

**INVITATION FOR BIDS (IFB)**  
**Federal Transit Administration Grant Program**  
**BID Number: ST 12-25**

FOR THE FOLLOWING ITEM

**Two (2) 27' Trolley Transit Vehicle**  
**Suitable for Public Transportation**

**Contact Agent for Specifications**

**Kenneth "Smitty" Smith, Transit Director**  
**Eureka Springs Transit System**  
**137 W. Van Buren**  
**Eureka Springs, AR 72632**

**479-253-9572**

**479-253-8272 (fax)**

**[smitty@eurekaspringsar.gov](mailto:smitty@eurekaspringsar.gov)**

**NOTICE OF NONDISCRIMINATION:** The **Eureka Springs Transit System (ESTS)** complies with all civil rights provisions of federal statutes and related authorities that prohibit discrimination in programs and activities receiving federal financial assistance. Therefore, ESTS does not discriminate on the basis of race, sex, color, age, national origin, religion (not applicable as a protected group under the FMCSA Title VI Program), disability, Limited English Proficiency (LEP), or low-income status in the admission, access to and treatment in ESTS's programs and activities, as well as ESTS's hiring or employment practices. Complaints of alleged discrimination and inquiries regarding ESTS's nondiscrimination policies may be directed to Civil Rights Officer Joanna P. McFadden (ADA/504/Title VI Coordinator), P. O. Box 2261, Little Rock, AR 72203, (501) 569-2298, (Voice/TTY 711), or the following email address: [joanna.mcfadden@ardot.gov](mailto:joanna.mcfadden@ardot.gov)  
Free language assistance for Limited English Proficient individuals is available upon request. This notice is available from the ADA/504/Title VI Coordinator in large print, on audiotape, and in Braille.

**EUREKA SPRINGS TRANSIT SYSTEM**

**BID INVITATION**

Contract  
Number: ST 12-25

**BID OPENING LOCATION:**  
Eureka Springs City Hall  
44 S. Main Street  
Eureka Springs, AR 72632

**MAIL/DELIVER TO:**  
Eureka Springs City Hall  
44 S. Main Street  
Eureka Springs, AR 72632

Bid Opening Date: TBA Time 10:00 am CST

Sealed bids for furnishing the commodity described below, subject to the Conditions on Page 2 of this bid invitation will be received at the above-noted mail and delivery locations until the above-noted bid opening date and time, and then publicly opened at the above-noted bid opening location. **Bids must be submitted on this form, with attachments when appropriate (see attached checklist), or bids will be rejected. Late bids and unsigned bids will not be considered.**

**In compliance with this Bid Invitation and subject to all the Conditions thereof, the undersigned offers and agrees to furnish any and all items upon which prices are quoted, at the price set opposite each item.**

Company Name: \_\_\_\_\_ Name (Type or Print): \_\_\_\_\_

Address: \_\_\_\_\_ Title: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ E-Mail: \_\_\_\_\_

Federal Tax ID or Social Security No.: \_\_\_\_\_

**Signature:** \_\_\_\_\_  
Signature must be legible, original (not photocopied) and in ink.  
Unsigned bids will be rejected.

Contract for furnishing **two (2), 27' Trolley without politicians' platform** at pricing set forth on the attached Bid Quotation Form. The successful vendor/manufacturer shall accept orders for the period specified subject to chassis availability and acceptance for the order by the manufacturer.

FOB: EUREKA SPRINGS TRANSIT SYSTEM

137 W. Van Buren  
Eureka Springs, AR 72632

The Invitation for Bids, Specifications, Bid Quotation Form, Bid Provisions and Federal Certifications are parts to the contract and by reference are incorporated herein. **Bidders must be licensed by the Arkansas Motor Vehicle Commission** and have a current Arkansas Dealers license. Should there be any conflict between information set forth in the Bid Conditions on page 2 and information set forth elsewhere in this bid package, the latter shall prevail. It shall be understood that by submission of bid that bidder agrees to all terms and conditions herein stated and specified. If the bid is found acceptable by the Eureka Springs Transit System (ESTS) and the Arkansas Department of Transportation (Department), in whole or in part, it will be considered a contract agreement bound under said terms and conditions. The parties hereto agree that the laws of the State of Arkansas shall govern this contract in all things.

**Bids must be submitted in a sealed envelope  
with "27" TROLLEY BID: ST 12-25" prominently displayed**

**BID CONDITIONS****Contract No. ST 12-25**

1. **ACCEPTANCE AND REJECTION:** ESTS reserves the right to reject any or all bids, to accept bids in whole or in part (unless otherwise indicated by bidder, to waive any informalities in bids received, to accept bids on materials or equipment with variations from specifications where efficient of operation will not be impaired, and to award a bid that will best serve the interest of ESTS.
2. **PRICES:** Unless otherwise stated in the Bid Invitation, the following will apply: (1) the unit price shall be bid, (2) the price should be stated in units of quantity specified (feet, each, lbs., etc.), (3) the price must be F.O.B. destination specified in bid, (4) price must be firm and not subject to escalation, (5) bid must be firm for acceptance for 60 calendar days from bid opening date. Discounts from bid price will not be considered in making awards.
3. **BID BONDS AND PERFORMANCE BONDS:** None required.
4. **TAXES:** ESTS is not exempt from Arkansas State Sales and Use Taxes, or local option city/county sales taxes, when applicable, and bidders are responsible to the State Revenue Department for such taxes. These taxes should not be included in bid prices, but where required by law, will be paid by ESTS as an addition thereto, and should be added to the billing to ESTS.
5. **"ALL OR NONE" BIDS:** Not applicable to this request for bids.
6. **SPECIFICATIONS:** Complete specifications should be attached for any substitution or alternate offered, or where amplification is necessary. Bidder's name must be placed on all attachments to the bid.
7. **EXCEPTIONS TO SPECIFICATIONS:** Any exceptions to the bid specifications must be stated in the bid. Any exceptions to manufacturer's published literature must be stated in the bid, or it will be assumed that bidder is bidding exactly as stated in the literature.
8. **BRAND NAME REFERENCES:** All brand name references in bid specifications refer to that commodity or its equivalent, unless otherwise stated in Bid Invitation. The bidder should state brand or trade name of item being bid, if such name exists.
9. **FREIGHT:** All freight charges should be included in the bid price. Any change in common carrier rates authorized by the Interstate Commerce Commission will be adjusted if such a change occurs after the bid opening date. Receipted common carrier bills that reflect ICC authorized rate changes must be furnished.
10. **SAMPLES, LITERATURE, DEMONSTRATIONS:** Samples and technical literature must be provided free of any charge within 14 calendar days of ESTS request, and free demonstrations within 30 calendar days, unless ESTS extends time. Failure to provide as requested within this period may cause a bid to be rejected. Samples, literature and demonstrations must be substantially the same as the item(s) being bid, unless otherwise agreed to by ESTS. Samples that are not destroyed will be returned upon request at the bidder's expense. Samples from successful bidders may be retained for comparison with items actually furnished.
11. **GUARANTY:** Unless otherwise indicated in Bid Invitation, it is understood and agreed that any item offered or shipped on this bid shall be newly manufactured, latest model and design, and in first class condition; and that all containers shall be new, suitable for storage or shipment and in compliance with all applicable laws relating to construction, packaging, labeling and registration.
12. **BACKORDERS OR DELAY IN DELIVERY:** Backorders or failure to deliver within the time required may constitute default. Vendor must give written notice to ESTS, as soon as possible, of the reason for any delay and the expected delivery date. ESTS has the right to extend delivery if reasons appear valid. If the reason or delivery date is not acceptable, vendor is in default.
13. **DEFAULT:** All commodities furnished will be subject to inspection and acceptance by ESTS after delivery. Default in promised delivery or failure to meet specifications authorizes ESTS to cancel award or any portion of same, to reasonably purchase commodities or services elsewhere and to charge full increase, if any, in cost and handling to defaulting vendor. Applicable bonds may be forfeited.
14. **ETHICS:** *"It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a public contract upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business."* (Arkansas Code, Annotated, Section 19-11-708).

# ESTS

## BID CHECKLIST

The following list will be used to determine if the bid is complete.

BID INVITATION - Filled Out and Signed in ink (**the Original, No Copies**)

BID QUOTATION FORM - Completed

APPENDIX A - Each page initialed

APPENDIX B - Each page initialed and last page filled out, signed in ink, and notarized

ATTACHMENTS:

- Copy of Arkansas Dealers License
- Copy of Altoona Bus Testing Certification (Whole test must be provided)
- Copy of Bus Manufacturer's FMSVV Certification (or Certification that FMSVV does not apply)
- Copy of Buy America documentation
- Copy of DBE Approval Certification
- Copy of Debarment and Suspension Certification
- Copy of Lobbying Certification
- Copy of Overall Federal Regulation Compliance
- Copy of SAMS.gov Screenshot
- Brochure – Model(s) bid
- Floor Plan Drawings
- Weight Analysis for each floor plan
- TVM Certification
- Dealer Federal ID# for excluded party listing
- Dealer Full Name (same listed with Federal ID#)
- DUNS number

**BID QUOTATION SHEET**  
**Bid Number: ST 12-25**  
**27' Trolley Vehicle as Specified Hereinafter**  
*(All bid pricing shall be rounded to the nearest dollar (\$).)*

**Bid Price:** \$ \_\_\_\_\_ per unit

**Best Delivery time\* from receipt of order (number of calendar days):** \_\_\_\_\_

\*Delivery time will be considered when awarding this Bid.

**Vehicle Information**

**Year:** \_\_\_\_\_

**Make:** \_\_\_\_\_

**Model:** \_\_\_\_\_

**Warranty:** \_\_\_\_\_

**Warranty Center:** \_\_\_\_\_

**Warranty Information**

**Chassis:** \_\_\_\_\_

**Body/Conversion:** \_\_\_\_\_

**Other:** \_\_\_\_\_

For bid to be considered responsive all items on this Bid Quotation must be bid and a delivery date acceptable to the Eureka Springs Transit System (ESTS) must be stated. All exceptions, equals, or alternates must have prior written approval in accordance with Annex A of this Request For Bids. The ESTS reserves the right to reject bid pricing on any and all items.

The undersigned offers and agrees to furnish any and all items upon which prices are quoted, at the price set opposite each item.

**Business Name (Print):** \_\_\_\_\_

**Bidders Name (Print):** \_\_\_\_\_

**Title (Print):** \_\_\_\_\_

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

The signature must be original and in ink. Unsigned bids will be rejected.

## **PURPOSE OF SPECIFICATIONS**

This item shall be a vehicle suitable for public transportation. The intent for these specifications is to set forth the minimum performance for a commercial body-on-chassis transit trolley. The vehicle shall be a standard production trolley, which will be used to transport the general public living in urban and rural areas. When equipped with an optional wheelchair lift and securement devices, this vehicle shall accommodate various seating combinations for both ambulatory and non-ambulatory passengers and will be required to operate on all types of neighborhood streets and rural roads in hilly terrain with frequent starts and stops.

All parts not specifically mentioned which are necessary in order to provide a complete vehicle shall, at a minimum, conform in strength, quality of material and workmanship to what is provided by the automotive industry generally. All equipment and parts shall be new and conform in strength; quality of material and workmanship to those approved by and generally utilized by the automotive industry and meets all applicable standards.

The vehicle manufacturer must strictly comply with chassis OEM standards and specifications for installation and application of all products, equipment, components, and any other items placed in or upon the chassis. Vehicle and modifications must comply with all Federal Motor Vehicle Safety Standards.

## **CLASSIFICATION OF VEHICLE CHASSIS AND SERVICE LIFE**

The most current production year model chassis available shall be used for this vehicle and shall be of the appropriate GVWR rating by the OEM to accommodate the final GVWR established for the completed unit by the after-market vehicle manufacturer. **At no time during the after-market manufacturing process shall the original chassis be modified in any way.**

**The useful life standard established for this vehicle is 12 years/200,000 miles, and requires the like-type model vehicle proposed to be, or have been, tested at the FTA Bus Testing Facility in this category or a higher service life category.**

## Primary Specifications

Access Plate	Shall install an access plate above fuel tank to allow easy access to fuel sender unit.
Air Conditioning	Two (2) roof top air conditioning systems shall be the OEM's largest available BTU output system for the chassis used, One in the front and the other in the back. The additional system shall provide an output of no less than 100,000 BTU. All hoses, fittings and clamps shall comply with SAE specification-J2064 Type D and be of a Quik-Click design or equivalent.
Aisle Width	Aisle width may vary according to seating configuration with a minimum of 15 inches.
Alignment	Full and complete front-end alignment shall be performed by an OEM authorized dealer service center after the manufacturing process has been completed and prior to delivery. Copy of the certificate shall be provided upon delivery.
Alternator	OEM Dual 150-amp alternators shall be supplied.
Battery System	Battery system shall be a dual battery system supplied with heavy duty commercial use batteries that provide a minimum 1250 CCA. The battery storage compartment shall be located in an enclosed compartment to the side of the vehicle incorporating a sliding tray for ease of access and shall not extend beyond or below a line horizontal to the stepwell.
Body Design	Body may be either a fiberglass reinforced plastic body incorporated structural steel reinforcements designed to meet all FMVSS requirements or a metal sheeting material attached to a structural safety cage designed to meet all FMVSS requirements. All joints shall comply with FMVSS 221.
Braking System	Wheel Brakes should be 4 wheel disc brakes that meet OEM for the GVWR of the vehicle. The Parking brake must be an air system that can be activated by the driver from the seat
Bumpers	Vintage cow catcher is to be retained in the front. Manufacturer shall install a rear bumper designed and built of a 12-gauge or heavier metal and mounted to the frame outward from the body so as to protect the rear body panels from a collision at 5 mph or less.
Chassis	27' Feet in length with a GVWR rating of 14,200 to 22,000 lbs. A Freightliner Chassis is preferred.

Cruise Control	The vehicle will be equipped with a standard OEM cruise control that will allow for high idle RPM.
Destination Signs	Luminator/Twin Vision electronically controlled LED front and side destination sign system. System shall include programming software or PCMCIA card.
Drive Shaft	Drive shaft will meet or exceed GVWR requirements and have Drive Shaft loops installed.
Engine	If possible, 6.6 Duramax or comparable Cummins Diesel Engine if available. Minimum HP of 260.
Engine Compartment	The engine compartment shall be full insulated with foil faced fire retardant barrier material. There will be a firewall of 11 gauge steel between engine compartment and passenger compartment. There shall be sufficient lighting for servicing in the engine compartment.
Entrance Door	Electrically Powered two-panel outward opening entrance door with a minimum clear center opening of 26" and a minimum height of 75" from lower step to door header. Door is operated by a dash mounted switch. Door shall also have an electric exterior opening system.
Emergency Exit Windows	Emergency exit windows shall be provided. Windows shall be designed and installed in compliance with FMVSS217 and be clearly labeled.
Exhaust System	Engine exhaust system shall be routed to exit the rear of the vehicle in front of the driver side rear tire in such a manner as to channel exhaust gases away from curbside passengers to the maximum extent possible.
Fare Box	<u>A fare box with a stand will be provided in the front of the vehicle within reach of the driver.</u>
Fast Idle	Engine fast idle control shall be provided to permit the driver to increase engine idle RPM to a preset RPM when the transmission is in PARK or NEUTRAL position and the parking brake is set. Idle speed should automatically return to normal when the brake is released, or transmission is put in gear.
Floor Cover	Floor covering shall be a rubber or vinyl with a minimum of 1/8" thickness under passenger seats and as supplied by OEM in the driver's area. Aisle covering shall be 3/16" thick ribbed. There shall be a 2" wide "STANDEE LIMIT" strip set into the ribbed aisle covering located at the rear of the driver's seat.



Floor Material	Floor shall be an exterior grade, 7 ply, water-resistant plywood being no less than ¾" inch in thickness and securely fastened to a metal rail sub floor.
Fuel Capacity	Fuel tank capacity shall be a minimum of 50 gallons located in a protected area under the floor.
Grab Rails Stepwell	Dual grab rail shall be installed adjacent to the entrance access to aide passengers with boarding. All rails will be spiral decorative brass.
Grab Rails Ceiling	Dual grab rails shall be installed in vehicle ceiling in passenger area to provide to provide a secure hold from the front to the rear of the vehicle. These rails will have leather grab straps attached. All rails will be spiral decorative brass.
Graphics	Exterior graphics will be an approved font and color. Graphics will say, "Eureka Springs Transit System" and the vehicle will be designated "No. 4" and "No. 5" respectfully.
Heater and Defroster	Heater/defroster shall be manufacturer's standard equipment and shall be augmented by additional auxiliary rear heater(s) to achieve and maintain an interior temperature of 65 F when the ambient temperature is 0 F. Heaters will have a shut-off valve.
Insulation	Fiberglass mats, high-density polystyrene or an approved equal shall be used to insulate the entire body, sides, front, rear and roof achieving an R-5 factor or greater rating.
Interior Finish	Interior finish shall be an oak or mahogany wood of sufficient thickness and durability or adequately supported to prevent buckling.
Lights, Exterior	Shall provide exterior dome clearance lights to be mounted in a recessed area or shall have an 'armor type' protection. Shall also provide mid-body and side turn signal lights. Exterior lighting shall be LED type to include the parking lights, brake lights, turn signals, backup lights and all clearance lights.
Lights, Interior	Interior lights shall be dome mounted with a minimum of four (4) passenger courtesy and one (1) driver courtesy light. There shall be shielded or recessed stepwell lights.
Manual	Shall provide an "as built" service manual in an electronic form on a compact disc that shall be in MS Word or Adobe Format.

Metal and Metal Fasteners	All metal and metal fasteners, including any required nuts and washers, used in the manufacturing process shall be rust and corrosive resistant. Metal and metal screws exposed to the outside environmental elements shall be stainless steel or approved equal to the extent possible.
<b>Mirrors, External</b>	Front side mirrors will be video mirror system designed for Transit Busses. A Luminator or comparable system with a standard view and a fisheye view. These will be attached to front posts of the right and left front for the driver to see.
Mirrors, Internal	Interior convex rear-view mirror shall be mounted above the windshield to provide driver full view of the bus interior. <b>The mirror will be mounted with a swivel point and will be adjustable.</b>
Miscellaneous	(1) Pull cord stop request system with touch tape at the wheelchair stations; (2) Stretched chassis will not be accepted; and (3) A weight analysis must accompany each bid along with a certificate stating that the unit bid meets all applicable Federal Motor Vehicle Safety Standards.
Paint Exterior	Solid Paint Exterior DuPont Green 1317 to match other vehicles in fleet.
Placard	A placard shall be installed in a location clearly visible to the driver stating the maximum height restriction for the vehicle.
Politician's Platform	<b>NO POLITIAN PLATFORM</b>
Radio	Shall provide an AM/FM/CD radio with public address mode and weather resistant external speaker. Radio shall have four or more speakers installed in locations to provide uniform sound within the passenger area. External speaker shall have a separate on/off switch.
Rear Axle	<b>The rear axle should have a ratio of at least 5.46 to one or higher</b> to accommodate our hilly terrain.
Rust proofing	Rust proofing shall be applied to the entire underbody, including wheel housing. Undercoating shall be TST, Kendall Seal N' Sound or approved equal.

Safety Back-up Camera	A safety backup camera will be installed with a minimum 4" screen in the driver's area. Camera shall be in a recessed area or have a guard to protect it.
Safety Tape	Reflective safety tape shall be applied below the passenger window area on both the right and left sides and on the rear of the vehicle. Tape shall be 2" wide, high intensity white reflective type.
Seat - Driver	Driver's seat shall be a Air Ride Driver Seat with a right flip-up armrest and adjustable lumbar support or approved equal. Seat shall have a map pocket. Upholstery material shall be a CMI Medallion vinyl or approved equal. Seat will be black in color.
Seats - Passengers	Seats shall be vintage oak slat style. Seat bottoms will have cushions for passenger comfort. Color will be a Kelly Green. <b>Minimum Fixed seating capacity shall be twenty eight (28) including driver.</b>
Seats - Fold-a-ways	Two (2) fold-a-way seats mounted over left-hand wheelchair stations. Folding seats will be also work slat seats with Kelly green cushions on the bottom. <b>Fold-a-way seating capacity shall be at least four (4).</b>
Seating Diagram	Preferred seating and body diagram is enclosed with these specifications. Bidding vendors <u>shall supply</u> a seating and body diagram with their bid.
Steering Column	Steering column will be a Tilt/Telescopic Steering column.
Tires and Wheels	Shall be the OEM's premium tubeless all-season radials rated for the size and GVW, <b>also to include a spare tire and wheel</b> of the same OEM type. No carrier is required for the spare tire. Wheels will be black in color with no hub caps.
Suspension	Suspension system shall be load rated and heaviest duty available for the GVW of the vehicle provided. Stabilizer bars shall be provided on front. Rear axle suspension enhancement system MorRyde or approved equal shall be installed to improve the ride quality.
Transmission	Transmission shall be automatic shift of the type recommended by manufacturer with a heavy-duty external transmission oil cooler with a fan. A backup alarm controlled by transmission shift control in the reverse position.
Web Cutter	Premium web cutter shall be supplied with each vehicle shall be mounted in a highly visible location in the driver's area and labeled "Seat Belt & Wheelchair Securement Belt Cutter".

Wheel Housing	Wheel housing shall be no less than 16-gauge steel or equivalent gauge aluminum.
Wheelchair lift	An ADA lift will be mounted, access on the right. Lift must be fully compliant with all ADA and FMVSS requirements and specifications. The lift shall be a Braun, Ricon or approved equal and of a type and design which provides minimum visual obstruction for the driver and have at least a 1000 lb. capacity. ADA decals shall be affixed to the outside of the vehicle as is appropriate.
Wheelchair System	Securement Two (2) wheelchair securement systems will be provided on the left side accessible through the ADA lift. All wheelchair tie-down systems shall have self-tensioning retractors and have a button type floor system. The lap/shoulder belts shall also have retractors. Storage pouches designed to accommodate restraint belts shall be provided and shall be affixed to the inside of the vehicle. Securement systems shall be a button Q'Straint, Sure-Lok or approved equal.
Windows	All windows and windshields will be in accordance with FMVSS571.205. All passenger windows will be tinted with no less than 30% light transmission. All glass will be tempered safety glass.
Wipers and Washers	Windshield wipers/washers shall be manufacturer's standard OEM, heavy duty, intermittent and located below the window.
Wiring	Master electric panel easily accessible. Body wiring harness shall have color, function and number coded wire. All wiring harnesses shall be tested prior to installation inside the body and shall be inspected after installation to assure electrical systems and lights are functioning properly.

**Federal Transit Administration Grant Programs  
APPENDIX A TO INVITATION FOR BID (IFB)  
TERMS, CONDITIONS, AND PROVISIONS**

**All Bidders will adhere to the following terms, conditions, and provisions:**

**Legal Requirements:** Bidders must possess, and be in compliance with, all local, state, and federal licensing and other legal requirements for the distribution and/or sales of the motor vehicles and other products proposed; and, shall submit a copy of the Arkansas Dealers License, Altoona Bus Testing Certification, Buy America documentation, and Bus Manufacturer's Certification or other documentation as may be required.

**Signatures:** All bidders must complete the Bid Quotation Form by providing all required. Each page of the Appendix A and B must be initialed and returned with the bid quotation. The Required Federal Certifications and Contractual Provisions (Appendix B) must be executed by completing and signing the last page in ink and be attested by a Notary Public.

**Specification Detail:** All bidders must provide the manufacturer's specifications in sufficient detail to determine compliance with all specifications set-forth in the advertisement for bids for chassis, body and accessories. The bidder must provide floor plan drawings of the proposed vehicle-seating configuration and weight analysis.

**Warranty and Service Center:** All bidders must have, and identify, a warranty and service location in Arkansas and staffed with factory trained personnel for all vehicles and major component equipment proposed. Further, the bidder must be able to perform or have performed warranty and service on all items not covered by original equipment manufacturer's warranty. Any such facility must have an adequate supply of parts to cover vehicle body components and related equipment (i.e., windows, seats, electrical system and lights, air conditioning, wheelchair lifts and tie down equipment).

**Deviation from Specifications:** Any deviation from specifications must be explained in detail in accordance with prescribed procedures for requesting approved alternates to the specifications. Otherwise, it will be considered that labor, materials, and equipment bid is in strict compliance with the specifications and the successful Bidder will be held responsible for meeting the specifications. The request shall specifically refer to the applicable specification paragraph.

**Bid Modification or Withdrawal:** A bid may be modified or withdrawn by the bidder's authorized representative, in person, or by written notice prior to the date/time set for bid opening. If bids are modified or withdrawn in person, the authorized representative shall make his identity known and shall sign a receipt for the bid. Written notices shall be received in the office designated in the ESTS' Bid Invitation form, no later

than the exact date/time for bid opening. After the sealed price proposals are opened, bids may not be withdrawn for 60 calendar days.

**Questions:** A bidder may discuss these specifications and any addenda with the authorized representative of ESTS. Such discussions do not, however, relieve bidders from the responsibility of submitting written, documented requests as required by these procedures. Any bidder in doubt as to the true meaning of any part of this IFB or related documents may submit a written request to ESTS for interpretation thereof.

**Alternates, Clarifications, or Exceptions:** A bidder may submit, to ESTS, requests for approved alternates, clarifications, or exceptions to the specifications.

**Bid Preparation:** Bidders shall submit one (1) copy of their bid on the prescribed form provided in this IFB along with standard floor plan schematics for the ramp equipment versions, as applicable, and all other information, material, and certifications as required by this IFB. It must be plainly marked by the bidder who will be responsible for their completeness and accuracy. All blank spaces must be filled in or noted in ink or typed or bids will be rejected. Bids having erasures or corrections must be initialed in ink by the bidder. All forms contained herein are to be completed and signed by the Authorized Signee. No changes shall be made in the wording on the forms. Bids shall be in the units specified for each item. The bidder shall enter the company name wherever so indicated and shall sign wherever so indicated. All bids must be submitted in a sealed envelope, addressed, and mailed or delivered as stated in the ESTS's Bid Invitation form.

**Responsibility:** ESTS will make an award only to a responsible bidder possessing the ability to perform successfully under the terms, conditions and provisions herein, as well as, the certifications required. The lowest responsive bidder must possess the ability to perform successfully and a willingness to comply with the terms, conditions, and provisions of a proposed contract. Prospective contractors must meet all of the following: financial resources adequate to perform the contract; ability to meet the required delivery schedule; satisfactory performance record; satisfactory record of integrity and business ethics; necessary organization, experience, accounting, and operational controls, and technical skills; compliance with applicable licensing and tax laws and regulations; necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and, other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulation.

**Inquires:** Any inquiry relating to the technical aspects of the specifications should be directed to: Kenneth "Smitty" Smith, Eureka Springs Transit System, Director, 137 W. Van Buren, Eureka Springs, AR 72632, telephone (479) 253-9572, FAX (479) 253-8272, Email: smitty@eurekaspringsar.gov.

**Protests:** Protests to any decision made by ESTS may be filed in writing with ESTS; bidders must submit full documentation as to the nature of the protest and/or reasons why the action of ESTS has inhibited competition or violated its procurement regulations within fourteen (14) calendar days.

**The successful Bidder upon award will adhere to the following terms, conditions, and provisions:**

**Term of Purchase Agreement:** The bid award prices subsequent to this bid shall be for the purchase of one (1) unit with a possibility for two (2), for a period commencing with the date of award through December 31, 2025. This contract may be extended for up to two (2) years upon mutual agreement of the parties on or before the above date of termination.

**Pre-Delivery Inspection:** The transit vehicle shall be delivered to the dealership that is awarded a contract by the ESTS complete with all necessary appurtenances and equipment, manufacturer's certificate of origin, safety inspection, and shall be ready for operation. Upon delivery of the transit vehicle to the dealership, ESTS shall be notified so that the transit vehicle can be inspected and tested before final delivery to ESTS. ESTS shall not be deemed to have accepted any transit vehicle until it has successfully passed all such tests and inspections in the sole and absolute opinion of the ESTS. ESTS will notify the dealership in writing within 15 working days of receipt if the transit vehicle has/ has not been accepted. A letter of non-acceptance or a Motor Vehicle Report will furnish details of the deficiencies.

**Delivery:** Bid prices shall include delivery of all vehicles to the Eureka Springs Transit System, 137 W. Van Buren, Eureka Springs, AR 72632, include the regular warranty, any Arkansas motor vehicle safety inspection required and service regularly furnished on new vehicles sold to the public. Delivery shall be determined by signed receipt of the ESTS's designated representative at the point of delivery indicated above and may be preceded by an inspection of the unit. The vehicle shall be delivered **within the stated Delivery Time on the Bid Quotation Form** following receipt of ESTS purchase order.

**Fuel Level at Delivery:** All vehicles shall be delivered to the F.O.B. location with the fuel tank containing no less than one-quarter full according to the fuel gauge.

**Delay in Delivery:** In the event of delivery of completed transit vehicle purchased under this contract shall be necessarily delayed because of strike, injunctions, government controls, pandemics, weather, or by reason of any other cause or circumstance beyond the control of the Bidder, the time of completion of delivery shall be extended by mutual agreement between ESTS and the Bidder.

**Demonstration:** ESTS reserves the right to test drive make and model of vehicles bid on prior to a contract being awarded. Samples may be demonstrator models with equipment similar, but not necessarily identical, to that listed in this specification.

**Federal Register Standard:** Any equipment furnished on a vehicle purchased under this specification for which “Federal Register Standard” has been established at time of delivery shall comply with the requirements of applicable standard and all equipment required by said standard shall be furnished whether or not it is specifically mentioned in this specification.

**Operator’s Manual:** The successful bidder shall furnish copy of Operator’s Manual published by vehicle manufacturer with each vehicle delivered.

**Advertisements:** No dealer advertisement shall be affixed to the vehicle.

**Serviced:** Each vehicle shall be completely serviced, cleaned and thoroughly inspected (in accordance with manufacturer’s required or recommended pre-delivery service) just prior to delivery to ESTS.

**Vehicle OEM Warranty** - The successful bidder shall not allow any contractors/manufacturers to perform any manufacturing process, component installation, or take any other action which will violate or otherwise cause the vehicle OEM to withdraw their full and complete warranty.

**Warranties:** The successful bidder shall furnish all warranty data for each vehicle delivered, as well as any warranty data for non-OEM components installed. The warranty data shall contain all necessary information such as make, model, serial number, etc., and shall be appropriately executed and assigned at the time vehicle is delivered to ESTS.

**Documents:** The successful bidder shall furnish, at the time of delivery to ESTS, all necessary documents required for titling and licensing the vehicle in accordance with all law and regulations. An original invoice to Eureka Springs Transit System, 137 W. Van Buren, Eureka Springs, AR 72632 must also be included. **Titling and licensing documents must reflect a first lien in favor of Arkansas Department of Transportation (Department) Public Transportation Programs Section, PO Box 2261, Little Rock, AR 72203.**

**Compliance:** The vehicle shall conform in all respects to the applicable Motor Vehicle Laws of the State of Arkansas. The vehicle shall also, at a minimum, conform to applicable Federal Motor Vehicle Safety Standards (FMVSS).



**Certification Tag:** The dealer or manufacturer shall affix a certification tag inside the vehicle that states the actual passenger design capacity including the driver.

**Eureka Springs Transit System (ESTS) shall adhere to the following:**

**Payment Schedule:** ESTS shall make payment in full within thirty (30) calendar days after acceptance of each unit provided that the Bidder has submitted an advance notice of invoice fifteen (15) calendar days prior to delivery of the vehicle and an official final invoice upon delivery. Bidder shall make the "Certificate of Origin" in the name of organization stipulated in the ESTS's Purchase Order.

**Qualifications for Award:** The award, if any, shall be the lowest priced responsive and responsible bidder. Responsible bidders shall be determined, in part, through the following criteria. The bidder must be a person, firm or corporation that: a) Has in operation, or has the capability to have in operation, a licensed dealership or manufacturing plant adequate to assure delivery of all equipment within the time specified under this contract; b) Has adequate engineering and/or service personnel or has the capability to have such personnel to satisfy any engineering or service problems that may arise during the warranty period; c) Has the necessary facilities and financial resources, or has the capability to obtain such facilities and resources, to complete the contract in a satisfactory manner within the required time.

**Investigations:** ESTS has the right to make such investigations as it may deem necessary to establish the competency and financial ability of any Bidder to perform the work. If, after the investigation, the evidence of competency and financial ability is not satisfactory, ESTS reserves the right to reject the Bid.

**Bidder Review Procedures:** All sections of this IFB and all supplementary documents are essential parts of the bid award and performance contract and requirements occurring in one or as though occurring in all. These specifications and all other clauses in their entirety shall be included in, and made a part of, the contract between the ESTS and the successful bidder.

**Interpretation, Changes, and Modifications:** Any interpretation, change, or modification made to the specifications by ESTS will be made only by a written addendum. A copy of such addendum will be mailed or delivered to each bidder receiving a set of documents and shall be applicable to all respective bidders.

**Bid Postponement and Amendment:** ESTS reserves the right to revise or amend the specifications. Such revisions and amendments, if any, shall be announced by addenda to this solicitation. Copies of such addenda shall be furnished to all prospective bidders. If the revisions and amendments require changes in quantities or prices bid, or both, the date set for opening bids may be postponed by such number of days as, in the opinion of the

ESTS, shall enable bidders to revise their bids. In any case, bid opening shall be at least 5 working days after the last addendum, and the addendum shall include an announcement of the new date, if applicable, for opening bids.

**Public Bid Opening:** Bids shall be publicly opened and read aloud at the time and place indicated in the ESTS Bid Invitation. Their content, including documents marked proprietary, shall be made public for the information of bidders and other interested parties, who may be present, either in person or by representatives.

**Award of Contract:** Any award will be made by written notice to the successful Bidder within sixty (60) calendar days after the opening of the bids. Bids must therefore remain valid for sixty (60) calendar days from date of the bid opening.

**Responsiveness:** ESTS shall determine responsiveness by the Bidder's adherence to the specifications as defined herein or by addenda; completeness of bid, and satisfactory submittal of fully executed bid forms and certifications and bid and performance bonds. Responsiveness to this bid shall also be determined by the Bidder's substantiation of qualifications, including consideration of past performance.

**Bid Rejection:** ESTS reserves the right to waive any and all minor bid informalities or irregularities received, or to reject, for good and compelling reasons, any and all bids submitted. Conditional bids, or those which take exceptions to the specifications, will be considered nonresponsive and will be rejected.

**Single Bid Response:** If only one bid is received in response to the invitation for bids, a detailed cost proposal may be requested of the single bidder. A cost/price analysis and evaluation and/or audit may be performed of the cost proposal in order to determine if the price is fair and reasonable.

**Addenda:** Addenda issued by ESTS prior to the bid opening shall be binding as if written into the original IFB.

**Bid Evaluation Criteria:** Acceptance of any bid is subject to the approval of the Arkansas Department of Transportation (Department). The Department shall review and evaluate all bids submitted.

**Federal Transit Administration Grant  
FTA BID Number: ST 12-25**

**APPENDIX B TO INVITATION FOR BID (IFB)**

**REQUIRED FEDERAL CERTIFICATIONS AND CONTRACTUAL PROVISIONS**

The Bidder shall comply with the following requirements. The term “System” shall mean the Eureka Springs Transit System. The term “Department” shall mean the Arkansas Department of Transportation.

**The following Federal Clauses & Certifications are required for Rolling Stock Procurements**

<b><u>Clause</u></b>	<b><u>Applicability</u></b>
ACCESS TO THIRD PARTY CONTRACT RECORDS.....	All
AMERICANS WITH DISABILITIES ACT (ADA).....	All
BUS TESTING.....	All
BUY AMERICA REQUIREMENTS.....	>\$150,000
CARGO PREFERENCE REQUIREMENTS.....	Transport by ocean vessel
CHANGES TO FEDERAL REQUIREMENTS.....	All
CIVIL RIGHTS LAWS AND REGULATIONS.....	All
CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT.....	>\$150,000
CONFORMANCE WITH ITS NATIONAL ARCHITECTURE.....	ITS projects
CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.....	>2,500
DEBARMENT AND SUSPENSION.....	>\$25,000
DISADVANTAGED BUSINESS ENTERPRISE (DBE).....	All
ENERGY CONSERVATION.....	All
EQUAL EMPLOYMENT OPPORTUNITY.....	All
NOTICE TO THIRD PARTY PARTICIPANTS.....	All
FLY AMERICA.....	Foreign air transport or travel
FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS.....	All
INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS.....	All
NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES.....	All
NOTICE TO FTA AND U.S. DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ABUSE OR OTHER ILLEGAL MATTERS.....	>25,000
PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES.....	>150,000
PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS.....	All
PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.....	All
PROMPT PAYMENT.....	All
RESTRICTIONS ON LOBBYING.....	>\$100,000
SAFE OPERATION OF MOTOR VEHICLES.....	All
SPECIAL NOTIFICATION REQUIREMENTS FOR STATES.....	All
SIMPLIFIED ACQUISITION THRESHOLD.....	All
SEVERABILITY.....	All
SOLID WASTES.....	>\$10,000
TERMINATION.....	>\$10,000 if 49 CFR Part 18 applies
TRAFFICKING IN PERSONS.....	All
VIOLATION AND BREACH OF CONTRACT.....	All

# FEDERAL CLAUSES/CERTIFICATIONS REQUIRED FOR ROLLING STOCK

## ACCESS TO THIRD PARTY CONTRACT RECORDS

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

## AMERICANS WITH DISABILITIES ACT (ADA)

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

## BUS TESTING

The Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 C.F.R. part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the recipient.

## BUY AMERICA REQUIREMENTS

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR § 200.322 Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7.

Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11. Domestic preferences for procurements

The bidder or offeror must submit to the Agency the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. For more information, please see the FTA's Buy America webpage at: <https://www.transit.dot.gov/buyamerica>

## CARGO PREFERENCE REQUIREMENTS

The contractor agrees:

- a. to use privately owned United States Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States Flag commercial vessels;

- b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill of lading in English for each shipment of cargo

described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA Recipient (through the contractor in the case of a subcontractor's bill of lading.); and

c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

## CHANGES TO FEDERAL REQUIREMENTS

The Recipient 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.

## CIVIL RIGHTS LAWS AND REGULATIONS

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

**1 Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:

a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C.

Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.

b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

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

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

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

### Civil Rights and Equal Opportunity

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C.

§ 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

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

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

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

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

**5. Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

## **CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

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

### Clean Air Act

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

### Federal Water Pollution Control Act

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

## **CONFORMANCE WITH ITS NATIONAL ARCHITECTURE**

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards pursuant to 23 CFR § 940. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

## **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

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

### **Compliance with the Contract Work Hours and Safety Standards Act.**

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

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

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

## **DEBARMENT AND SUSPENSION**

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

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

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

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

## **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

*(Does not apply to projects fully funded by the Tribal Transportation Program (TTP).)*

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

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

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

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

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

## **ENERGY CONSERVATION**

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

## **EQUAL EMPLOYMENT OPPORTUNITY**

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **NOTICE TO THIRD PARTY PARTICIPANTS**

Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and applicable changes to those federal requirements will apply to each Third Party Agreement and parties thereto at any tier.



## **FLY AMERICA**

a) Definitions. As used in this clause—

1) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. 2) "United States" means the 50 States, the District of Columbia, and outlying areas. 3) "U.S. flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

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

c) If available, the Contractor, in performing work under this contract, shall use U.S. flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S. flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

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

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

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

## **FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS**

(1) The contractor certifies that it:

(a) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(b) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

If the contractor cannot so certify, the Recipient will refer the matter to FTA and not enter into any Third Party Agreement with the Third Party Participant without FTA's written approval.

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

## **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

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

## **NO 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.

## **NOTICE TO FTA AND U.S. DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ABUSE OR OTHER ILLEGAL MATTERS**

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its sub agreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

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

*(Does not apply to projects fully funded by the Tribal Transportation Program (TTP).)*

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

## **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

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

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

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

## **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

a. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
  - i. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  - ii. Telecommunications or video surveillance services provided by such entities or using such equipment.
  - iii. Telecommunications or video surveillance equipment or services procured or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

- b. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- c. See Public Law 115-232, section 889 for additional information.
- d. See also § 200.471.

## PROMPT PAYMENT

*(Does not apply to projects fully funded by the Tribal Transportation Program (TTP).)*

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

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

## RESTRICTIONS ON LOBBYING

Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

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

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

Certification and disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

- (1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or
- (2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

- (1) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or
- (2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000, Unless

such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

(1) A subcontract exceeding \$100,000 at any tier under a Federal contract;

(2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;

(3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,

(4) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement, Shall file

a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

## **SAFE OPERATION OF MOTOR VEHICLES**

### Seat Belt Use

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

### Distracted Driving

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

## **SPECIAL NOTIFICATION REQUIREMENTS FOR STATES**

Applies to States –

a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:

(1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;

(2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and

(3) The amount of federal assistance FTA has provided for a State Program or Project.

b. Documents - The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance,

(2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

## SIMPLIFIED ACQUISITION THRESHOLD

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

## SEVERABILITY

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

## SOLID WASTES

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

## TERMINATION

### Termination for Convenience (General Provision)

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

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

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

### Opportunity to Cure (General Provision)

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

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

### Waiver of Remedies for any Breach

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

### Termination for Convenience (Professional or Transit Service Contracts)

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

### Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

#### Termination for Default (Transportation Services)

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

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

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

#### Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Agency may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the 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. 3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

#### Termination for Convenience or Default (Architect and Engineering)

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

If the termination is for the convenience of the Agency, the Agency's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If the termination is for failure of the Contractor to fulfill the contract obligations, the Agency may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Agency.

#### Termination for Convenience or Default (Cost-Type Contracts)

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

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

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

## TRAFFICKING IN PERSONS

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

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

## VIOLATION AND BREACH OF CONTRACT

### **Disputes:**

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

### **Performance during Dispute:**

Unless otherwise directed by the agencies authorized representative, contractor shall continue performance under this contract while matters in dispute are being resolved.

### **Claims for Damages:**

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

### **Remedies:**

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

### **Rights and Remedies:**

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

# Federal Certifications

## CERTIFICATION AND RESTRICTIONS ON LOBBYING

I, \_\_\_\_\_ hereby certify  
(Name and title of official)

On behalf of \_\_\_\_\_ that:  
(Name of Bidder/Company Name)

- 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 any agency, a Member of Congress, and 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.
- If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the 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.
- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, 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 which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Name of Bidder/Company Name Type or \_\_\_\_\_

print name \_\_\_\_\_

Signature of authorized representative: \_\_\_\_\_ Date / /



# GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Recipients, contractors, and subcontractors 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 (found below); or (c) adding a clause or condition to the contract or subcontract.

**Instructions for Certification:** By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

- (1) It will comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 180,
- (2) To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:
  - a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:
    1. Debarred,
    2. Suspended,
    3. Proposed for debarment,
    4. Declared ineligible,
    5. Voluntarily excluded, or
    6. Disqualified,
  - b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:
    1. 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,
    2. Violation of any Federal or State antitrust statute, or,
    3. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,
  - c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,
  - d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,
  - e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a – 2.d above, it will promptly provide that information to FTA,
  - f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:
    1. Equals or exceeds \$25,000,,
    2. Is for audit services, or,
    3. Requires the consent of a Federal official, and
  - g. It will require that each covered lower tier contractor and subcontractor:
    1. Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
    2. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
      - a. Debarred from participation in its federally funded Project,
      - b. Suspended from participation in its federally funded Project,
      - c. Proposed for debarment from participation in its federally funded Project,
      - d. Declared ineligible to participate in its federally funded Project,
      - e. Voluntarily excluded from participation in its federally funded Project, or
      - f. Disqualified from participation in its federally funded Project, and
- (3) It will provide a written explanation as indicated on a page attached in FTA's TrAMS platform or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third-Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

## Certification

Contractor: \_\_\_\_\_

Signature of Authorized Official: \_\_\_\_\_ Date: \_\_\_\_\_

Name and Title of Contractor's Authorized Official: \_\_\_\_\_

### Overall Federal Regulation Compliance

All contractual provisions required by the Arkansas Department of Transportation (ARDOT), as set forth in FTA Circular 4220.1F dated July 2012 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 the ESTS requests which would cause the ESTS to be in violation of the FTA terms and conditions.

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The ESTS Representative

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Vendor Representative

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Date

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Date