereto to the U.S. Secretary of Transportation or the Secretary’s duly authorized representatives, to the Comptroller General of the United States, and the Comptroller General’s duly authorized representatives, and to the Contractor and each of its Subcontractors,

B.C.1.2. Permit those individuals listed above to inspect all work and materials related to its Award, and to audit any information related to its Award under the control of the Contractor or Third Party Participant within books, records, accounts, or other locations, and

B.C.1.3. Otherwise comply with 49 U.S.C. § 5325(g), and federal access to records requirements as set forth in the applicable U.S. DOT Common Rules.

D. Federal Changes

B.D.1. The Contractor shall at all times comply with all applicable Federal regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement as amended or promulgated from time to time during the term of this contract.

E. Civil Rights Requirements

- B.E.1.** The Contractor agrees that it must comply with applicable federal civil rights laws, regulations, and requirements, and follow applicable federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Contractor or a federal program, including the Tribal Transit Program or the Indian Tribe Contractor, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service.
- B.E.2.** Nondiscrimination in Federal Public Transportation Programs. The Contractor agrees to, and assures that it and each Third Party Participant, will:
- B.E.2.1.** Prohibit discrimination on the basis of race, color, religion, national origin, sex (including gender identity), disability, or age.
- B.E.3.** Prohibit the:
- B.E.3.1.** Exclusion from participation in employment or a business opportunity for reasons identified in 49 U.S.C. § 5332,
- B.E.3.2.** Denial of program benefits in employment or a business opportunity identified in 49 U.S.C. § 5332, or
- B.E.3.3.** Discrimination identified in 49 U.S.C. § 5332, including discrimination in employment or a business opportunity identified in.
- B.E.4.** Follow:
- B.E.4.1.** The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Contractors," to the extent consistent with applicable federal laws, regulations, requirements, and guidance, and other applicable federal guidance that may be issued, but
- B.E.4.2.** FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its Underlying Agreement supported with federal assistance under the Tribal Transit Program.
- B.E.5.** Nondiscrimination – Title VI of the Civil Rights Act. The Contractor agrees to, and assures that each Third Party Participant, will:
- B.E.5.1.** Prohibit discrimination on the basis of race, color, or national origin,
- B.E.6.** Comply with:
- B.E.6.1.** Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq.,
- B.E.6.2.** U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and
- B.E.6.3.** Federal transit law, specifically 49 U.S.C. § 5332, and
- B.E.7.** Follow:
- B.E.7.1.** The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Contractors," to the extent consistent with applicable federal laws, regulations, requirements, and guidance,
- B.E.7.2.** U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and
- B.E.7.3.** All other applicable federal guidance that may be issued.
- B.E.8.** Equal Employment Opportunity.
- B.E.8.1.** Federal Requirements and Guidance. The Contractor agrees to, and assures that each Third Party Participant will, prohibit, discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin, and:
- B.E.8.2.** Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.,

- B.E.8.3.** Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity" September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs,
- B.E.8.4.** Comply with federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement,
- B.E.8.5.** FTA Circular 4704.1 "Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Contractors," and
- B.E.8.6.** Follow other federal guidance pertaining to EEO laws, regulations, and requirements, and prohibitions against discrimination on the basis of disability,
- B.E.8.7.** Specifics. The Contractor agrees to, and assures that each Third Party Participant will:
- B.E.8.8.** Prohibited Discrimination. Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their race, color, religion, national origin, disability, age, sexual orientation, gender identity, or status as a parent, as provided in Executive Order No. 11246 and by any later Executive Order that amends or supersedes it, and as specified by U.S. Department of Labor regulations,
- B.E.8.9.** Affirmative Action. Take affirmative action that includes, but is not limited to:
 - B.E.8.9.1. Recruitment advertising, recruitment, and employment,
 - B.E.8.9.2. Rates of pay and other forms of compensation,
 - B.E.8.9.3. Selection for training, including apprenticeship, and upgrading, and
 - B.E.8.9.4. Transfers, demotions, layoffs, and terminations, but
- B.E.8.10.** Indian Tribe. Recognize that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer," and

F. Incorporation Of Federal Transit Administration (FTA) Terms

- B.F.1.** 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 the most current FTA Circular 4220, 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 NCTD requests which would cause NCTD to be in violation of the FTA terms and conditions.

G. Energy Conservation

- B.G.1.** The Contractor agrees to, and assures that its Subcontractors, 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. § 6321 *et seq.*, and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. part 622, subpart C.

H. Right of the Federal Government to Terminate

- B.H.1.** Justification. After providing written notice to the Contractor, the Contractor agrees that the Federal Government may suspend, suspend then terminate, or terminate all or any part of the federal assistance for the Award if:
 - B.H.1.1.** The Contractor has failed to make reasonable progress implementing the Award,
 - B.H.1.2.** The Federal Government determines that continuing to provide federal assistance to support the Award does not adequately serve the purposes of the law authorizing the Award, or
 - B.H.1.3.** The Contractor has violated the terms of the Underlying Agreement, especially if that violation would endanger substantial performance of the Underlying Agreement.
- B.H.2.** Financial Implications. In general, termination of federal assistance for the Award will not invalidate obligations properly incurred before the termination date to the extent that the obligations cannot be

anceled. The Federal Government may recover the federal assistance it has provided for the Award, including the federal assistance for obligations properly incurred before the termination date if it determines that the Contractor has misused its federal assistance by failing to make adequate progress, failing to make appropriate use of the Project property, or failing to comply with the Underlying Agreement, and require the Contractor to refund the entire amount or a lesser amount, as the Federal Government may determine including obligations properly incurred before the termination date.

- B.H.3.** Expiration of the Period of Performance. Except for a Full Funding Grant Agreement, expiration of any period of performance established for the Award does not, by itself, constitute an expiration or termination of the Award; FTA may extend the period of performance to assure that each Formula Project or related activities and each Project or related activities funded with “no year” funds can receive FTA assistance to the extent FTA deems appropriate.

I. Debarment and Suspension

- B.I.1.** The Contractor agrees to the following:

B.I.1.1. It will comply with the following requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200.

B.I.1.2. It will not enter into any arrangement to participate in the development or implementation of the Underlying Agreement with any Third Party Participant that is debarred or suspended except as authorized by:

B.I.1.2.1. U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200,

B.I.1.2.2. U.S. OMB regulatory guidance, “Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180, including any amendments thereto,

B.I.1.2.3. Executive Orders No. 12549, “Uniform Suspension, Debarment or Exclusion of Participants from Procurement or Nonprocurement Activity,” October 13, 1994, 31 U.S.C. § 6101 note, as amended by Executive Order No. 12689, “Debarment and Suspension,” August 16, 1989, 31 U.S.C. § 6101 note, and

B.I.1.2.4. Other applicable federal laws, regulations, or guidance regarding participation with debarred or suspended Contractors or Third Party Participants.

B.I.1.3. It will review the U.S. GSA “System for Award Management – Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs,” <https://www.sam.gov>, if required by U.S. DOT regulations, 2 C.F.R. part 1200.

B.I.1.4. It will include, and require each Third Party Participant to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant:

B.I.1.4.1. Complies with federal debarment and suspension requirements, and

B.I.1.4.2. Reviews the SAM at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200.

B.I.1.5. If the Contractor suspends, debar, or takes any similar action against a Third Party Participant or individual, the Contractor will provide immediate written notice to the:

B.I.1.5.1. FTA Regional Counsel for the Region in which the Contractor is located or implements the Underlying Agreement,

B.I.1.5.2. FTA Headquarters Manager that administers the Grant or Cooperative Agreement, or

B.I.1.5.3. FTA Chief Counsel.

J. Disputes, Breaches, Defaults, or Other Litigation

- B.J.1.** FTA Interest. FTA has a vested interest in the settlement of any violation of federal law, regulation, or disagreement involving the Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.

- B.J.2.** Notification to FTA. If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the FTA Chief Counsel, or FTA Regional Counsel for the Region in which the Contractor is located. (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- B.J.3.** Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
- B.J.4.** If the Contractor has credible evidence that a Principal, Official, Employee, Agent, or Third Party Participant of the Contractor, or other person has submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 *et seq.*, or has committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal assistance, the Contractor must promptly notify the U.S. DOT Inspector General, in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Contractor is located.
- B.J.5.** Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Contractor may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Contractor receives FTA's prior written concurrence.
- B.J.6.** Enforcement. The Contractor must pursue its legal rights and remedies available under any third party agreement, or any federal, state, or local law or regulation.

K. Lobbying Restrictions

- B.K.1.** The Contractor agrees that neither it nor any Third Party Participant will use federal assistance to influence any officer or employee of a federal agency, member of Congress or an employee of a member of Congress, or officer or employee of Congress on matters that involve the Underlying Agreement, including any extension or modification, according to the following:
 - B.K.1.1.** Laws, Regulations, Requirements, and Guidance. This includes:
 - B.K.1.1.1. The Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended,
 - B.K.1.1.2. U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. part 20, to the extent consistent with 31 U.S.C. § 1352, as amended, and
 - B.K.1.1.3. Other applicable federal laws, regulations, requirements, and guidance prohibiting the use of federal assistance for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature, and
 - B.K.1.2.** Exception. If permitted by applicable federal law, regulations, requirements, or guidance, such lobbying activities described above may be undertaken through the Contractor's or SubContractor's proper official channels.

L. Clean Air Act

- B.L.1.** (42 U.S.C. §§ 7401 – 7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 – 1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award 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).

M. Clean Water

- B.M.1.** The Common Grant Rules specifically prohibit the use of facilities included in the EPA "List of Violating Facilities," in the performance of any third party contract at any tier exceeding \$100,000. The contractor must also comply with all applicable standards, orders, or regulations issued under

Section 508 of the Clean Water Act, as amended, 33 U.S.C. Section 1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. Sections 1251 through 1377.

N. Fly America

B.N.1. The air transportation requirements of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 – 301-10.143.

O. Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701 – 3708)

B.O.1. Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. part 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

P. Disadvantaged Business Enterprises

- B.P.1.** The Contractor acknowledges and understands that the statutory and regulatory provisions relating to disadvantaged business enterprises (DBE) differ significantly between FTA and FRA, including Section 1101(b) of the FAST Act (23 U.S.C. § 101 note) and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, both of which apply to FTA, but not to FRA.
- B.P.2.** FRA is not authorized to use FTA's DBE regulations, and consequently the Contractor agrees to comply with the statutory and regulatory DBE provisions that apply to federal assistance provided by FTA when using that federal assistance for purchases.
- B.P.3.** The Contractor agrees to use the "contracting with small and minority firms, women's business enterprise" provisions of the applicable U.S. DOT Common Rules.

Q. RECYCLED PRODUCTS

B.Q.1. 42 U.S.C. 6962

B.Q.2. 40 CFR Part 247

B.Q.3. Executive Order 12873

B.Q.4. Applicability to Contracts: The Recycled Products requirements apply to all contracts for items designated by the EPA, when the Contractor procures \$10,000 or more of one (1) of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds.

B.Q.5. Flow down Requirements: These requirements flow down to all Contractor and sub-Contractor tiers.

B.Q.6. Recovered Materials - The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. The Contractor agrees to comply with the U.S. Environmental Protection Agency (US EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 CFR part 247.

R. ADA ACCESS REQUIREMENTS**B.R.1.** 49 U.S.C. § 5301, 29 U.S.C. § 794, 42 U.S.C. § 12101**B.R.2.** Applicability to Contracts: The Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.**S. Public Transportation Employee Protective Arrangements.****B.S.1.** As a condition of award of federal assistance appropriated or made available for FTA programs involving public transportation operations, the Recipient agrees to comply and assures that each Third Party Participant will comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):**B.S.2.** (1) U.S. DOL Certification. When its Award, the accompanying Underlying Agreement, or any Amendments thereto involve public transportation operations and are supported with federal assistance appropriated or made available for 49 U.S.C. §§ 5307 – 5312, 5316, 5318, 5323(a)(1), 5323(b), 5323(d), 5328, 5337, 5338(b), or 5339, or former 49 U.S.C. §§ 5308, 5309, 5312, or other provisions of law as required by the Federal Government, U.S. DOL must provide a certification of employee protective arrangements before FTA may provide federal assistance for that Award. The Recipient agrees that the certification issued by U.S. DOL is a condition of the Underlying Agreement and that the Recipient must comply with its terms and conditions. 82**B.S.3.** (2) Special Warranty. When its Underlying Agreement involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The Recipient agrees that its U.S. DOL Special Warranty is a condition of the Underlying Agreement and the Recipient must comply with its terms and conditions.**B.S.4.** (3) Special Arrangements for Underlying Agreements for Federal Assistance Authorized under 49 U.S.C. § 5310. The Recipient agrees, and assures that any Third Party Participant providing public transportation operations will agree, that although pursuant to 49 U.S.C. § 5310, and former 49 U.S.C. §§ 5310 or 5317, FTA has determined that it was not “necessary or appropriate” to apply the conditions of 49 U.S.C. § 5333(b) to any Subrecipient participating in the program to provide public transportation for seniors (elderly individuals) and individuals with disabilities, FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate.**T. Charter Service.****B.T.1.** (a) Prohibitions. The Recipient agrees that neither it nor any Third Party Participant involved in the Award will engage in charter service, except as permitted under federal transit laws, specifically 49 U.S.C. § 5323(d), (g), and (r), FTA regulations, “Charter Service,” 49 CFR Part 604, any other federal Charter Service regulations, federal requirements, or federal guidance.**B.T.2.** (b) Exceptions. Apart from exceptions to the Charter Service restrictions in FTA’s Charter Service regulations, FTA has established the following additional exceptions to those restrictions: 88**B.T.2.1.** (1) FTA’s Charter Service restrictions do not apply to equipment or facilities supported with federal assistance appropriated or made available for 49 U.S.C. § 5307 to support a Job Access and Reverse Commute (JARC)- type Project or related activities that would have been eligible for assistance under repealed 49 U.S.C. § 5316 in effect in Fiscal Year 2012 or a previous fiscal year, provided that the Recipient uses that federal assistance for FTA program purposes only; and**B.T.2.2.** (2) FTA’s Charter Service restrictions do not apply to equipment or facilities supported with the federal assistance appropriated or made available for 49 U.S.C. § 5310 to support a New Freedom-type Project or related activities that would have been eligible for federal assistance under repealed 49 U.S.C. § 5317 in effect in Fiscal Year 2012 or a previous

fiscal year, provided the Recipient uses that federal assistance for FTA program purposes only.

- B.T.3.** (c) Violations. If it or any Third Party Participant engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures and remedies, including withholding an amount of federal assistance as provided in FTA's Charter Service regulations, 49 CFR Part 604, appendix D, or barring it or the Third Party Participant from receiving federal assistance provided in 49 U.S.C. chapter 53, 23 U.S.C. § 133, or 23 U.S.C. § 142.

U. School Bus Operations.

- B.U.1.** (a) Prohibitions. The Recipient agrees that neither it nor any Third Party Participant that is participating in its Award will engage in school bus operations exclusively for the transportation of students or school personnel in competition with private school bus operators, except as permitted by federal transit laws, 49 U.S.C. § 5323(f) or (g), FTA regulations, "School Bus Operations," 49 CFR Part 605, and any other applicable federal "School Bus Operations" laws, regulations, requirements, or applicable federal guidance.
- B.U.2.** (b) Violations. If a Recipient or any Third Party Participant has operated school bus service in violation of FTA's School Bus laws, regulations, or requirements, FTA may require the Recipient or Third Party Participant to take such remedial measures as FTA considers appropriate, or bar the Recipient or Third Party Participant from receiving federal transit assistance.

V. Substance Abuse.

- B.V.1.** (a) Drug-Free Workplace. The Recipient agrees to: (1) Comply with the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. § 8103, et seq.; (2) Comply with U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 49 CFR Part 32; and (3) Follow and facilitate compliance with U.S. OMB regulatory guidance, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 2 CFR Part 182, particularly where the U.S. OMB regulatory guidance supersedes comparable provisions of 49 CFR Part 32.
- B.V.2.** (b) Alcohol Misuse and Prohibited Drug Use.
- B.V.3.** (1) Requirements. The Recipient agrees to comply and assures that its Third Party Participants will comply with:
- B.V.3.1.** (i) Federal transit laws, specifically 49 U.S.C. § 5331;
- B.V.3.2.** (ii) FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655; and
- B.V.3.3.** (iii) Applicable provisions of U.S. DOT regulations, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," 49 CFR Part 40.
- B.V.4.** (2) Remedies for Non-Compliance. The Recipient agrees that if FTA determines that the Recipient or a Third Party Participant receiving federal assistance under 49 U.S.C. chapter 53 is not in compliance with 49 CFR Part 655, the Federal Transit Administrator may bar that Recipient or Third Party Participant from receiving all or a portion of the federal transit assistance for public transportation it would otherwise receive.

