

River Cities Public Transit  
1600 E Dakota, Pierre, SD  
605-945-2360



## **REQUEST FOR PROPOSALS**

# Mobile Radios for Vehicle and Dispatch Operations

RFP # 2023-002

Advertised Date:	3/11/2023
Proposal Deadline:	3/31/2023

**Contact Information:**

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River Cities Public Transit  
1600 E. Dakota Ave.  
Pierre, S.D. 57501

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## Introduction:

River Cities Public Transit (RCPT) is a private non-profit agency dedicated to providing transportation services to individuals with disabilities, the elderly, low-income, and the general public. Our primary service areas include Hughes, Stanley, Hand, Hyde, Dewey, Ziebach, Haakon, East Pennington, north half of Jackson, Jones, Lyman, and Minnehaha counties in South Dakota.

River Cities Public Transit receives funds for our operations from Federal, state, county, and city governments through donations from generous donors in the communities we serve. Combined, these funds help keep our fares affordable to the riders who have minimal funds available for transportation but still need to be mobile in our communities.

### Purpose of this RFP

The purpose of this **Request for Proposal (RFP)** is to assist in the specification and selection of a supplier to support RCPT. This RFP provides information about RCPT and our plans to procure **digital** radio equipment to support our Dispatch and Vehicle Fleet operations.

The equipment listed in this RFP will be used by RCPT to **replace our current inventory of analog radios with digital radios** and to allow our employees to effectively communicate between dispatchers and vehicle drivers in the performance of their normal business operations.

### Requests for RFP

Any vendor interested in obtaining an RFP from RCPT for any project should contact **Jess Marlow, at 605-945-2360 or email at [jmarlow@rcptransit.com](mailto:jmarlow@rcptransit.com)**. Any vendor planning to submit a proposal for any RCPT project should inform RCPT by the above email address of their intentions so any changes or clarifications can be submitted. All RFP announcements, changes and clarifications for projects will be listed on the RCPT website at [rcptransit.com/availablebids](http://rcptransit.com/availablebids), or by [clicking here](#)".

### Scope of Work

RCPT will use the proposals submitted to evaluate and choose a radio equipment vendor to supply and train if determined necessary as listed in this RFP for a period of 1 year.

- The awarded Vendor will be expected to supply digital radio equipment and quantities listed in this RFP to RCPT headquarters offices located at 1600 E Dakota Avenue in Pierre, SD and other RCPT offices managed from this location throughout the state.
- The awarded Vendor will be expected to train RCPT staff at the same location(s) as determined by RCPT. RCPT is **NOT seeking installation services of these radios**, and vendor pricing should not reflect such services.

**Deliverables**

Proposals will **include all of the equipment** requested in this RFP and any **training** requested or determined necessary by RCPT. RCPT is **NOT interested** in proposals that only have a partial list of the requested equipment. The Vendor must be able to supply equipment that meets or exceeds the specifications listed in this RFP.

It is the responsibility of the Vendor to visit each RCPT site, **if necessary**, to determine and analyze the existing infrastructure presently utilized by RCPT, and if the Vendors proposed solution is capable of using this existing infrastructure to facilitate this project.

The vendor will be expected to fulfill delivery of radio equipment within 10 business days of RCPT placing an order.

**Minimum Specifications**

RCPT currently owns and operates **EF Johnson and Kenwood** analog and digital radios.

The goal of this procurement is to move to an **all-digital** mobile radio inventory that adhere to the **P25 suite of standards for interoperability**. Vendors are encouraged to propose any brand name radio as long as it is digital and need or exceed the minimum specification below, and integrates seamlessly with our current equipment inventory.

**Equipment**

**Dispatch Environment**

- Line Item 1: Mobile Radio for Base Setup
- Line Item 2: Control Head
- Line Item 3: Microphone
- Line Item 4: DC Power Cable
- Line Item 5: Mounting Case
- Line Item 6: Power Supply

**Bus / Fleet Environment**

- Line Item 1: Mobile Radio
- Line Item 2: Control Head
- Line Item 3: Microphone
- Line Item 4: DC Power Cable
- Line Item 5: Mounting Bracket
- Line Item 6: Ignition Sense

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## Instructions To Vendors

This is a **one-time** Request for Proposal for a tenure of 1 year from the execution of the contract. All of the specifications, standard features, and options must **meet or exceed** the specifications listed. Any different product than the above specifications must include a detailed description of the product. Proposals should include a cost that is easily comparable and complete for all of the items listed.

## Clarification of Proposal

RCPT reserves the right to obtain clarification of any proposal at any point in the evaluation and selection process; and to request more information in an effort to properly evaluate any proposal. It is the vendors responsibility to respond within two business days of any proposal inquiry for clarification. **Failure to respond to any request for clarification within two business days can result in the rejection of the proposal.**

## Proposal Format and Submission

All proposals must be **organized and tabbed** with the following heading labels:

### Business Summary

A summary of your business to include history, expertise, executive summaries, financial highlights, and capability to fulfill and execute the goals of this proposal.

### Assessment of Work

A complete narrative of the Vendors assessment of the work to be performed under this RFP, the vendors ability and approach, and the resources necessary to fulfill the requirements demonstrating the Vendor's understanding of the desired overall performance expectations.

### Warranty and Maintenance

This section should include a description of radio and equipment warranties that come with a purchase and applicable times when the radios and equipment are covered under warranty.

### Project Plan

The responsibilities and schedule for performing the work. The Vendor will provide a project plan that indicates how the Vendor will complete the required deliverables.

### Cost Proposal

RCPT expects the vendor's Cost Proposal to include:

- Costs for each line item listed for the Dispatch Environment
- Costs for each line item listed for the Bus / Fleet Environment
- Any / all anticipated training costs

Item costs should be supported for the entire 1 year of this contract and may be different by product type. Please use the **Cost Sheet Appendix A** of this RFP to display the cost for each item.

### Signature

Proposals must be signed by an authorized officer of your company. Before submitting your proposal, please ensure that it meets or exceeds all requirements, including the four signed Federal Certifications attached to this RFP.

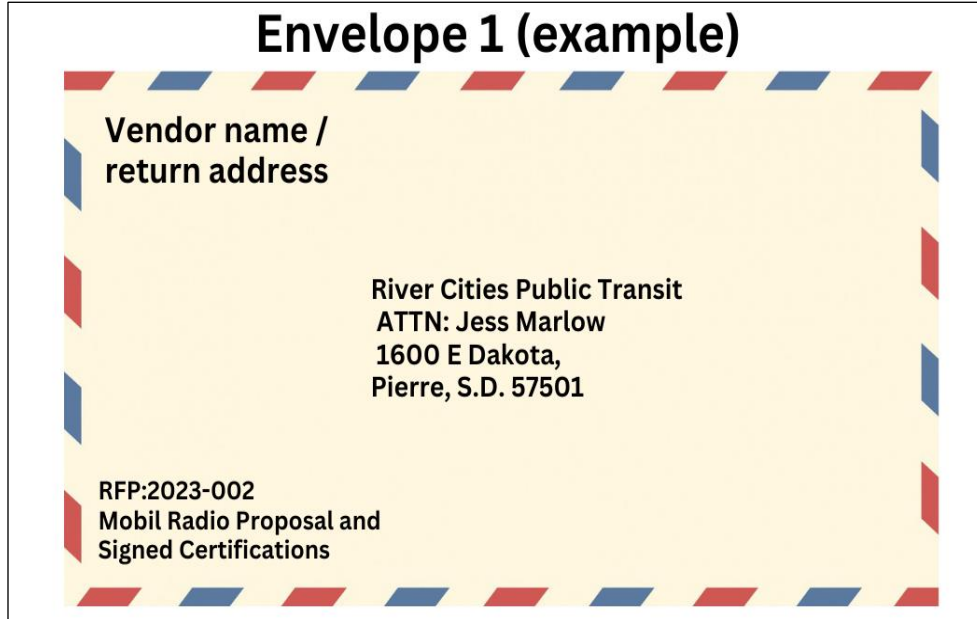
### Due Date

All proposals are due in **written form and should be delivered to our headquarters located at 1600 E Dakota, Pierre, SD. 57501** either by mail or hand-delivered no later than 1 pm **local time on 3/31/2023**. Please **DO NOT** email proposals in response **to this RFP Electronic versions will not be considered**.

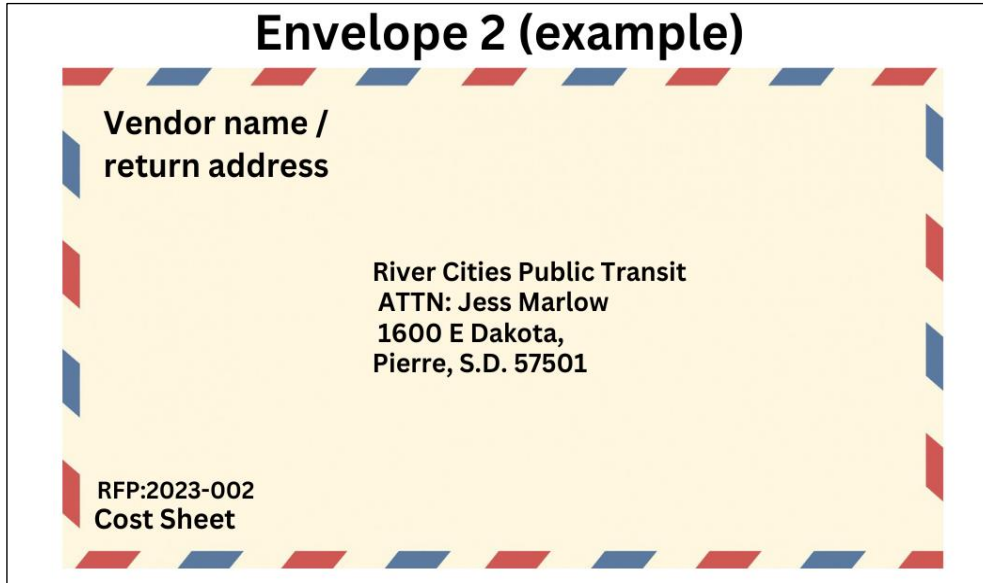
### Submitting a Proposal

The Vendor must submit an original and one (1) identical copy of each proposal AND cost estimate in the following manner: Submitted proposals should be sent in two separate sealed envelopes as shown in the examples on the next page.

**Envelope 1:** Includes Mobil Radio Proposal, Signed Certifications (original and 1 identical copy)



**Envelope 2:** Includes Signed Cost Estimate (original and 1 identical copy)



No proposal envelope will be opened until the date and time indicated. It is the vendors’ responsibility to sign and return the **four required certifications** pertaining to this RFP. If the Vendor fails to do so, their proposal will NOT be considered for award.

**Proposed Procurement Timeline**

Request for Proposal Advertised	3/1/2023
Questions Due By	3/8/2023
Response To Questions Due	3/15/2023
Proposal Submission Deadline	3/31/2023
Winning Vendor Chosen By	4/3/2023
Contract Signed by Both Parties By	4/7/2023
Items received within 120 days of signed contract.	8/5/2023



### Tax-Exempt Status

RCPT is a 501(c) (3) non-profit organization that is tax-exempt and should not be charged any sales tax on the final proposal. Proof of tax-exempt status will be provided to the winning Vendor.

### Proposal Evaluation and Contract Award

Vendors will be evaluated based on the project requirements included in this RFP plus the items listed below:

#### Evaluation Procedure

- An evaluation committee of 4 RCPT staff will evaluate and rank each proposal separately and independently.
- Each proposal will be evaluated using a standard evaluation sheet or spreadsheet developed by RCPT.

#### Evaluation Criteria

- Vendors will be evaluated on their ability to successfully supply the equipment identified in this RFP in its entirety within 10 business days an order is placed.
- Vendors will be compared and evaluated on the cost of each equipment line item.
- Vendors will be compared and evaluated on the availability of each equipment line item.
- Vendors will be compared and evaluated on the timeliness of product delivery.
- Vendors will be compared and evaluated on their ability to train RCPT staff on the correct use of equipment.
- Any proposal that does not meet or exceed the specifications at the time of submittal will be rejected.
- RCPT reserves the right to interview companies about their proposals as part of the evaluation process.
- Vendors will be evaluated on their ability to successfully supply digital radios that are P25 Compliant.
- Vendors will be evaluated on their ability to successfully supply digital radios that use VHF / UHF?

#### Contract Negotiation

This process is a **Request for Proposal/Competitive Negotiation** process.

Each proposal shall be evaluated, and each Vendor shall be available for negotiation discussions and meetings at RCPT's request.

RCPT reserves the right to negotiate on any components of every proposal submitted. From the time the proposals are submitted until the formal award of a contract, each proposal is considered a working document and will be kept confidential.

The negotiation discussions will also be confidential until the award is completed.

### Contract Award Procedures

1. The highest-scoring proposal will be selected as the Mobile Radio equipment vendor.
2. RCPT reserves the right to negotiate pricing with the winning vendor.
3. On 5/5/23, the winning Vendor will be notified and a public announcement of the winning Vendor will be placed on [www.rcptransit.com/availablebids/](http://www.rcptransit.com/availablebids/).
4. The contract for supplying Mobile Radio equipment will be established.
5. A signed contract will be completed by RCPT, and the Vendor chosen for the project.

### Eligibility for Award

The Vendor chosen will not be debarred or disqualified in any way from doing business with the State of South Dakota or the Federal government. Additionally, the Vendor chosen will be a **responsive and responsible bidder** and will submit a bid that conforms in all material respects to this RFP and has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.

### Unique Entity Identifier & SAM.gov

**Important: All vendors submitting proposals must have a Unique Entity Identifier (U.E.I.) and be registered on SAM.gov.** Failure to provide a U.E.I. or failure to register in SAM.gov will disqualify you from consideration. **Please allow up to 3 weeks for SAM.gov processing.** You must be registered in SAM.gov and have a Unique Entity Identifier before the award date to be eligible for award.

Registering on SAM.gov is FREE. For information on registering for SAM.gov please click here: <https://sam.gov/content/home>

### Disadvantaged Business Enterprises

RCPT encourages Disadvantaged Business Enterprises (D.B.E.) to submit proposals. RCPT has determined that D.B.E., as defined in 49 C.F.R. Part 26, shall have the opportunity to compete fairly for contracts financed in whole or in part with Federal funds. Accordingly, all RCPT procurements funded with Federal funds may include, as appropriate, the use of goals for the procurement of all classes of goods and services, as outlined in the RCPT DBE program. All procurement transactions will be conducted to provide full and open competition.

### Protest Procedures

Any protests to this RFP or the process will be submitted within **5 business days** of the date of award to:

**Community Coordinated Transportation Systems Inc,  
dba River Cities Public Transit  
1600 East Dakota Ave  
Pierre SD 57501**

Protesters must provide the following information in writing:

- Name of the protester.
- Solicitation/contract number or description.
- Statement of grounds for protest.

Protests will be reviewed by River Cities Public Transit's Executive Director or designated staff.

The Executive Director or designated staff will respond in detail to each substantive issue raised in the protest.

Unfavorable protest determinations may be appealed to River Cities public Transit's Board of Directors. The decision of the Board of Directors will be final.

### Insurance & Bonding

The winning Vendor must provide proof of insurance and/or bonding. A minimum level of liability insurance will be required for all **contracts**. Amounts may vary for particular procurement requests depending on the source of funding as well as the contract amount.

### Federal Clauses and Certifications

All Federal Certifications and Clauses must be followed and met. Signatures must be included on the appropriate forms. The Federal Clauses and three Certifications that need to be signed and included in the proposal are attached to this RFP See appendix C.

### Conflict of Interest and Non-competitive Practices

The following groups shall not participate in or attempt to use their official position to influence any purchasing decisions in which they, or persons related to them, have a financial interest: The employee, officer, agent, or board member, any family member of his/her immediate family, partners, an organization that employs, or is about to employ any of the previous mentioned; organizational conflicts of interest (an organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable or potentially unable to render impartial assistance or advice to RCPT; a contractor's objectivity in performing the contract work is or might be otherwise impaired, or a contractor has an unfair competitive advantage). Members of the groups listed under the conflict-of-interest section above shall be subject to the conflict-of-interest laws of South Dakota. Anyone who violates the standards of the law shall be subject to penalties, sanctions, or other disciplinary actions provided for therein.

### Suspension and Debarment

No award using federal funds can be made to any debarred entity that has suspension status on Sam.gov. or has not obtained a U.E.I. number.

### Modification or Withdrawal of Proposals

Any time before the time and date set for submittal of proposals, a request may be made in writing by a vendor to withdraw or modify its proposal to:

**River Cities Public Transit**

Attn: Jess Marlow  
1600 E. Dakota Ave.  
Pierre, S.D. 57501

### Postponement, Amendment, and or Cancellation of RFP

RCPT reserves the right to postpone, amend or cancel this RFP at any time during the process.

### Rejection of Proposals

RCPT reserves the right to reject any proposal at any time.

### Term of Contract and Conditions

RCPT adheres closely to all Federal and State guidelines for the timelines set, financial commitments, and payment of invoices as indicated by the Vendor. The Vendor will adhere closely to the timelines set for the completion of the project.

### Compliance with RFP Terms and Attachments

The Vendor chosen to supply RCPT with digital radio equipment must comply with the terms of this RFP and follow all state and federal requirements. RCPT intends to award the digital radio equipment contract to the Vendor that meets the requirements and terms of the RFP to the best standards.

### Single Proposal Response

If only one Vendor submits a proposal, RCPT will evaluate that proposal to determine the qualifications and reserves the right to accept or reject the proposal.

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## Appendix A: Cost Sheet

**Vendor name:** \_\_\_\_\_

**Important:** This cost sheet is to be filled out in its entirety, signed, and mailed separately as identified on pages 7 & 8. If RCPT does not receive the cost sheet, your proposal will not be considered.

**Instructions to vendors:**

List the cost of each item. If more than one brand of product is offered use additional columns. At least one product for each item must be proposed. If a column or cell is not needed, please put N/A in the cell.

### Digital Radios for Dispatch Environment

Quantity	Line Item	Price Brand #1	Price Brand #2	Price Brand #3
1	1. Mobile Radio for Base Setup			
1	2. Control Head			
1	3. Microphone			
1	4. DC Power Cable			
1	5. Mounting Case			
1	6. Power Supply			

### Digital Radios For Vehicle Environment

Quantity	Line Item	Price Brand #1	Price Brand #2	Price Brand #3
1	Mobile Radio			
1	Control Head			
1	Microphone			
1	DC Power Cable			
1	Mounting Bracket			
1	Ignition Sense			

## Appendix B: Federal Clauses

### ARTICLE FTA-1. DEFINITIONS

**1.1 C.F.R.:** The acronym referring to the United States Code of Federal Regulations, which contains regulations applicable to F.T.A. grant recipients and their Vendors and subcontractors.

**1.2 D.O.T.:** The acronym referring to the United States Department of Transportation. Also represented as USDOT.

**1.3 E.P.A.:** The acronym referring to the United States Environmental Protection Agency. Also represented as USEPA.

**1.4 F.T.A.:** The acronym referring to the Federal Transit Administration, a public transit regulatory unit of the USDOT, formerly known as the Urban Mass Transit Administration.

**1.5 U.S.C.:** The acronym referring to the United States Code.

### ACCESS TO RECORDS AND REPORTS

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

b. **Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.334.

The Contractor shall:

- maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or
- expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

c. **Access to Records.** The Contractor agrees to provide sufficient access to F.T.A. and its contractors to inspect and audit records and information related to performance of this contract in accordance with 2 C.F.R. § 200.337.

d. **Access to the Sites of Performance.** The Contractor agrees to permit F.T.A. and its contractors access to the sites of performance under this contract in accordance with 2

C.F.R. § 200.337.

#### AMERICANS WITH DISABILITIES ACT(A.D.A.)

The contractor agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794,

- which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (A.D.A.), as amended, 42 U.S.C. §§ 12101 et seq.,
- which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act,
- and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq.,
- which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act.

In addition, the contractor agrees to comply with any and all applicable requirements issued by the F.T.A., D.O.T., D.O.J., U.S. G.S.A., U.S. EEOC, U.S. F.C.C., any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

#### BUY AMERICA REQUIREMENTS

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 C.F.R. § 200.322 Domestic preferences for procurements,

- which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in F.T.A. funded projects are produced in the United States, unless a waiver has been granted by F.T.A. or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7.

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

#### **Domestic preferences for procurements:**

The bidder or offeror must submit to the Agency the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

#### **Required Use of American Iron, Steel, Manufactured Products, and Construction Materials:**

Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

1. All iron and steel used in the project are produced in the United States this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;

2. All manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
3. All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an **infrastructure project**.

As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

**Waivers:**

When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. The agency should notify the recipient for information on the process for requesting a waiver from these requirements.

- a. When the Federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that:
  1. applying the domestic content procurement preference would be inconsistent with the public interest;
  2. the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
  3. the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

**Definitions:**

“Construction materials” includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials;



aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is or consists primarily of:

- nonferrous metals;
- plastic and polymer based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass) ;
- lumber; or
- drywall

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

## **RESTRICTIONS ON LOBBYING**

Conditions on use of funds.

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

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

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

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, whether that person has

made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

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

### **CARGO PREFERENCE REQUIREMENTS**

The contractor agrees:

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

b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "onboard" 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 F.T.A. Recipient (through the contractor in the case of a subcontractor's bill of lading.) ; and

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

### **CIVIL RIGHTS LAWS AND REGULATIONS**

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

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

a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits

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

b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246,

“Equal Employment Opportunity,” September 24, 1965, as amended, prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin.

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

3 Nondiscrimination on the Basis of Age. The “Age Discrimination Act of 1975,” as amended, 42 U.S.C. § 6101 et seq., and Department of Health and

Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45

C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in

Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

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

#### **CIVIL RIGHTS AND EQUAL OPPORTUNITY**

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

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

1. Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for

employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements F.T.A. may issue.

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

In addition, the Contractor agrees to comply with any implementing requirements F.T.A. may issue.

3. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any Implementing requirements F.T.A. may issue.

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

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

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

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 74017671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 12511387).

Violations must be reported to F.T.A. and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

**Clean Air Act**

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

**Federal Water Pollution Control Act**

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

**CONFORMANCE WITH ITS NATIONAL ARCHITECTURE**

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

**DEBARMENT AND SUSPENSION**

The Contractor shall comply and facilitate compliance with U.S. D.O.T. regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. O.M.B.) "Guidelines to Agencies on

Governmentwide Debarment and Suspension (Non-procurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an F.T.A. official irrespective of the contract amount.

As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

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

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

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

The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### **DISADVANTAGED BUSINESS ENTERPRISE (D.B.E.)**

It is the policy of the Agency and the United States Department of Transportation ("D.O.T.") that Disadvantaged Business Enterprises ("D.B.E.'s"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in D.O.T. assisted contracts.

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

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or

(4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

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

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

### **ENERGY CONSERVATION**

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

### **EQUAL EMPLOYMENT OPPORTUNITY**

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

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

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

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant.

This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding,

hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

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

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

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

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

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

#### **NOTICE TO THIRD PARTY PARTICIPANTS**

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



**FLY AMERICA**

a) Definitions. As used in this clause—

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

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

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

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

Statement of Unavailability of U.S. Flag Air Carriers

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

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

**FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS**

(1) The contractor certifies that it:

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

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

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

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

#### **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (F.T.A.) TERMS**

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

#### **NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

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

#### **NOTIFICATION TO FTA**

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

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

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

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

#### **SOLID WASTES**

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

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

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

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by F.T.A. under the authority of 49 U.S.C. chapter 53, the Government

reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

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

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

a. Recipients and sub-recipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;

2. Extend or renew a contract to procure or obtain; or

3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system or as critical technology as part of any system. As described in Public Law 115232, section 889, covered telecommunications equipment is telecommunications equipment produced by **Huawei Technologies Company** or Z.T.E. Corporation (or any subsidiary or affiliate of such entities).

i. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

ii. Telecommunications or video surveillance services provided by such entities or using such equipment.

iii. Telecommunications or video surveillance equipment or services procured or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

b. In implementing the prohibition under Public Law 115232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

c. See Public Law 115232, section 889 for additional information.

d. See also § 200.471.

**PROMPT PAYMENT**

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

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

**SAFE OPERATION OF MOTOR VEHICLES**Seat Belt Use

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

Distracted Driving

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

**SPECIAL NOTIFICATION REQUIREMENTS FOR STATES**

Applies to States –

a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its

State Program, Project, or related activities:

(1) The Identification of F.T.A. as the federal agency providing the federal assistance for a State Program or Project;

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

and

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

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

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

### **SIMPLIFIED ACQUISITION THRESHOLD**

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America’s eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).

### **SEVERABILITY**

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

### **TERMINATION**

#### Termination for Convenience (General Provision)

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

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

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default.

The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

#### Opportunity to Cure (General Provision)

The Agency, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

#### Waiver of Remedies for any Breach

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

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

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

#### Termination for Default (Supplies and Service)

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

#### Termination for Default (Transportation Services)

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default.

The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

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

Failure to agree on an amount will be resolved under the Dispute clause.

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

#### Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default.

In this event, the Agency may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Agency resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Agency in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if: 1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and 2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract. 3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

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

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2)



deliver to the Agency 's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

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

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

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

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

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

#### **TRAFFICKING IN PERSONS**

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

- (a) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect;
- (b) Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or

(c) Use forced labor in the performance of the Recipient's Award or sub-agreements thereunder.

## **VIOLATION AND BREACH OF CONTRACT**

### Disputes:

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

### Performance during Dispute:

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

### Claims for Damages:

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

### Remedies:

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

### Rights and Remedies:

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

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### Appendix C: Required Certifications

#### CERTIFICATION AND RESTRICTIONS ON LOBBYING

I, \_\_\_\_\_ hereby certify

(Name and title of official)

On behalf of

\_\_\_\_\_ that:

(Name of (Bidder/Company Name))

- No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – L.L.L., “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into.

Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.

Name of Bidder/Company Name:

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Type or print name:

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Signature of authorized representative:

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Date \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

**Please print, fill out, sign and send in a sealed envelope per the instructions on pages 7 & 8 of this RFP**

**CERTIFICATION ON GOVERNMENTWIDE DEBARMENT AND SUSPENSION  
(NONPROCUREMENT)**

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

(1) It will comply and facilitate compliance with U.S. D.O.T. regulations, “Non procurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. O.M.B.) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Non procurement),” 2 C.F.R. part 180,

(2) To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:

a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:

1. Debarred
2. Suspended
3. Proposed for debarment
4. Declared ineligible
5. Voluntarily excluded
6. Disqualified

b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:

1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
2. Violation of any Federal or State antitrust statute, or,
3. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,

c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,

d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,

e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a – 2.d above, it will promptly provide that information to F.T.A.

f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 C.F.R. part 1200 and 2 C.F.R. part 180 if it:

1. Equals or exceeds \$25,000
2. Is for audit services, or,
3. Requires the consent of a Federal official, and

g. It will require that each covered lower tier contractor and subcontractor:

1. Comply and facilitate compliance with the Federal requirements of 2 C.F.R. parts 180 and 1200, and
2. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
  - a. Debarred from participation in its federally funded Project,
  - b. Suspended from participation in its federally funded Project,
  - c. Proposed for debarment from participation in its federally funded Project,
  - d. Declared ineligible to participate in its federally funded Project,
  - e. Voluntarily excluded from participation in its federally funded Project, or
  - f. Disqualified from participation in its federally funded Project, and It will provide a written explanation as indicated on a page attached in F.T.A.'s TrAMS platform or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third-party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

It will provide a written explanation as indicated on a page attached in F.T.A.'s TrAMS platform or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third-party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

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**GOVERNMENTWIDE DEBARMENT AND SUSPENSION**

**Certification**

Company \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

**Please print, fill out, sign and send in a sealed envelope per the instructions on pages 7 & 8 of this RFP**

**BUY AMERICA CERTIFICATION  
STEEL OR MANUFACTURED PRODUCTS**

If steel, iron, or manufactured products (as defined in 49 CFR 661.3 and 661.5) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in 49 CFR 661.13(b).

Certificate of Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 C.F.R. part 661.

Company \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

**Please print, fill out, sign and send in a sealed envelope per the instructions on pages 7 & 8 of this RFP**



**CERTIFICATE OF NONCOMPLIANCE WITH BUY AMERICA STEEL OR MANUFACTURED PRODUCTS REQUIREMENTS**

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. 661.7.

Company \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

**Please print, fill out, sign and send in a sealed envelope per the instructions on pages 7 & 8 of this RFP**