OZARK REGIONAL TRANSIT

INVITATION FOR BID (IFB) & REQUEST FOR PROPOSALS (RFP) & REQUEST FOR QUALIFICATIONS (RFQ)

RULES & GUIDELINES
# TABLE OF CONTENTS

**PART I** .............................................................................................................................1
DEFINITIONS ..........................................................................................................................1
  1.0 Singular, Plural, Gender and Definitions: .................................................................1
  1.1 Additional Definitions: .........................................................................................2

**PART II** .............................................................................................................................3
SOLICITATION ......................................................................................................................3
  2.0 Solicitation: ........................................................................................................3
  2.1 Submission of Proposal: .....................................................................................3
  2.2 Bid Opening ........................................................................................................3
  2.3 Request for Clarifications: ....................................................................................3
  2.4 Proposal Inquiries: ................................................................................................3

**PART III** ..........................................................................................................................4
GENERAL REQUIREMENTS ...............................................................................................4
  3.0 Deadline for Submission of Proposals: .................................................................4
  3.1 Format: .................................................................................................................4
  3.2 Receipt of a Single Proposal: ................................................................................4
  3.3 Additional Information: .......................................................................................4
  3.4 Debarment and Suspension Requirements of Executive Order 12549: .................4
  3.5 Receipt of Addenda: .............................................................................................5
  3.6 IFB/RFP Postponement and Amendment: ............................................................5
  3.7 Conditions of Proposal: ......................................................................................5
  3.8 Proposals and Proposal Modifications: .................................................................5
  3.9 Proposal/Offer: ....................................................................................................5
  3.10 Waiver of Informalities & Proposal Rejection: ..................................................5
  3.11 Proposal Withdrawal: ........................................................................................6
  3.12 Authority to Submit and Perform Proposal: .......................................................6
  3.13 Proposal Protests: ................................................................................................6
  3.14 Approved Equals: ..............................................................................................7
  3.15 Announcement of Award and Award: .................................................................7
  3.16 Prohibited Interest: ............................................................................................7
  3.17 Audit and Inspection: ........................................................................................8
  3.18 Federal Requirements: .......................................................................................8
  3.19 Time is of the Essence: ......................................................................................8
  3.20 Project Familiarization: .....................................................................................8

**PART IV** ..........................................................................................................................9
CONTRACT PROVISIONS ........................................................................................................9
  4.0 Incorporation of Federal Transit Administration (FTA) Terms: .......................9
  4.1 Change Orders: ....................................................................................................9
  4.2 Change Order Procedure: .....................................................................................9
  4.3 Regulatory Changes: ............................................................................................9
  4.4 Breach of Contract: ............................................................................................9
  4.5 Disputes: ..............................................................................................................9
  4.6 Termination for Default: .....................................................................................10
Notice of Non-Discrimination: Ozark Regional Transit (ORT) complies with the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964 and other federal equal opportunity laws and therefore does not discriminate on the basis of race, sex, color, age, national origin, religion or disability, in admission or access to and treatment in ORT programs and activities, as well as ORT’s hiring or employment practices. Contact, Joel Gardner, Executive Director, 2423 East Robinson Avenue, 479-756-5901, jgardner@ozark.org. Complaints of alleged discrimination and inquiries regarding ORT’s nondiscrimination policies may be directed to JoAnna McFadden, Section Head – EEO/DBE, (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@arkansashighways.com

This notice is available from the ADA/504/Title VI Coordinator in large print, on audiotape and in Braille.
PART I
DEFINITIONS

1.0 Singular, Plural, Gender and Definitions:
Any word contained in the text of this Invitation For Bid (IFB)/Request For Proposals (RFP) shall be read as the singular or the plural and as the masculine, feminine or neuter gender, all as may be applicable in the particular context. More specifically, however, for the purposes of this Invitation For Bid/Request For Proposal, the following words shall have the meanings attributed to them in this Section:

a) "ORT" means the Ozark Regional Transit Authority, an Arkansas public transit authority.

b) "Contract Documents" means the document, including all exhibits attached thereto and/or incorporated therein by reference, which evidences the obligation of ORT and the Contractor resulting from this IFB/RFP/RFP.

c) "Contractor" means a person, natural or artificial, who is or may be awarded a contract hereunder.

d) "FTA" means the Federal Transit Administration.

e) "Proposal" means the offer and response made to this IFB/RFP by a Proposer.

f) "Proposal Opening Date" means date proposal(s) are officially opened and reviewed.

g) "Proposer" means the person, natural or artificial, submitting a Proposal in response to this IFB/RFP/RFP.

h) "IFB/RFP" and/or "Invitation For Bid/Request For Proposals" means Invitation For Bid/Request For Proposals.

i) "Submission Deadline" means date and time bids must be submitted to be considered.

j) "US DOL" means the United States Department of Labor.

k) "US DOT" means the United States Department of Transportation.
1.1 Additional Definitions:
For the purposes of this Invitation For Bid/Request For Proposals, the following words shall have the meanings attributed to them in this Section:

a) "ORT’s Address" means 2423 East Robinson Avenue, Springdale, Arkansas, 72764.

b) "ORT’s Administration Building" means the Administration building situated at the ORT’s Address.

c) “Maintenance Facility” means the Maintenance building located at 2423 East Robinson Avenue located in Springdale, Arkansas, 72764.
PART II
SOLICITATION

2.0 Solicitation:
ORT is soliciting Proposals from qualified firms who meet the conditions set forth herein the specifications and requirements within the IFB/RFP.

2.1 Submission of Proposal:
All Proposals must be delivered to ORT, postage prepaid if mailed, to ORT's Address in a sealed envelope with the words "IFB/RFP #(assigned bid number) Response Bid Enclosed" prominently marked on both sides of the envelope. All Proposals must be submitted to ORT in accordance with the provisions hereof on or before the Submission Deadline. No Proposal submitted after the Submission Deadline will be considered.

The following forms and documentation must be included with bid submittal:

1. Bid in Response to Invitation to Bid
2. Receipt of Addenda Certification
3. Non-Collusion Assurance Affidavit
4. DBE/WBE Certification
5. EEO Certification
6. Eligible Bidder Certification
7. Restrictions on Lobbying Certification
8. Buy America Certification (if applicable to project)

2.2 Bid Opening
Bids submitted to ORT in accordance with the requirements hereof shall be publicly opened and examined on the Bid Opening Date. PLEASE BE ADVISED that the contents of each Bid, including documents marked proprietary, shall be made public.

2.3 Request for Clarifications:
Any request for clarifications must be in writing and submitted by the Bidder. Responses will be made by ORT on or before the submission deadline.

2.4 Proposal Inquiries:
All inquiries regarding IFB/RFP should be directed to Ozark Regional Transit, (479) 756-5901.
PART III
GENERAL REQUIREMENTS

3.0 Deadline for Submission of Proposals:
All Proposals received by ORT prior to the Submission Deadline shall be kept securely sealed. Any Proposal submitted to ORT in an unsealed envelope may be considered non-responsive and may be rejected. Any Proposal submitted to ORT, which has no signature, may be considered non-responsive and may be rejected. Any Proposal received after the Submission Deadline may not be opened and/or considered for award.

3.1 Format:
Proposals must be submitted to ORT in conformity with the format and requirements hereof. Proposals submitted to ORT in any other format may be considered non-responsive and may be rejected. The person executing the Proposal must initial any erasures, emendations, corrections, interlineations, alterations or other changes appearing on the Proposal.

3.2 Receipt of a Single Proposal:
In the event only one Proposal is received, or in the event of an apparently unbalanced Proposal, the Proposal may be considered for evaluation based on the established criteria, and ORT may determine the reasonableness of the Proposal price through any appropriate means, including, but not limited to, price and cost analysis. A price analysis involves examining the Proposal and evaluating a prospective price without evaluating the separate cost elements. If only one Proposal is so received and ORT determines that a price or cost analysis is needed, the sole Proposer shall cooperate with ORT, as necessary, in order for its Proposal to be considered or the Proposer may at its option withdraw its Proposal.

3.3 Additional Information:
ORT reserves the right to require that a Proposer submit additional and further information or explanation to aid ORT in considering the Proposal. At the discretion of ORT, Contractors submitting proposals may be requested to make oral presentations as part of the evaluation process.

3.4 Debarment and Suspension Requirements of Executive Order 12549:
Any Bid submitted hereunder shall include Certification Number Five attached hereto, executed by the Bidder, that the Bidder, the employees of the Bidder and the subcontractors of the Bidder are not on the Comptroller General's list of ineligible Contractors. If any of the foregoing persons appear on the Comptroller General's list of ineligible Contractors the Bidder will be considered ineligible.
WARNING: ANY BID THAT DOES NOT INCLUDE THE CERTIFICATE REQUIRED BY THIS SECTION SHALL BE CONSIDERED NON-RESPONSIVE.

3.5 Receipt of Addenda:
Any Proposal submitted hereunder shall include Receipt of Addenda Certification attached hereto, executed by the Proposer, representing that the Proposer has received and read all Addenda described hereon.

WARNING: ANY PROPOSAL THAT DOES NOT INCLUDE THE CERTIFICATE REQUIRED BY THIS SECTION SHALL BE CONSIDERED NON-RESPONSIVE.

3.6 IFB/RFP Postponement and Amendment:
ORT reserves the right to revise or amend this IFB/RFP at any time up to or until the Submission Deadline. All revisions and amendments shall be in writing and copies thereof either mailed, transmitted by facsimile, and will be posted on ORT’s website (www.ozark.org) to all persons who pick up or received the IFB/RFP. The Submission Deadline and the Proposal Opening Date may be extended at the sole discretion of ORT.

3.7 Conditions of Proposal:
Any Proposal submitted in response to this Invitation For Bid/Request For Proposals and any purchase orders and/or contracts awarded or resulting there from shall be subject to the terms, provisions, instructions and conditions hereof and any subsequent amendments, modifications, addendum, supplements and/or changes thereto.

3.8 Proposals and Proposal Modifications:
All documents, data, materials and information submitted by the Proposer to ORT, whether accompanying the Proposal originally or subsequently submitted and all emendations and modifications made to the Proposal shall be deemed to constitute a part of the Proposal.

3.9 Proposal/Offer:
Each Proposal submitted by a Proposer is deemed to be an offer made by and binding upon the Proposer and ORT may, in its sole discretion, accept the offer as stated in the Proposal, with or without further negotiations, and, upon such acceptance by ORT, Proposer covenants and agrees that it is bound and obligated to fully perform in accordance with the terms and provisions of its Proposal as accepted.
3.10 Waiver of Informalities & Proposal Rejection:
ORT reserves the right to waive any informality or irregularity in any Proposal it receives which in ORT's sole discretion do not prejudice other persons. Further, ORT reserves the right to reject any and all Proposals submitted. Conditional Proposals or those Proposals submitted which take exception to the provisions hereof will be considered as non-responsive and will be rejected.

3.11 Proposal Withdrawal:
Proposals may be withdrawn upon the written request of the Proposer, if received by ORT at any time up to (but not on or after) the Submission Deadline. If a Proposal is withdrawn in the manner and within the time prescribed herein, then any bond or certified check delivered with the Proposal shall likewise be returned to the Proposer. After the Proposal Opening Date, all Proposals received by ORT shall be binding upon the Proposer and shall remain and be in full force and effect for a period of at least 90 days.

3.12 Authority to Submit and Perform Proposal:
If a natural or artificial person submits the Proposal, doing business under a trade name, an assumed name or a fictitious name, then the Proposal shall so state. If the Proposal is submitted by a Partnership or Joint Venture, then, in addition to the name of the Partnership or the Joint Venture and the address of the Partnership or Joint Venture, then the full name and address of each Partner of the Partnership or Joint Ventured of the Joint Venture shall be stated in the Proposal and the Proposal must be executed by each Partner of the Partnership or Joint Ventured of the Joint Venture, as applicable. If the Proposal is submitted by a Limited Partnership, then (i) the full name and address of each General Partner and Limited Partner shall be stated in the Proposal, (ii) evidence of the General Partner's authority to act for and bind the Limited Partner shall be included in and with the Proposal, (iii) evidence of registration as a foreign limited partnership in Arkansas shall be included in and with the Property and (iv) the Proposal shall be executed by the duly authorized General Partner(s). If the Proposal is submitted by a corporation or limited liability company, then (i) a certificate of good standing from the Secretary of State of Arkansas shall be included in and with the Proposal, (ii) a certified copy of the resolution authorizing the execution of the Proposal in the name of the corporation or limited liability company shall be included in and with the Proposal, and (iii) the Proposal shall be executed by the duly authorized officer of the corporation or limited liability company.

3.13 Proposal Protests:
A Proposer may seek a review of ORT's acceptance of a Proposal. Requests for such review must be in writing and received by ORT not less than 10 calendar days before the Proposal Opening Date. Requests for a review received less than 10 calendar days before the Proposal Opening Date will not be considered. ORT’s Assistant General Manager or designated purchasing agent; must furnish ORT’s Executive Director a copy of all previous correspondence and other documentation pertaining to the Proposer's request for a review. In conducting the review, the Executive Director will consider only the correspondence and documentation provided by ORT’s Assistant General Manager or obtained through specific requests to ORT, Proposer, or other third party.
Upon receipt of notice that a request for review has been submitted to ORT, care of the designated purchasing agent, the Executive Director must determine if the Proposal Opening Date should be postponed. If the Proposal Opening Date is postponed, ORT must notify all prospective Proposers who have been furnished a copy of the IFB/RFP that a request for review has been filed with ORT and that the Proposal Opening Date is postponed until the Executive Director of ORT has issued his/her decision. Upon receipt of the Executive Director’s decision, ORT must issue an amendment rescheduling the Proposal Opening Date or announcement other appropriate action.

A request for review may be withdrawn at any time before ORT has issued its decision. ORT will notify all Proposers if a request for review has been withdrawn.

3.14 Approved Equals:
Whenever any brand name, any manufacturer name, or product name is indicated in this Invitation to Bid/Request for Proposal, they are included only for the purpose of establishing identification and a general description of the item. Whenever a process is designated or described, it will be understood that the words “or approved equals” follows such name, designation or description, whether in fact they do so or not.

It should be understood that specifying a brand name component and/or equipment in this Invitation to Bid/Request for Proposal shall not relieve the bidder from the responsibility to produce the product in accordance with the performance warranty and contractual requirements hereof. The bidder is responsible for notifying ORT of any inappropriate brand name and/or equipment that may be called for in this Invitation For Bid/Request For Proposals and to propose a suitable substitute therefore.

3.15 Announcement of Award and Award:
The Proposal which is deemed and determined by ORT's Selection Committee, in its sole discretion, to be the most responsive and responsible Proposal, complying with all of the conditions hereof, shall be accepted by ORT, unless all Proposals are rejected. ORT shall announce which Proposal it has accepted, or that all Proposals have been rejected, in writing addressed to each person submitting a Proposal.

The successful proposer should be notified of the contract award as soon as possible. That notice will be made in the form of a recommendation to the Ozark Regional Transit Authority Board for award of the contract. An affirmative vote of the Board will be required before the contract can be finalized and put into effect.

3.16 Prohibited Interest:
No employee, officer, director or agent of ORT shall participate in the selection, and/or award or administration of a contract resulting from this IFB/RFP if a conflict of interest, real or apparent, would be involved. ORT's directors, officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from any Proposer.
3.17 Audit and Inspection:
By submission of a Proposal hereunder the Proposer agrees that ORT, the Comptroller General of the United States, or any of their duly authorized representatives shall, for the purpose of audit and examination, be permitted to inspect all of its work, materials, payrolls, and other data and records with regard to the Proposer's performance of this IFB/RFP and audit the books, records and accounts in regard thereto. Further, the Proposer shall maintain all records required hereunder and by any applicable laws, rules and regulations for at least three years from the termination date of the IFB/RFP.

3.18 Federal Requirements:
All Proposers understand that Federal laws, regulations, policies, and related administrative practices (hereinafter referred to as the "Federal Requirements") applicable to this IFB/RFP may be modified from time to time. By submission of a Proposal hereunder all Proposers agree that the most recent of such Federal Requirements will govern the administration of this IFB/RFP at any particular time.

3.19 Time is of the Essence:
Time is of the Essence of this IFB/RFP and all provisions hereof.

3.20 Project Familiarization
The Bidder shall familiarize him/herself with the location of facilities and of the areas of responsibility and labor therein. Failure to do so will not relieve a successful bidder of his obligation to furnish all labor/materials/supplies necessary to carry out the provisions of this contract. Insofar as possible in carrying out his work, the Bidder must employ such methods and/or means to not cause any interruption of or interference with operations of Ozark Regional Transit Authority.
PART IV
CONTRACT PROVISIONS

By submission of a Proposal, pursuant to the terms and provisions hereof, the Proposer covenants and agrees that the following provisions shall be made a part of any Contract Documents resulting herefrom:

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

4.1 Change Orders:
RESERVED

4.2 Change Order Procedure:
RESERVED

4.3 Regulatory Changes:
RESERVED

4.4 Breach of Contract:
If the Contractor shall fail, refuse or neglect to fully comply with the terms and provisions hereof, such a failure, refusal or neglect shall be deemed a breach of this Contract, and ORT may, in its discretion, pursue any and all of its lawful remedies.

4.5 Disputes:
Except as otherwise provided for in this Contract, any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement of the Contractor and ORT, shall be decided by the Executive Director of ORT, who shall reduce this decision to writing, and mail or otherwise deliver a copy of same to the Contractor within twenty (20) days after the dispute is submitted for determination. The decision of the Executive Director of ORT shall be final and conclusive upon the parties hereto, unless determined by a court of competent jurisdiction to have been fraudulent or capricious or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this Section, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with
the performance of the Contractor's obligations under the Contract and in accordance with the Executive Director's decision, unless the Contractor, in good faith, believes that continued performance will adversely affect the safety of the product or services being supplied hereunder or have significant impact on the Contractor's production schedule. This "Disputes" clause does not preclude consideration of questions of law in connection with decisions provided for above, provided, that nothing in this Contract shall be construed as making final the decision of any administrative official, representative or board on the question or law. On procurement items in which FTA funding is involved, the Contractor shall be aware of protest procedures with the FTA Regional Offices.

4.6 Termination for Default:
ORT, by written notice, may terminate this Contract, in whole or in part, if the Contractor fails or refuses to perform any of the provisions hereof within the time and in the manner specified herein and/or any extensions thereof or if the Contractor fails to make progress in the performance of the Contractor's obligations hereunder so as to endanger performance of this Contract in accordance with its terms and, in either of said events, the Contractor does not cure such failure to so perform within a period ten (10) days after receipt of notice of default from ORT. If the Contract is terminated in whole or in part for default, ORT may procure upon such terms and in such manner as ORT may deem appropriate, supplies or services similar to those so terminated. The Contractor shall be liable to ORT for any excess costs for such similar supplies or services and shall continue the performance of this Contract to the extent not terminated under the provisions of this clause.

Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

Payment for completed supplies or services delivered to, performed for, and accepted by ORT shall be at the contract price. ORT may withhold from amounts otherwise due the Contractor for such completed supplies such sum as ORT determines to be necessary to protect ORT against loss because of outstanding liens or claims of former lien holders.

If, after notice of termination of this Contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to termination for convenience of ORT.

The rights and remedies of ORT provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.
4.7 Termination for Convenience:
ORT, by written notice, may also terminate this Contract, in whole or in part, if it is in the best interest of ORT as determined, from time to time, by ORT in its sole discretion. Any such termination shall be effected by delivery to the Contractor of a notice of termination specifying the extent to which the performance of work under the Contract is terminated and the date upon which such termination shall be effective. If this Contract is for supplies and is so terminated, the Contractor shall be compensated in accordance with its auditable cost to point or notification of terminations and its cost incurred pursuant to and in compliance with the terms listed in this document. To the extent that this Contract is for services and is so terminated, ORT will be liable only for payment in accordance with the payment provision of this Contract for services rendered to the effective date of termination.

4.8 Contractor Action:
After receipt of a notice of termination, and except as otherwise directed by ORT, the Contractor shall: (i) Stop work under the Contract on the date and to the extent specified in the notice of termination; (ii) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the Contract as is not terminated; (iii) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination; (iv) Assign to ORT in the manner, at the times, and to the extent directed by ORT, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which ORT shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts; (v) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of ORT, to the extent it may require, which approval or ratification shall be final for all the purposes of this clause; (vi) Transfer title to ORT and deliver in the manner, at the times, and to the extent, if any, directed by ORT the fabricated or no fabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated, and the completed or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to ORT; and (vi) Use its best efforts to sell, in the manner, at the times, to the extent, and at the price(s) directed or authorized by ORT, any property of the types referred to above, provided, however, that the Contractor shall not be required to extend credit to any purchaser, and may acquire any such property under the conditions prescribed by and at a price(s) approved by ORT, and provided further, that the proceeds of any such transfer of disposition shall be applied in reduction of any payments to be made by ORT to the Contractor under this Contract, or shall otherwise be credited to the price or cost of the work covered by this Contract, or paid in such other manner as ORT may direct, for the protection or preservation of the property related to this Contract which is in the possession of the Contractor and in which ORT has or may acquire an interest.

4.9 Communications:
In cases where communication is required between Contractor and ORT, such as further information, furnishing of specifications, or obtaining approval of proposed work, such communications from Contractor shall be forwarded directly to the Executive Director of
ORT. Communications shall be in writing and delivered personally, by facsimile (fax) or telegram, or by regular, registered, or certified mail. Telephone calls may be used to expedite communications, but shall not be official communications unless confirmed in writing. Communications shall be considered received at the time actually received the addressee or designated agent.

4.10 Contractor Responsibility:
In case of any variance, this specification shall take precedence over Contractor's or subcontractor's own specification. The Contractor shall assume responsibility for all materials and services used, whether the same is manufactured by the Contractor or purchased ready made from a source outside the Contractor's company. In case of the replacement of a subcontractor, the Contractor shall, within five (5) days, notify ORT in writing of the replacement and provide name, address, telephone number, and the type of service.

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

4.12 No Federal Government Obligations to Third Parties:
(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government or in approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

4.13 False or Fraudulent Statements and Claims:
The Contractor acknowledges and agrees as follows:

(1) The Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 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 the Project. The Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, ORT
reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended.

(2) The Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to ORT in connection with an urbanized area formula project financed with Federal assistance authorized by 49 U.S.C. § 5307, ORT reserves the right to impose on the Contractor the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1), to the extent ORT deems appropriate.

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

4.14 Maintenance of Records:
The Contractor shall at all times maintain reasonable records relating to the performance of this Contract. Such records shall be in conformity with the generally accepted accounting principles. Records shall be available to ORT and its representative(s).

4.15 Audit and Inspection of Records:
The Contractor shall permit ORT, the authorized representative of ORT, the United States Department of Transportation, and the Comptroller General of the United States to inspect and audit all data and records of the Contractor relating to its performance under the contract. The Contractor and its suppliers shall maintain records concerning minority/disadvantaged business enterprises for a period of three (3) years after completion of the contract.

4.16 Prohibited Interest – Contractor:
The Contractor warrants and represents that it presently has no interest and shall not acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of services, required to be performed under this Contract. The Contractor further warrants and represents that in the performance of this Contract, it shall not employ any person with such interest.

4.17 Prohibited Interest – Authority:
No member, officer, or employee of ORT, or of a local public body during their tenure, or for one (1) year thereafter, or organization which employs, or is about to employ any of the above, shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

4.18 Interest of Members or of Delegates to Congress:
No member of or delegate to the Congress of the United States shall be admitted to any share or part of the Contract, or to any benefit arising therefore. This shall not be construed to prevent any such person from owning stock in a publicly held corporation.
4.19 Restrictions on Lobbying:
ORT agrees to comply with 31 U.S.C. § 1352, which prohibits the use of Federal funds for lobbying any official or employee of any Federal agency, or member or employee of Congress. In addition, even though ORT uses no Federal funds for lobbying, ORT also agrees to disclose any lobbying of any official or employee of any Federal agency, or member or employee of Congress in connection with Federal assistance, and to comply with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20.

4.20 Free Competitive Bidding Affidavit:
Bidder has not, either directly, or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the bid submitted herein.

4.21 Non-Collusion Assurance:
The Bidder attests that he or she is the person responsible within its firm for the final decision as to the price(s) and amount of this bid and further attest that:

1) The price(s) and amount of this bid have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition with any other Vendor, Bidder or potential Bidder.

2) Neither the price(s) or the amount of this bid has been disclosed to any other firm or person who is a Bidder or potential Bidder on this project, and will not be so disclosed prior to bid opening.

3) No attempt has been made or will be made to solicit, cause or induce any firm or person to refrain from bidding on this project, or to submit a bid higher than the bid of this firm, or any intentionally high or non-competitive bid or other form of complimentary bid.

4) The bid of its firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complimentary bid.

5) Its firm has not offered or entered a subcontract or agreement regarding the purchase of materials or services from any firm or person, or offered, promised or paid cash of anything of value to any firm or person, in consideration for an agreement or promise by any firm or person or person to refrain from bidding or to submit a complementary bid on this project.

6) Its firm has not offered or promised any subcontract or agreement regarding the sale of materials or services to any firm or person, and has not been promised or paid cash or anything of value to any firm or person, whether in connection to any other project, in consideration for my firm’s submitting a complimentary bid, or agreeing to do so, on this project.
7) The Bidder has made a diligent inquiry of all members, officers, employees, and agents of its firm with responsibilities relating to the preparation, approval, or submission of its firm’s bid and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in this affidavit.

4.22 Grant Contract:
The services and/or product described herein are to be purchased with the assistance of a Grant from the Federal Government under the Federal Transit Administration Act of 1964. The Contractor shall be required to comply with all terms and conditions prescribed for third party contracts in a grant contract between the United States of America and ORT.

4.23 Buy America:
The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver had been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than $100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.


- This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111-5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph 2 CFR 176.140 (b)(3) and 2 CFR 176.140 (b)(4). This requirement does not apply to the material listed by the Federal Government under 2 CFR 176.140(b)(2).

- A prospective applicant requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) should submit the request to the U.S. Federal Transit Administrator in time to allow a determination before submission of applications or proposals. The prospective applicant shall include the information and applicable supporting data required by paragraphs at 2 CFR 176.140(c) and (d) in the request. If an applicant has not requested a determination regarding the inapplicability of 1605 of the Recovery Act before submitting its application or proposal, or has not received a response to a previous request, the applicant shall include the information and supporting data in the application or proposal.”
4.24 Cargo Preference:
Cargo Preference-Use of United States-Flag Vessels-The Contractor agrees:
(a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent
of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and
tankers) involved, whenever shipping any equipment, material, or commodities
pursuant to the underlying contract to the extent such vessels are available at fair and
reasonable rates for United States-Flag commercial vessels;
(b) to furnish within 20 working days following the date of loading for shipments
originating within the United States or within 30 working days following the date of
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).
(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.

4.25 “Fly America” Requirements
The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act)
in accordance with the General Services Administration's regulations at 41 CFR
Part 301-10, which provide that recipients and sub-recipients of Federal funds and
their contractors are required to use U.S. Flag air carriers for U.S Government-
financed international air travel and transportation of their personal effects or
property, to the extent such service is available, unless travel by foreign air carrier
is a matter of necessity, as defined by the Fly America Act.

The Contractor shall submit, if a foreign air carrier was used, an appropriate
certification or memorandum adequately explaining why service by a U.S. flag air
carrier was not available or why it was necessary to use a foreign air carrier and
shall, in any event, provide a certificate of compliance with the Fly America
requirements. The Contractor agrees to include the requirements of this section in
all subcontracts that may involve international air transportation.

4.26 Indemnification:
(a) The Contractor covenants and agrees with ORT that it shall defend, indemnify,
save and hold harmless ORT, its agents, officers, directors and employees of, from
and against any and all suits, proceedings, claims, causes of action, awards (including
any punitive awards), damages (including any claim for property damage and/or injury
to persons, including death and disease), decrees, judgments, liabilities, losses,
demands and any and all costs, expenses, attorney's fees and any fees, charges and
expenses of any expert witnesses or professionals incurred by ORT, its agents,
officers, directors and employees (including any such costs, expenses, fees and charges
incurred in the enforcement of this indemnmification) arising out of, resulting from,
related to or in any way connected to: (i) the Contractor's acts or omissions, including
acts or omissions of its employees, servants and agents, (ii) the performance by the
Contractor, its employees, servants and agents of the Contractor's obligations
hereunder, (iii) the violation by the Contractor, its employees, servants and agents of
proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished hereunder, (iv) the violation by the Contractor, its employees, servants and agents of any federal, state or local laws and regulations applicable to or relating to this Contract and (v) any alleged infringement of the United States Letters Patent or patent laws, regulations and rules covering any product, materials, supplies or equipment to be furnished hereunder.

(b) In any and all claims against ORT or any of its agents or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation benefits payable by or for the Contractor, or any subcontractor under workers compensation acts, disability benefit acts or other employee benefit acts.

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

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

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

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

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

1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

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

4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components. The Bidder understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

### 4.29 Delivery Procedure:
Delivery shall be determined by signed receipt of ORT, at the point of delivery, which shall be ORT's Address.

Delivery of the Product(s) shall be FOB point of delivery.

### 4.30 Delivery Schedule:
The Product(s) shall be delivered Monday through Friday ONLY. Saturday and Sunday delivery is not permitted. Hours of delivery shall be 8:00 a.m. through 5:00 p.m., local time.

### 4.31 Assumption of Risk of Loss:
Contractor shall assume all responsibility and liability incident to said delivery of the Product(s).

### 4.32 Title:
RESERVED

### 4.33 Delivery or Installation Delays:
The timely receipt of ORT's requirements is essential. If the requirements are not received on time in accordance with the contracted delivery schedule, ORT may cancel the unfulfilled portion of the contract for cause, purchase substitute requirements elsewhere, and recover from contractor any increased costs thereby incurred together with all
resulting incidental and consequential damages. ORT may also terminate for cause, purchase substitute requirements elsewhere and recover costs and damages for breach of Contractor's obligations.

ORT reserves the right to extend delivery or installation, in case the delivery of the Product under this Contract shall be necessarily delayed because of strike, injunction, civil disturbance, government controls, or by reason of any cause or circumstance beyond the control of the Contractor, as detailed in writing by the Contractor. The time of completion of a delivery or installation shall be extended by a number of days to be determined in each instance by ORT, in its sole discretion.

**4.34 Liquidated Damages:**
In the event of delay in the completion of deliveries of the Product(s) beyond the dates specified and not subject to the Contract unavoidable delays cause, ORT shall assess as liquidated damages $100.00 per calendar day. These damages shall be deducted from any monies due, or which may thereafter become due, to the Contractor under this contract.

**4.35 Final Acceptance:**
RESERVED

**4.36 Non-Acceptance:**
RESERVED

**4.37 Equal Employment Opportunity:**
The Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age, 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 insert the foregoing provision, modified as necessary to identify the affected parties, in each third party contract implementing this procurement, except third party contracts for standard commercial supplies, raw materials, or construction, and shall require each third party contractor to insert a similar provision in each subcontract, except subcontracts for standard commercial supplies, raw materials, or construction.

**4.38 Davis Bacon & Copeland Anti-Kickback Acts:**
Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the
locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

(1) Minimum wages

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Bidder and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Bidder and its sub bidders at the site of the work in a prominent and accessible place where it can be easily seen by the workers. (ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

(2) The classification is utilized in the area by the construction industry; and
(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed. (B) If the Bidder and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

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

The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification. (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Bidder shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof. (iv) If the Bidder does not make payments to a trustee or other third person, the Bidder may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Bidder, that the applicable standards of the Davis-Bacon Act have been met.

The Secretary of Labor may require the Bidder to set aside in a separate account assets for the meeting of obligations under the plan or program. (v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination.

The contracting officer shall approve an additional classification and wage rate and fringe
benefits therefore only when the following criteria have been met:

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

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

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

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

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification. (2) Withholding - ORT shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Bidder under this contract or any other Federal contract with the same prime Bidder, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Bidder, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Bidder or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, ORT may, after written notice to the Bidder, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
(3) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the Bidder during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Bidder shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

Bidders employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (ii)(A) The Bidder shall submit weekly for each week in which any contract work is performed a copy of all payrolls to ORT for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402.

The prime Bidder is responsible for the submission of copies of payrolls by all subcontractor. (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Bidder or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

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

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

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and
fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract. (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section. (D) The falsification of any of the above certifications may subject the Bidder or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code. (iii) The Bidder or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job.

If the Bidder or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Bidder, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Bidder as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

Where a Bidder is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Bidder's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination.

Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits,
apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Bidder will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices.

Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the Bidder will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

(5) Compliance with Copeland Act requirements - The Bidder shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract. (6) Subcontracts - The Bidder or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the
subcontractors to include these clauses in any lower tier subcontracts. The prime Bidder shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5. (7)

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

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

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7.

Disputes within the meaning of this clause include disputes between the Bidder (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility - (i) By entering into this contract, the Bidder certifies that neither it (nor he or she) nor any person or firm who has an interest in the Bidder's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4.39 Contract Work Hours and Safety Standards:

(1) Overtime requirements - No Bidder 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 Bidder and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Bidder and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of
the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - ORT 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 Bidder or subcontractor under any such contract or any other Federal contract with the same prime Bidder, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Bidder, such sums as may be determined to be necessary to satisfy any liabilities of such Bidder or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts - The Bidder or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors include these clauses in any lower tier subcontracts. The prime Bidder 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.

4.40 Insurance and Bonding:

At a minimum, the Contractor agrees to comply with FTA regulations, “Project Management Oversight”, 49 C.F.R. Part 663, and any revision thereto.

At all times during the term of the Contract, the Contractor shall purchase and maintain the following insurance coverage’s at a minimum:

(a) Comprehensive general public liability on an occurrence basis and property damage insurance, including but not limited to, premises and operations coverage with X, C and U exclusions deleted, if applicable, owners and contractors protective coverage; product and completed operations coverage, broad form property damage coverage including completed operations, blanket contractual liability insurance, personal injury coverage, and contingency liability coverage, protecting and indemnifying ORT and others designated by ORT against any and all claims (including all costs and expenses of defending against same) for bodily injury, sickness, disease or death or for damage or injury to or destruction of property (including loss of use) arising out of the Contractor's performance of its obligations under the Contract, the limits of which insurance shall be not less than Five Hundred Thousand Dollars.

(b) Worker's compensation insurance and employer's liability insurance with a minimum limit of Five Hundred Thousand Dollars covering all liability imposed under the provision of any worker's compensation law, employer's liability act or similar laws of the State of Arkansas that may at any time or from time to time be enacted.
(c) Business Auto Liability Insurance in the amount of Five Hundred Thousand Dollars combined single limits for bodily injury and/or property damage liability including, (i) owned autos, (ii) hired or borrowed autos, and (iii) non-owned autos.

(d) Blanket Fidelity Bond Insurance in the amount of One Hundred Thousand Dollars on each and every employee of the Contractor.

(e) Insurance company certificates evidencing the existence of all of these policies of insurance shall be delivered to ORT and all policies of insurance required to be provided and obtained hereunder shall show ORT as an additional insured and provide that they shall not be amended or canceled on less than 30 days prior written notice to ORT and all insured and beneficiaries of the policies.

### 4.41 Bid Bond Requirements (Construction)

Bid Security - A Bid Bond must be issued by a fully qualified surety company acceptable to ORT and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder. (b) Rights Reserved - In submitting this Bid, it is understood and agreed by bidder that the right is reserved by ORT to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of ORT.

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

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

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.
4.42 Performance and Payment Bonding Requirements (Construction)
The Bidder shall be required to obtain performance and payment bonds as follows:

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

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

(b) Payment bonds
1. The penal amount of the payment bonds shall equal:
   (i) Fifty percent of the contract price if the contract price is not more than $1 million.
   (ii) Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or
   (iii) Two and one half million if the contract price is more than $5 million.

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

4.43 Performance and Payment Bonding Requirements (Non-Construction)
The Bidder may be required to obtain performance and payment bonds when necessary to protect ORT's interest. (a) The following situations may warrant a performance bond:

1. ORT property or funds are to be provided to the Bidder for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A Bidder sells assets to or merges with another concern, and ORT, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements. (b) When it is determined that a performance bond is required, the Bidder shall be required to obtain performance bonds as follows:

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

6. ORT may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. ORT may secure additional protection by directing the Bidder to increase the penal amount of the existing bond or to obtain an additional bond. (c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in ORT’s interest. (d) When it is determined that a payment bond is required, the Bidder shall be required to obtain payment bonds as follows:
7. The penal amount of payment bonds shall equal:
   (i) Fifty percent of the contract price if the contract price is not more than $1 million;
   (ii) Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or
   (iii) Two and one half million if the contract price is increased.

4.44 Advance Payment Bonding Requirements
The Bidder may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. ORT shall determine the amount of the advance payment bond necessary to protect ORT.

4.45 Patent Infringement Bonding Requirements (Patent Indemnity)
The Bidder may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Bidder is unknown or doubtful. ORT shall determine the amount of the patent indemnity to protect ORT.

4.46 Warranty of the Work and Maintenance Bonds
1. The Bidder warrants to ORT, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by ORT, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Bidder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Bidder hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by ORT and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to ORT. As additional security for these guarantees, the Bidder shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to ORT written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Bidder's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

4.47 Payroll Records:
The Contractor and any subcontractor shall maintain payrolls and basic payroll records during the course of the work, and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name
and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of Authority, USDOT, the Department of interview employees during working hours on the job.

4.48 **Subcontracts:**

The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth as well as 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 within these clauses.

4.49 **Disadvantaged Business Enterprises:**

The Federal Fiscal Year goal has been set by ORT in an attempt to match projected procurements with available qualified disadvantaged businesses. ORT’s goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established by ORT as set forth by the Department of Transportation Regulations 49 C.F.R. Part 23, March 31, 1980, and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this request for proposal.

If a specific DBE goal is assigned to this contract, it will be clearly stated in the IFB/RFP, and if the contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBEs in the work provided, ORT may declare the Contractor noncompliant and in breach of contract. If a goal is not stated in the Special Specifications, it will be understood that no specific goal is assigned to this contract.

(a) **Policy** - It is the policy of the Department of Transportation and ORT that Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, and as amended in Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, shall have the maximum opportunity to participate in the performance of Contract financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Section 106(c) of the STURAA of 1987, apply to this Contract.

The Bidder agrees to ensure that DBEs as defined in 49 CFR Part 23 and Section 106(c) of the STURAA of 1987, have the maximum opportunity to participate in the whole or in part with federal funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts.
It is further the policy of ORT to promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of ORT’s procurement activities is encouraged.

(b) **DBE obligation** - The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

(c) Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, ORT may declare the contractor noncompliant and in breach of contract.

(d) The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with the ORT’s DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of ORT and will be submitted to the ORT upon request.

(e) ORT will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation.

The assistance may include the following upon request:
* Identification of qualified DBE
* Available listing of Minority Assistance Agencies
* Holding bid conferences to emphasize requirements

DBE Program Definitions, as used in the contract:

(a) Disadvantaged business "means a small business concern":

i. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

ii. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
iii. Which is at least 51 percent owned by one or more women individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women individuals; and
iv. Whose management and daily business operations are controlled by one or more women individuals who own it.

(b) "Small business concern" means a small business as defined by Section 3 of the Small Business Act and Appendix B - (Section 106(c)) Determinations of Business Size.

(c) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

i. "Black Americans", which includes persons having origins in any of the Black racial groups of Africa;

ii. "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuba, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

iii. "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

iv. “Asian-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of Pacific, and the Northern Marianas;

v. "Asian-Indian Americans", which includes persons whose origins are from India, Pakistan, and Bangladesh.

The Contractor agrees to comply with current US DOT regulations on participation of DBEs, as defined in 49 CFR part 26, in the performance of contracts and subcontracts financed in whole or in part with Federal Funds.

Complaints concerning non-compliance with these regulations may be handled under the procedure specified in Section 4.39 below.
4.50 Non-Discrimination:
During the performance of this Contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

(a) Compliance with Regulations: The Contractor agrees to and shall comply with the Title VI of the Civil Rights Act of 1964, 42 USC §2001d and the Regulations relative to nondiscrimination in federally assisted programs of ORT (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "Regulations", which are herein incorporated by reference and made a part of this Contract).

(b) Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, religion, color, sex, age, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(c) Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, or national origin.

(d) Information and Reports: The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information is required, which is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to ORT, or the Federal Transit Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

(e) Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, ORT shall impose such contract sanctions as it or the Federal Transit Administration may determine to be appropriate including, but not limited to: (i) withholding of payments to the Contractor under the Contract until the Contractor complies; and/or (ii) cancellation, termination or suspension of the Contract, in whole or in part.

(f) Incorporation of Provisions: The Contractor shall include the provisions of paragraph (a) through (e) of this section in every subcontract, including procurements of
materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

(g) The Contractor shall take such action with respect to any subcontract or procurement as ORT or the Federal Transit Administration may direct, as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Contractor may request ORT to enter into such litigation to protect the interests of ORT and, in addition, the Contractor may request the services of the Attorney General in such litigation to protect the interests of the United States.

4.51 Americans with Disabilities Act:
The Contractor agrees to comply with, and assure that any of its subcontractors hereunder complies with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; 49 U.S.C. § 5301(d); and the following regulations and any amendments thereto:

(a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
(b) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
(c) U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 38;
(d) Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
(e) DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
(f) General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
(h) Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
(i) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609.

4.52 Suspension & Debarment:
This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Bidder is required to verify that none of the Bidder, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The Bidder is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered
transaction it enters into. 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 ORT. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to ORT, 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 49 CFR 29, Subpart C 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.

4.53 Privacy:
The following requirements apply to the Bidder and its employees that administer any system of records on behalf of the Federal Government under any contract: (1) The Bidder agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Bidder agrees to obtain the express consent of the Federal Government before the Bidder or its employees operate a system of records on behalf of the Federal Government.

The Bidder understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract. (2) The Bidder also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

4.54 Patent Rights:
Rights in Data—This following requirements apply to each contract involving experimental, developmental or research work: (1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information.

The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration. (2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added: (a) Except for its own internal use, the Purchaser or Bidder may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Bidder authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution. (b) In accordance with 49
C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government.

Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party. 1. Any subject data developed under that contract, whether or not a copyright has been obtained; and 2. Any rights of copyright purchased by the Purchaser or Bidder using Federal assistance in whole or in part provided by FTA. (c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Bidder performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained.

If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Bidder's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects. (d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Bidder agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Bidder of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract.

Neither the Purchaser nor the Bidder shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government. (e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent. (f) Data developed by the Purchaser or Bidder and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Bidder identifies that data in writing at the time of delivery of the contract work. (g) Unless FTA determines otherwise, the Bidder agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA. (3)
Unless the Federal Government later makes a contrary determination in writing, irrespective of the Bidder's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Bidder agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401. (4) The Bidder also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

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

1. **General** - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Bidder agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified. (2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Bidder's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Bidder agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401. (3) The Bidder also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

### 4.55 Recycled Products

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

### 4.56 Environmental Protection

directives, or other requirements that may affect the Project. Thus, the Contractor agrees to adhere to any such Federal requirements as the Federal Government may now or in the future promulgate.


(b) Air Quality--The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor should be aware that the following U.S. EPA regulations, among others, may apply to 40 C.F.R. Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures," 40 C.F.R. Part 86; and "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600. The Contractor agrees to report any violation of these requirements resulting from any Project implementation activity to FTA and the appropriate U.S. EPA Regional Office.

(d) Clean Water--The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. The Contractor agrees to report any violation of these requirements resulting from any Project implementation activity to FTA and the appropriate U.S. EPA Regional Office.

(e) Seismic Safety: The Bidder agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Bidder also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

(f) Motor Vehicle Pollution Requirements: The Bidder hereby certifies that: 1) The horsepower of the vehicle is adequate for the speed, range and terrain in which it will be required to operate and also to meet the demands of all auxiliary power equipment. 2) All gases and vapors emanating from the crankcase of a spark ignition engine are controlled to minimize their escape into the atmosphere. 3) Visible emission from the exhaust will not exceed No. 1 on the Ringlemann Scale, when measured six inches from the tail pipe with the vehicle in steady operation. 4) When the vehicle has been idled for three minutes and then accelerated to 80% of the rated speed under load, the
capacity of the exhaust will not exceed No. 2 on the Ringlemann Scale for more than five (5) seconds, and not more than No. 1 on the Ringlemann Scale thereafter.

4.57 Energy Conservation:
The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency contained in applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 et seq.

4.58 Miscellaneous:
The parties hereto agree to the following provisions:

(a) This Agreement is entered into in the State of Arkansas and shall be construed and interpreted in accordance with its laws.

(b) Each party and counsel for each party have reviewed this Agreement and, accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement. No inferences shall be drawn from the fact that changes have been agreed to herein from the prior Agreements.

(c) In the event one or more of the provisions (or portions thereof) of this Agreement is determined to be illegal or unenforceable, the remainder of this Agreement shall not be affected thereby and each remaining provision or portion thereof shall continue to be valid and effective and shall be enforceable to the fullest extent permitted by law.

(d) This Agreement contains all the terms and conditions agreed upon by the parties hereto with respect to the transactions contemplated hereby and all prior agreements whether written, verbal or arising by past practice, are deemed to have merged into this Agreement. This Agreement shall not be amended, altered or modified except by written instrument signed by all of the parties.

(e) This Agreement shall be binding upon and inure to the benefit of the representatives, heirs, estates, successors and assigns of the parties hereto.

(f) Nothing expressed or implied in this Agreement is intended, or shall be construed, to confer upon or give any person, firm or corporation, other than the parties hereto, their representatives, heirs, estates, successors and assigns, any benefits, rights or remedies under or by reason of this Agreement.

(g) Time is of the essence of this Agreement.

(h) This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
(i) The waiver of any breach or condition of this Agreement by any party hereto shall not constitute a precedent for any subsequent waiver or breach of any condition and the Parties further agree that this Agreement terminates and renders inoperative and unenforceable all verbal agreements between the Parties hereto.

(j) The word employee, person, officer, representative and all personal pronouns used herein, whether used in the masculine, feminine or neuter gender, shall include all other genders. Any word used herein stated in the singular shall include the plural, and vice versa. All titles and articles are for convenience only, and neither limit nor amplify the provisions of this Agreement, and all references herein to articles, paragraphs or subparagraphs hereof shall refer to the corresponding articles, paragraphs or subparagraphs of this Agreement unless a specific reference is made to such articles, paragraphs or subparagraphs of another document or instrument.

4.59 Transit Employee Protective Provisions:
(1) The Bidder agrees to comply with applicable transit employee protective requirements as follows:

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

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

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in non-urbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Bidder agrees to comply with the terms and conditions of the Special Warranty for the non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

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

4.60 Drug and Alcohol Testing:

Anyone who performs a safety-sensitive function for the recipient or sub recipient is required to comply with 49 CFR 653 and 654, with certain exceptions for contracts involving maintenance services.

Option 1 The Bidder agrees to: (a) participate in (grantee's or recipient's) drug and alcohol program established in compliance with 49 CFR 653 and 654.

Option 2 The Bidder agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The Bidder agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the Bidder shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.
Option 3 The Bidder agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The Bidder agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the Bidder shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Bidder agrees further to [Select a, b, or c] (a) submit before (insert date or upon request) a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt (insert title of the Policy Statement the recipient wishes the Bidder to use) as its policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval before (insert date or upon request) a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the Bidder agrees to: (to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

4.61 Civil Rights:

The following requirements apply to the underlying contract: (1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Bidder agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Bidder agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue. (2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract: (a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Bidder agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Bidder agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to,
the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Bidder agrees to comply with any implementing requirements FTA may issue. (b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Bidder agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Bidder agrees to comply with any implementing requirements FTA may issue. (c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Bidder agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Bidder agrees to comply with any implementing requirements FTA may issue. (3) The Bidder also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.