

INVITATION FOR BIDS (IFB)

FOR

FULL SIZE ¾ TON PICKUP TRUCK

CVCOG Program: Concho Valley Transit

Solicitation Number: 24-Transit-B-0004

PROCUREMENT CONTACTS

PRIMARY	SECONDARY
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SOLICITATION TIMELINE

EVENT	DATE
CVCOG Date of Solicitation Issuance:	January 22 nd , 2024
Pre-Bid Conference:	No Pre-Bid Conference
Due Date for Written Questions:	February 2 nd , 2024; 5:00PM CST
Anticipated Posting of Agency's Written Answers:	February 6 th , 2024
Deadline for Submission of Bids:	February 23 rd , 2024; 4:30PM CST
CVCOG Opening of Bids:	February 23 rd , 2024; 4:30PM CST
CVCOG Admin Review of Bids:	February 26 th – 27 th , 2024
CVCOG Anticipated Notice of Intent to Award:	February 28 th – February 29 th , 2024
Board Review and Decision Date:	March 13 th , 2024
Anticipated Commencement of Services:	March – April 2024
Submission Format:	One (1) original and one (1) combined PDF copy on a USB flash drive.

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LEGAL NOTICE

INVITATION FOR BID: 24-Transit-B-0004

Notice is hereby given that Concho Valley Council of Governments (CVCOG) is receiving bids for the following procurement until 4:30PM (CST) 02/23/2024, for the following:

PURCHASE OF ONE (1) FULL SIZE ¾ TON PICKUP TRUCK

All terms and conditions included hereafter are part of this bid request. Any bid failing to comply with all of these terms and conditions may not be accepted. Rights are reserved to reject any and all bids and to waive any and all technicalities.

Bid Package, specifications and drawings are available at Concho Valley Council of Governments (CVCOG), 5430 Link Rd. San Angelo, TX 76904, <https://www.cvcog.org>. Further information may be obtained from Jaylon Seales, Contract & Open Records Manager at jaylon.seales@cvcog.org. Bidders are hereby notified that this is the only authorized source of bid documents in order to ensure an accurate record of Bidders for addenda notification purposes.

Due to the requirement of sealed bidding, facsimile or emailed bids will not be acceptable as valid bid responses.

All Bidders will be required to certify they are not on the Texas Comptroller and Texas Department of Transportation consolidated list of ineligible Bidders. Manufacturers appearing on said list will be considered ineligible.

Any interpretation, correction or change of the bid documents will be made by addendum. Interpretations, corrections, or changes made in any other manner will not be binding. Addenda will be posted publicly to <https://www.cvcog.org>.

Price, quality, specifications and time of guaranteed delivery will be the determining factors in the award of the bid. Award will be made to the supplier offering the best total value to CVCOG. Any award on the basis of this bid will be contingent upon approval by the CVCOG or CVTD Board of Directors and the terms of the contract to be negotiated with the successful bidder. The award is based contingent upon available budget.

Jaylon Seales

Contract & Open Records Manager

Concho Valley Council of Governments

jaylon.seales@cvcog.org

SIGNATURE PAGE

****MUST BE COMPLETED AND SUBMITTED WITH BID PACKET****

Submission of a bid will constitute acknowledgement and acceptance of all the terms and conditions contained in this Solicitation. Bidders, their authorized representative, and their agents are responsible for obtaining, and will be deemed to have, full knowledge of the conditions, requirements, and specifications of this Solicitation at the time a bid is submitted to Concho Valley Council of Governments.

Submission must be signed by a duly authorized representative(s) of the respondent, which must be the actual legal entity that will perform the contract if awarded.

Bids will be good for ninety (90) calendar days from the bid submission due date.

Respondent is REQUIRED to sign this Signature Page and return with the submitted response. An unsigned Submission will be deemed non-responsive.	
Legal Name of Entity/Individual:	
Doing Business As (DBA) Name:	
Company Mailing and Billing Address (if different from company address):	
City, State, Zip Code:	
Tax ID Number (EIN):	DUNS Number (if applicable):
Unique Entity ID (SAM.gov) REQUIRED (See Section 3.4)	
Contact Person:	Phone Number:
Email Address:	

Authorized Signature personnel authorized to bind Respondent company to any contract/purchase order that may result from this Solicitation	
Authorized Signature:	Date:
Printed Name:	Title:
Email Address:	

All clarifications to this Solicitation will be in writing and identified as a Letter of Clarification. Verbal communications and other written documents intended to clarify and interpret will not legally bind the Concho Valley Council of Governments. Only information supplied by a written addenda and posted to the CVCOG website should be used in preparing submissions. Any addenda will be posted on the CVCOG website http://www.cvcog.org/cvcog/solicitations_procurement.html as soon as available. CVCOG does not assume responsibility for the receipt of any addenda by Respondent(s). Respondents must frequently check the CVCOG website for updates.

SECTION 1: AGENCY INFORMATION AND INTRODUCTION

The Concho Valley Council of Governments, hereinafter referred to as “CVCOG”, is a voluntary organization of local governments organized in 1967 under authority granted by the Texas Legislature in 1965 (Chapter 391, Local Government Code). Under provisions of the law, Councils of Governments are political subdivisions of the state, but they are not governments because they have no authority to make laws, levy taxes, or exercise police powers. Councils of Governments are specifically authorized to:

- *conduct planning*
- *assist local governments in implementing plans*
- *provide technical assistance, grant writing and grant administration services*
- *contract with local, state and federal governments and other public and private agencies*
- *review and comment on applications for federal and state grants-in-aid and solid waste permits*
- *assist local governments in solving governmental problems*

The Concho Valley Council of Governments is one of 24 regional councils in Texas. The geographic boundaries of the councils must coincide with the state’s planning regions as designated by the Governor. Membership in Texas’ Councils of Governments includes almost 2,000 local governments and all of the state’s 254 counties.

Policy decisions for the Council are made by its Executive Committee composed of a representative chosen by the local government members of each county, a member of the board of the largest school district, a member representing the region’s largest city, and two members of the Texas legislature whose districts lie partially or wholly within the region.

One of the main goals of CVCOG is to foster a cooperative effort in resolving problems, policies, and plans that are common and regional. Included in CVCOG are the following programs:

- 2-1-1 Texas
- Aging and Disability Resource Center
- Area Agency on Aging
- Concho Valley Council of Governments Administration
- Concho Valley Transit District
- Criminal Justice
- Concho Valley Economic Development District
- Foster Grandparents
- Head Start and Early Head Start
- Homeland Security
- Concho Valley Regional Law Enforcement Academy
- Regional 9-1-1
- Regional Services
- RSVP
- Senior Companion
- Solid Waste
- VISTA

SECTION 2: SCOPE OF WORK AND SPECIFICATIONS

1. Specifications of Goods and/or Services to be Provided

Model:	Full Size ¾ Ton Pickup Truck
Year Model:	2022-Current Year Model
Condition:	New
Cab:	Crew Cab – 4D
Bed Length:	Standard
Exterior Color:	Black Preferred, or White
Fuel Type:	Gasoline
Drive:	4x4
Transmission:	Automatic w/ overdrive
Steering:	Power Steering, adjustable tilt-wheel
Brake System:	Power disc brakes on all wheels; with Anti-lock Braking System
Restraint System:	Front driver and front passenger air bags required
Tires:	Manufacturer's standard tire. All primary tires and wheels shall be identical (i.e., no cross brands or models). Each vehicle shall be equipped with a full-size spare tire. Spare tire may be mounted on a traditional steel wheel. All tires and wheels shall be properly balanced.
Air Conditioning:	Manufacturer's standard factory installed air conditioner
Floors:	Weatherproof Floor Mats Front and Back Preferred
Seats:	Leather Preferred, or Vinyl
Interior Color:	Darker Tones Preferred - Black or Gray
Interior Other:	AM/FM Stereo radio, power door locks, power windows, cruise control
Remote Start:	Yes
Keys:	2 key fobs at time of delivery (all keys must start vehicle at time of delivery)
Toolbox:	Aluminum Crossbed Toolbox – Black
Bedliner:	Spray-In
Tint:	Preferred 25%, Texas legal
Towing:	Tow Package Preferred
License Plate Brackets:	Vehicle to be equipped with front and rear license plate bracket
Trailer Hitch:	Yes
Grille Guard:	Yes
Rearview Camera:	Preferred
Reverse Sensing:	Yes
Running Boards:	Yes, Full Length

2. Delivery Information

2.1. Delivery Location

Awarded Contractor shall deliver the vehicle to the below location. Delivery date and time shall be scheduled with the Procurement Contact listed on Page 1.

Concho Valley Transit Plaza
510 N. Chadbourne Street
San Angelo, TX 76903

2.2. Shipping Costs

There shall be no delivery or shipping fees for this purchase.

3. Inspection and Acceptance

The Contractor shall only tender for acceptance those items that conform to the requirements of this Contract. The Concho Valley Council of Governments (CVCOG) reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The CVCOG may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. The CVCOG must exercise its post-acceptance rights -- (1) Within a reasonable time after the defect was discovered or should have been discovered; and (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

SECTION 3: BIDDER ELIGIBILITY REQUIREMENTS

1. Eligible Contractors

Only individuals or firms from lawfully formed business organizations may apply. CVCOG will contract only with the individual and/or firm that submits a responding bid and is not on hold with the Texas and/or Federal Government. Individuals and/or firms will be on contract and will not be considered an employee of CVCOG nor will the firm and/or individual be eligible for any benefits provided by CVCOG.

2. State Debarment and Exclusion

Bidder must certify that neither the Bidder nor its principles are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in this procurement by any State of Texas department or agency. Where Bidder is unable to certify to any of the statements in the certification, Bidder must include an explanation with their bid submission. Debarment, pending debarment, declared ineligibility or voluntary exclusion from participation by any State of Texas department or agency may result in the bid being deemed non-responsible. Signing and submitting a bid for this Solicitation is so certifying.

3. Federal Debarment and Exclusion

Contractor shall certify that neither Bidder nor its principles are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in the transaction by any Federal department or agency. Where Bidder is unable to certify to any of the statements in the certification, Bidder must include an explanation with their bid submission. Debarment, pending debarment, declared ineligibility or voluntary exclusion from participation by any Federal department or agency may result in the bid being deemed non-responsible. Signing and submitting a bid for this Solicitation is so certifying.

4. Unique Entity Identifier and System for Award Management (SAM)

****Successful Bidder must be registered to do business with the U.S. Government through www.sam.gov prior to award of Contract. ****

If not already registered, Bidders shall register their entity to do business with the U.S. federal government by completing the entity registration process at SAM.gov. Active registration in SAM.gov provides your entity the ability to apply for federal grants or loans or bid on government contracts.

The Contractor shall maintain registration in SAM during contract performance and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement. The Contractor is responsible for the currency, accuracy and completeness of the data within SAM, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in SAM after the initial registration, the Contractor is required to review and update on an annual basis, from the date of initial registration or subsequent updates, its information in SAM to ensure it is current, accurate and complete. Updating information in SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

5. Responsive Bidders

In order for a Bidder to be eligible for award of the Contract, the bid must be responsive to the Solicitation; and CVCOG must be able to determine that the Bidder is responsible for fulfilling the Contract in a satisfactory manner.

Responsive bids are those that comply with all material aspects of the Solicitation. Bids which do not comply with all the requirements of the Solicitation will be rejected and deemed non-responsive.

6. Responsible Bidders

Responsible Bidders must:

1. Have adequate financial resources or the ability to obtain such resources as required during the performance of the Contract;
2. Have a satisfactory record of past performance;
3. Have necessary management and technical capability to perform;
4. Be qualified as an established firm regularly engaged in the type of business to perform the Contract required by this Invitation for Bids;
5. Be otherwise qualified and eligible to receive an award under applicable federal, state, county, or municipal laws and regulations; and
6. Certify that it is not on the U.S. Comptroller General's list of ineligible Contractors – signing and submitting a bid for this Solicitation is so certifying.
7. Certify that it is not on the Texas Comptroller's list of ineligible Contractors – signing and submitting a bid for this Solicitation is so certifying.

SECTION 4: INSTRUCTIONS TO BIDDERS

1. Specifications

Bidders are expected to examine the specifications, standard provisions, and all instructions. Failure to do so will be at the Bidders risk. Bids that are submitted on other than authorized forms or with different terms or provisions may not be considered as responsive.

If applicable, before submitting a Bid, Bidders shall visit the site of the proposed work and shall fully inform themselves of all conditions in and about the work site, the building or buildings, if any, and

any work that may have been done thereon. However, no Bidder shall visit the site without prior authorization by CVCOG. Questions will not be answered during any site visit. Instead, questions resulting from the site visit must be submitted in writing.

All interpretations of the specifications shall be made on the basis of the following statement: The apparent silence of the specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only material and workmanship of the finest quality are to be used.

2. Information Required

Each Bidder shall furnish the information required by the Solicitation. Bidders shall sign the statement submittal. Erasures or other changes must be initialed by the person signing the documents. Bids or statements signed by an agent are to be accompanied by evidence of his/her authority unless such evidence has been previously furnished to CVCOG.

Only signed, written Bids specifically accepting responsibility for meeting the objectives and requirements specified in the Solicitation will be considered. The cover letter must bear the signature of a person duly authorized to legally commit for the Bidder.

3. Preparation of Bids

For each item offered, bidders shall (1) show the unit price, including, unless otherwise specified, packaging, packing, and preservation and (2) enter the extended price for the quantity of each item offered in the "Amount" column of the Schedule. In case of discrepancy between a unit price and an extended price, the unit price will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.

Bids for supplies or services other than those specified will not be considered unless authorized by the solicitation.

Bidders must state a definite time for delivery of supplies or for performance of services, unless otherwise specified in the solicitation.

Time, if stated as a number of days, will include Saturdays, Sundays, and holidays.

4. Pre-Bid Meeting

A Pre-Bid Meeting will not be held for this specific acquisition. All questions should be submitted in writing per the instructions in Section 4.6 Questions, Clarifications, and Explanations to Bidders.

5. Communications With Bidders

All communication should be made only through the CVCOG Procurement Department contacts listed on Page 1. The secondary P.O.C. must only be used after reasonable attempts to contact the primary P.O.C. have failed. Except as provided in this solicitation and as otherwise necessary for the conduct of ongoing CVCOG business operations, bidders are expressly and absolutely prohibited from engaging in communications with CVCOG personnel who are involved in any manner in the review and/or evaluation of the proposals, selection of a respondent, and/or negotiation or formalization of a contract. Failure to follow the guidelines set forth in this solicitation regarding vendor communication could result in bid rejection.

6. Questions, Clarifications, and Explanations to Bidders

Any prospective bidder desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective bidders before the submission of their bids. Oral explanations or instructions given before the award of a contract will not be binding. Any information given a prospective bidder concerning a solicitation will be furnished promptly to all other prospective bidders as an amendment to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective bidders.

All contractors are encouraged to send any questions in writing to the Procurement Contacts listed on Page 1 before the Due Date for Written Questions. Answers and any supplemental materials pertaining to submitted questions will be posted to CVCOG website (www.cvcog.org) in the form of addenda addressing each submitted question. Questions and answers will be posted to the CVCOG website as soon as available. The names of respondents who submit questions will not be disclosed.

7. Bid Submission Requirements

Bids shall adhere to the following format and contain the following items in the order outlined below. Utilize the Bid Requirements Checklist to ensure submission of all required items.

1. Signature Page (Page 6 of Solicitation).
2. Bid Form.
3. Vehicle Specifications.
4. Warranty Information.
5. Estimated Delivery Date.
6. All executed attachments, certifications and assurances.

8. Required Method of Submission and Packaging Information

Bids and bid modifications shall be submitted in sealed envelopes or packages. Bidders shall submit sealed bids by providing two (2) printed copies and one (1) combined PDF copy on a USB flash drive. Bidders using commercial carrier services must ensure that the bid is addressed and marked on the outermost envelope or wrapper as prescribed below:

SOLICITATION #: 24-Transit-B-0004
Concho Valley Council of Governments
Attention: Jaylon Seales
Contract & Open Records Manager
Procurement Department
5430 Link Road
San Angelo, TX 76904

The exterior of the packaging/envelope must also indicate the bidding company or bidder's name. Any bids which are mislabeled or do not indicate the Bidder's name or address as required above may be opened by CVCOG solely for the purpose of identifying the Bidder for return of the bid packet.

All bids must be submitted in sufficient time to be received and time-stamped at the above location on or before the published bid date and time shown on the Solicitation. Any bid received after the published time and date cannot be considered.

Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

9. Late Submission, Modification, and Withdrawal of Bid

Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the CVCOG Procurement Department by the time specified in the IFB. If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time.

Any bid, modification, or withdrawal received by CVCOG after the exact time specified for receipt of bids is "late" and will not be considered. However, a late modification of an otherwise successful bid that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

Acceptable evidence to establish the time of receipt at the CVCOG installation includes the time/date stamp of that installation on the bid wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of CVCOG personnel.

If an emergency or unanticipated event interrupt normal CVCOG processes so that bids cannot be received at the exact time specified in the IFB and urgent Government requirements preclude amendment of the IFB, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

Bidders may withdraw bids only by written request received by the Procurement Department before the Bid Submittal Deadline. After that time, Bidders may not withdraw their bids for a period of ninety (90) days from the Bid Submittal Deadline. At no time may the successful Bidder(s) withdraw their bid.

10. Bid Opening

All bids shall be opened and announced publicly as received by CVCOG as soon after the deadline for bid submission has passed and is reasonably practicable. Information submitted in response to the Invitation for Bids shall not be released by CVCOG during the process of or prior to the Contract award. Bidders are advised that CVCOG may be required to release certain information, other than trade secrets, after Contract award.

Bids will be opened at the location and on the date/time indicated below:

DATE: February 23rd, 2024

TIME: 4:30PM-5:00PM

LOCATION: 5430 Link Rd. San Angelo, TX 76904; Admin Conference Room S135.

Attendance is optional.

11. Basis for Award of Contract

CVCOG intends to award a contract resulting from this Solicitation to the lowest responsive and responsible Bidder determined by CVCOG.

12. Posting of Recommendation for Award

The recommended award will be posted publicly to the Concho Valley Council of Governments website (www.cvcog.org). Award of contract will be contingent upon final approval from the CVCOG or CVTD Board of Directors.

13. Non-Response to IFB

To help us improve the quality of our solicitations, and to make our procurement process more responsive and business friendly, please provide comments and suggestions regarding this solicitation. Please return your comments with your response. If you have chosen not to respond to this solicitation, please email the Procurement Contacts listed on Page 1 and advise the reason.

SECTION 5: SOLICITATION SPECIFIC PROVISIONS

1. Reservation of Rights

CVCOG expressly reserves the right to –

- a. Cancel this Solicitation at any time before the date and time established for bid submission;
- b. Reject any or all bids;
- c. Accept other than the lowest bid;
- d. Waive informalities or minor irregularities in bids received;
- e. Extend the Invitation for Bids due date;
- f. Reissue the Invitation for Bids;
- g. Procure any item or service by other means;
- h. Retain all bids submitted. The selection or rejection of a bid does not affect this right; and
- i. If applicable, CVCOG reserves the right to negotiate a Contract with the Bidder having the best price/cost as determined by CVCOG. No award will be made automatically based upon the lowest price or based solely on the bids submitted. CVCOG additionally reserved the right to suspend negotiations with the first Offeror should it not progress in a manner satisfactory to CVCOG and commence negotiations with the next best rated Bidder.

Furthermore, CVCOG may accept any item or group of items of a bid, unless the bidder qualifies the bid by specific limitations. Unless otherwise provided in the Schedule, bids may be submitted for quantities less than those specified. CVCOG reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the bidder specifies otherwise in the bid.

A written award or acceptance of a bid mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the bid shall result in a binding contract without further action by either party.

CVCOG may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to CVCOG even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

2. Public Information and Rights to Submitted Materials

All information, documentation, and other materials submitted in response to this Solicitation are considered non-confidential and/or non-proprietary and are subject to public disclosure under the Texas Public Information Act (Texas Government Code, Chapter 552.001, et seq.) after the solicitation is completed. The awarded contractor strictly complies with all statutes, court decisions, and opinions of the Texas Attorney General with respect to disclosure of solicitation information.

The CVCOG will keep confidential any trade secrets and/or proprietary information which the Bidder does not wish to be disclosed. For such information, the Bidder must mark each page in boldface at the top and bottom as “**CONFIDENTIAL/PROPRIETARY INFORMATION**”. Cost information shall not be deemed confidential.

CVCOG shall not be liable for disclosure of any proprietary information that is not clearly identified as such in the Bid.

3. Statement of Qualification

CVCOG reserves the right to award a contract to the low Bidder it deems responsive and responsible. The Bidder may be required, upon request, to prove to the satisfaction of CVCOG that the Bidder has the skill and experience and the necessary facilities and financial resources to fulfil the contract in a responsible and satisfactory manner.

4. Clarification of Bids

CVCOG reserves the right to clarify any point in a bid or obtain additional information to evaluate a particular bid submission. Failure of a Bidder to respond to such a request for further information or clarification may result in that bids' rejection.

5. Multiple Awards

CVCOG reserves the right, in its sole discretion, after evaluation of all responsive bids, proposals or qualification statements to award the work described herein to more than one responsive bidder, proposer or respondent. In such cases where an award is made to more than one responsive bidder, proposer or responder, CVCOG shall apportion the work among the various primary, secondary and alternate providers in such manner and at such time as it deems appropriate under the circumstances in its sole discretion and no minimum amount or proportion of work is guaranteed to any single provider or class of providers irrespective of such provider's designation as primary, secondary or alternate.

6. Exclusionary and Discriminatory Specifications

CVCOG agrees that it will comply with the requirements of 49 U.S.C. Section 5323(h) (2) refraining from using any Federal assistance awarded by the FTA to support procurements using exclusionary or discriminatory specifications.

7. Geographic Preference

This Procurement shall be conducted in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in evaluation or award of bids or proposals, except where applicable Federal statutes expressly mandate or encourage geographic preference such as A/E contracts under certain circumstances.

8. Cost or Price Analysis

CVCOG reserves the right to conduct a cost or price analysis for any purchase. CVCOG may be required to perform a cost analysis when competition is lacking in any purchase. Sole source procurements which result in a single bid being received will be subject to a cost analysis which will include the appropriate verification of cost data, the evaluation of specific elements of costs, and the projection of data to determine the effect on bid prices. CVCOG may require a Pre-Award Audit, and potential Contractors shall be prepared to submit data relevant to the proposed work, allowing CVCOG to determine that the proposed price is fair, reasonable, and following Federal, State, and local regulations.

Procurements resulting in a single response will be treated as a negotiated procurement. CVCOG reserves the right to negotiate with the single Respondent to achieve a fair and reasonable price. In the event both parties cannot agree upon a negotiated price, CVCOG reserves the right to reject the single response. Contract change orders or modifications will be subject to a cost analysis.

9. Additional Quantities

CVCOG reserves the right to acquire additional quantities at the prices quoted in this invitation. If additional quantities are not acceptable, the proposal sheets must note: **For Specified Quantity Only**.

10. Errors and Administrative Corrections

CVCOG will not be responsible for any errors in bids. Bidders will only be allowed to alter bids after the submittal deadline in response to requests for clarifications by CVCOG. CVCOG reserves the right to request an extension of the bid period from a Bidder or Bidders.

CVCOG reserves the right to allow corrections or amendments to be made that are due to minor administrative errors or irregularities, such as errors in typing, transposition, or similar administrative errors. Erasures or other changes or entries made by the bidder must be initialed by the person signing the bid.

11. Protests, Disputes, and Appeals

Prior to submission of an agency protest, all parties shall use their best efforts to resolve concerns raised by an interested party at the contracting officer level through open and frank discussions.

CVCOG Protest Procedures can be found here:

<https://www.cvcog.org/cvcog/docs/Procurement/Procurement%20Protests%20and%20Dispute%20Resolution.pdf>

12. Interpretation of Specifications

The specifications and/or product references contained herein are intended to be descriptive rather than restrictive. CVCOG is soliciting responses to provide a complete service package which meets its overall requirements. Specific services and collection references may be included in this Solicitation for guidance, but they are not intended to preclude Respondents from recommending alternative solutions offering comparable or better performance or value. Results of informal meetings or discussions between a potential Respondent and CVCOG official or employee may not be used as a basis for deviations from the requirements contained in this Solicitation. The intent of the specifications is to provide Respondent with sufficient information concerning the Products/Services to be contracted so Respondent can prepare and submit an acceptable Response. The specifications may be detailed or general in nature. Details of construction, materials, or the way in which services

will be provided, are left to the discretion of the Respondent, provided only that any offering must conform, as a minimum, to best Industry standards and practices and to what is currently being sold in the marketplace. Requirements contained in the Solicitation are not considered to be biased toward any Respondent(s) competing under this Solicitation.

13. Brand Name or Equivalent

Wherever in the specifications any materials or processes are indicated or specified by patent or proprietary name and/or by name of manufacturer, such specifications will be deemed to be used for the purpose of facilitating descriptions of the performance, materials and/or processes desired and must be deemed to be followed by the words, "or equivalent", if not stated in the specifications. The burden of proof will rest with the Respondent, in the course of a technical evaluation, to prove that the proposed item(s) are equivalent to the performance, materials, processes, or articles specified. Determination as to whether the item(s) bid is/are equivalent to those specified will rest solely with CVCOG. If a respondent is offering an "or equivalent" item, respondent must list the manufacturer's name and product number of the item offered. If this detail is not provided, it will be assumed respondent is offering the exact item specified. CVCOG's decision whether an item is an equivalent to the item specified is final.

14. Price Complete

The price quoted shall include all items of labor, material, tools, equipment, and other costs necessary to fully provide the goods and/or services pursuant to the specifications or scope of this Solicitation. It is the intention of the specifications to provide and require complete goods and/or services prescribed. Anything omitted from the specifications, which is clearly necessary for the use of or operation of the goods and/or services shall be considered to be included within the scope of such goods and/or services although not directly specified or called for in the specifications. No advantage shall be taken by the manufacturer or supplier in the omission of any part or detail, which goes to make the required goods and/or services complete and ready for service or use. All parts shall be new and in no case will used (except for testing), reconditioned or obsolete parts be accepted. CVCOG and the manufacturer/supplier shall mutually agree when it is necessary or desirable to make changes in, additions to or deductions from the work to be performed, or the goods and/or services to be furnished, pursuant to the provisions of the contract documents. Any such changes which affect the contract price shall require the approval of CVCOG, in writing, in which the effect on the contract price is specifically set forth. All requests and responses shall be in writing.

15. Taxes and Interest

CVCOG is exempt from paying federal excise taxes or state and local sales and use taxes. Bidders will not include these taxes in their proposed price(s). All other government taxes, duties, fees, licenses, permits, royalties, assessments, and charges shall be included in the proposed price.

CVCOG will not pay interest on unpaid or disputed invoices, whether due or overdue.

16. Compliance with IFB Terms and Attachments

CVCOG intends to award a contract based on the terms, conditions and attachments contained in this IFB. Bidders are strongly advised not to make any exceptions. Bidders shall submit bids that respond to the requirements of the IFB. An exception is not a response to an IFB requirement.

Bidders are cautioned that exceptions to the terms, conditions, and attachments may result in a rejection of the bid.

17. Terms and Conditions Attached to Response

Any terms and conditions attached to a Response will not be considered unless specifically referred to in the Response.

18. False Statements in Bids

Bidders must provide full, accurate, and complete information as required by this solicitation and its attachments. The penalty for making false statements in bids is prescribed in 18 U.S.C.1001.

19. Collusion

The Bidder guarantees that the bid submitted is not a product of collusion with any other bidder, and no effort has been made to fix the bid price of any Bidder or to fix any over-head, profit, or cost element of any proposal price (Certification of Non-Collusion). Failure to submit the signed certification at the time of bid opening shall be grounds for disqualifying the Bidder's offer.

If CVCOG determines that collusion has occurred among Bidders, none of the bids from the participants in such collusion shall be considered. CVCOG's determination shall be final.

20. Bid Validity

Bids shall remain valid for the period of Ninety Days (90 Days) after the date of bid opening as prescribed by CVCOG. A bid valid for a shorter period shall be rejected as non-responsive.

21. Texas Bidder Affirmation

Bidder certifies that if a Texas address is shown as the address of the Bidder on its Bid submission, Bidder qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.

22. Disclosure of Interested Parties

Bidder represents and warrants that if selected for award of a contract valued at \$1 million or more as a result of this Solicitation, Bidder will submit to CVCOG a Certificate of Interested Parties prior to contract execution in accordance with Section 2252.908 of the Texas Government Code.

23. Costs

CVCOG is not liable for any costs incurred by a bidder or proposer in responding to this Solicitation, including those for presentations, when applicable.

24. Samples

Samples of items, when required, must Be furnished free of expense, on or before IFB due date and time, and if not destroyed by testing may, upon request, be returned at the proposer's expense. Each individual sample must be labeled with the proposer's name, manufacturer's brand name and number, IFB number and item reference. Request for return of samples shall be accompanied by instructions which include shipping authorization and name of carrier and must be received with your proposal. If return instructions are not received with the proposal, the commodities shall be disposed of by CVCOG.

SECTION 6: RESULTING CONTRACT INFORMATION

1. Type of Contract

This is a Fixed Cost contract. Per the desired term of the contract, the pricing submitted by the Bidder shall remain fixed for the initial term of the Agreement. All purchases during the term of the contract are subject to the pricing submitted to CVCOG unless mutually agreed upon in writing.

2. Anticipated Term of Agreement

The contract resulting from this IFB becomes effective upon the date of the last signature ("Effective Date") and shall remain in effect until the completion of all obligations of both Parties hereto, or five years from the Effective Date, whichever comes first.

3. Contract Execution

Upon administrative review and approval from CVCOG's Executive Board, CVCOG will prepare and submit a final contract to the awarded Bidder at the address provided in the Solicitation or via email. The awarded Bidder shall execute the contract within 7 days after the receipt of the contract.

4. Contract Administration

The contract resulting from this IFB will be between CVCOG and the Awarded Contractor. The Contractor is responsible for providing the goods/services described herein. CVCOG is not a party to defining the division of work between the Contractor and its Subcontractors if any, and the Specifications and/or Scope of Services has not been written with this intent.

The Contractor represents that it has or will obtain all duly licensed and qualified personnel and equipment required to perform hereunder. The Contractor's performance under this Contract may be monitored and reviewed by CVCOG. Reports and data required to be provided by the Contractor shall be delivered to CVCOG within FIVE (5) business days. Questions by the Contractor regarding the interpretation of the terms, provisions, and requirements of this Contract shall be addressed to CVCOG for a response.

5. Contract Termination

5.1. Termination for Cause

CVCOG may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the CVCOG, upon request, with adequate assurances of future performance. In the event of termination for cause, the CVCOG shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the CVCOG for any and all rights and remedies provided by law. If it is determined that the CVCOG improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

5.2. Termination for Convenience

CVCOG reserves the right to terminate the contract at any time, in whole or in part, without cost or penalty, by providing thirty (30) calendar days' advance written notice, if CVCOG determines that such termination is in the best interest of the organization. In the event of such a termination, Contractor must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. CVCOG shall be liable for payments limited only to the portion of work CVCOG authorized in writing and which Contractor has completed, delivered to CVCOG, and which has been accepted by CVCOG. All such work shall have been completed, in accordance with contract requirements, prior to the effective date of termination. CVCOG shall have no other liability, including no liability for any costs associated with the termination.

5.3. Termination for Non-Appropriation

Notwithstanding any contrary provision of this Agreement, each payment obligation of CVCOG or any of its programs created by this Agreement is conditioned upon the availability of funds

that are appropriated or allocated for the goods and/or services under this Agreement. If such funds are not allocated, this Agreement may be terminated by CVCOG. CVCOG shall notify Contractor at the earliest possible time before such termination. No penalty shall accrue to CVCOG in the event this provision is exercised, and CVCOG shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.

5.4. Opportunity to Cure

CVCOG, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor thirty (30) days 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 CVCOG's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within thirty (30) days after receipt by Contractor of written notice from CVCOG setting forth the nature of said breach or default, CVCOG 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 CVCOG from also pursuing all available remedies against Contractor and its sureties for said breach or default.

SECTION 7: SPECIAL CONTRACTUAL TERMS AND CONDITIONS

1. Warranty and Guarantee

The Contractor guarantees that all goods, materials, supplies, and/or equipment delivered and installed under the Contract will be made from materials suitable and adequate for the purposes intended and described in the Contract, and in a workmanlike manner in accordance with the best engineering practice, and that such equipment will fully comply with the Contract Drawings, Specifications, and the Contractor's bid including all performance requirements and representations included in the Contract Drawings, Specifications, or the Contractor's bid, whether set forth on data sheets, performance curves, or otherwise.

All specialties, equipment and parts supplied by the Contractor shall be the same design and model on all equipment purchased under this Specification. The Contractor shall assume all responsibility for these specialties, parts and equipment whether manufactured by the Contractor or purchased by him/her from another source.

All Contractors will provide the Owner with a written Statement of Warranty to include the Material and Labor to replace any defective parts/components provided under this purchase.

2. Invoicing Terms

2.1. Invoicing General Information

The Contractor shall submit invoices to 5430 Link Rd. San Angelo, TX 76904 OR electronic invoice to procurement-dept@cvcog.org.

Contractors must invoice within THIRTY (30) days of completion of work or as agreed in writing as long as the project or service is ongoing.

An invoice must include:

- a. Name and address of the Contractor;
- b. Invoice date;
- c. Invoice Number;
- d. Agreement number, contract line-item number and, if applicable, the order number;
- e. Description, quantity, unit of measure, unit price and extended price of the items delivered;
- f. Shipping number and date of shipment including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- g. Terms of any prompt payment discount offered;
- h. Name and address of official to whom payment is to be sent; and
- i. Name, title, and phone number of person to be notified in event of defective invoice.

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C.3903).

2.2. Invoice Submission Schedule

The Contractor shall submit invoices in accordance with the following schedule:

- a. For items of work for which there is one-time pricing, those items shall be billed in the month following the acceptance of the goods or services by CVCOG.

3. Payment Terms

Payment shall be made for items accepted by CVCOG that have been delivered to the delivery destinations set forth in this agreement. CVCOG will make payment in accordance with the Prompt Payment Act (31 U.S.C.3903). In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

3.1. Advance Payment Prohibited

No advance payment shall be made for the work furnished by the Contractor according to this contract; only approved progress payments will be made.

3.2. Travel Reimbursement

- a) There shall be no reimbursement for Routine Travel. Contractor shall not be reimbursed for Non-Routine Travel without prior approval from CVCOG.
- b) Routine Travel is defined as travel within a 50-mile radius of CVCOG's base location, as identified in the IFB, or the Contractor's facility, whichever is closer to the consulting site. There will be no payment for labor hours for travel time or reimbursement for any travel expenses for work performed within these radiuses or at the Contractor's facility.

SECTION 8: GENERAL CONTRACTUAL TERMS AND CONDITIONS

1. CVCOG Terms and Conditions

By submitting a bid, or delivering the supplies or performing the services identified herein, Bidder agrees to comply with all the CVCOG Terms and Conditions and all specifications and other

documents that this Solicitation incorporates by reference or attachment. Concho Valley Council of Governments Terms & Conditions can be located here:

<https://www.cvcog.org/cvcog/docs/Solicitations/CVCOG%20Terms%20&%20Conditions%20Version%202023.pdf>

Exceptions to the CVCOG Terms & Conditions are not permitted. These Terms & Conditions will be included in the resulting Contract with the selected Bidder.

2. Electronic Signatures

Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Solicitation or the resulting Agreement, if any, are intended to authenticate this writing and to have the same force and effect as manual signatures.

SECTION 9: REQUIRED FORMS, CERTIFICATIONS, AND ASSURANCES

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BID SUBMISSION CHECKLIST

This checklist is provided for your convenience and is not required to be included with your submission.

The items/actions in the checklist below are **REQUIRED** as part of your proposal, bid, or offer. If your response to this solicitation does not contain the items below, your response may be rejected as a material failure to comply with advertised specifications.

Attachment Name	Check
Signature Page.	
Bid Form / Price Sheet.	
Vehicle Specifications.	
Warranty Information.	
Estimated Delivery Date.	
Addenda Acknowledgement Certification	
Debarment And Suspension Certification	
Certification Regarding Lobbying	
Certification of Non-Collusion	
Certification Concerning Conflicts of Interest and Noncompetitive Practices	
Tax Liability Certification	
Prohibition on Contracts with Companies Boycotting Israel Certification	
No Excluded Nation or Foreign Terrorist Organization Certification	
Certification of HUB Participation (If Applicable)	
Disadvantaged Business Enterprise (DBE) Good Faith Effort Certification	
Certification of Disadvantaged Business Enterprise (DBE) Participation (If Applicable)	
Current W-9 Form	

BID FORM

GENERAL: BASE BID FORM	
As defined in Contract Documents	
Base Bid	\$ _____
Alternate 1 (If Required)	\$ _____
Alternate 2 (If Required)	\$ _____
Alternate 3 (If Required)	\$ _____
TOTAL BID	\$ _____
	<i>(Basis of Award)</i>

<i>(Total bid shown is to be written out)</i>	

BASIS OF AWARD:

The award of this contract is based on the lowest responsive and responsible BIDDER determined by Concho Valley Council of Governments (CVCOG) by adding the base bid and all alternates as specified or required.

ADDENDA ACKNOWLEDGEMENT CERTIFICATION

In compliance with this Solicitation and to all conditions imposed therein and hereby incorporated by reference, the undersigned offers and agrees to furnish the services described herein in accordance with the attached signed Bids, Proposals, or as mutually agreed upon by subsequent negotiation.

Initial for receipt of each Addendum identified below (*if applicable*):

Addendum #1 _____

Addendum #2 _____

Addendum #3 _____

Addendum #4 _____

Addendum #5 _____

Addendum #6 _____

Addendum #7 _____

Addendum #8 _____

Addendum #9 _____

Addendum #10 _____

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

DEBARMENT AND SUSPENSION CERTIFICATION

This certification does not apply to contracts and subcontracts under \$25,000.

Check one box below (and provide explanation if necessary):

- ☐ The Contractor certifies that the Contractor and its principals:
1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily or involuntarily excluded from covered transactions by any federal department or agency;
 2. Have not, within the preceding three years, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; violation of federal or state antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or commission of any other offense indicating a lack of business integrity or business honesty;
 3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any offense described in Paragraph 2 of this certification;
 4. Have not, within the preceding three years, had one or more public transactions (federal, state, or local) terminated for cause or default.

- OR -

- ☐ The Contractor is unable to certify to all of the statements in this certification, and attaches its explanation to this certification. (In the explanation, the Contractor must certify to those statements that can be certified and explain why the other statements cannot be certified.)

The Contractor shall require that the language of this certification be included in the contract documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

The Contractor certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

CERTIFICATION REGARDING LOBBYING

The Contractor certifies, to the best of its knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of a federal department or agency, a member of the U.S. Congress, an officer or employee of the U.S. Congress, or an employee of a member of the U.S. 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 thereof.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal Contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instruction, as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).
3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants and contracts under grants, loans and cooperative agreements) and that all sub recipients shall certify and disclose accordingly. This certification is a material representation of fact upon 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, USC § 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 CONTRACTOR CERTIFIES AND AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND DISCLOSURE, IF ANY. IN ADDITION, THE CONTRACTOR UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 USC §§ 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND DISCLOSURE, IF ANY.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

CERTIFICATION OF NON-COLLUSION

By my signature below, I, individually and as an agent for the Contractor, certify that neither I, nor the business entity for which I am an agent, nor any other agent for that business entity, have entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of the free submission of competitive procurement in connection with this submitted Contract.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

CERTIFICATION CONCERNING CONFLICTS OF INTEREST AND NONCOMPETITIVE PRACTICES

The undersigned, being first duly sworn, on oath states on behalf of the Contractor:

- A. **Conflict of Interest.** That the Contractor, by entering into this Contract with CVCOG to perform or provide work, services, or materials to CVCOG, has thereby covenanted, and by this affidavit does again covenant and assure that it has no direct or indirect pecuniary or proprietary interest and that it shall not acquire any such interest which conflicts in any manner or degree with the services required to be performed under this Contract and that it shall not employ any person or agent having any such interest. Suppose the Contractor or its agents, employees, or representatives hereafter acquires such a conflict of interest. In that case, it shall immediately disclose such interest to CVCOG and immediately eliminate the conflict or withdraw from this Contract, as CVCOG may require.
- B. **Contingent Fees and Gratuities.** That the Contractor, by entering into this Contract with CVCOG to perform or to provide services or materials for CVCOG, has thereby covenanted and by this affidavit does again covenant and assure:
1. That no person or selling agency except bona fide employees or designated agents or representatives of the Contractor has been an employee or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and
 2. That no gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Contractor or any of its agents, employees, or representatives to any official member, Board Member, or employee of CVCOG or other governmental agency to secure this Contract or secure favorable treatment concerning the awarding or amending or the making of any determination concerning the performance of this Contract.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

TAX LIABILITY CERTIFICATION

This certificate applies to all contracts. Offers that do not include this completed certification will be rejected as nonresponsive.

The Contractor certifies that:

1. It has no 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;
2. It has not been convicted of a felony criminal violation under any federal law within the preceding 24 months; and
3. It shall require that the language of this certification be included in the award documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

The Contractor certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL CERTIFICATION

The 85th Texas Legislature approved new legislation, effective Sept. 1, 2017, which amends Texas Local Government Code Section 1. Subtitle F, Title 10, Government Code by adding Chapter 2270 which states that a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:

- 1) does not boycott Israel; and
- 2) will not boycott Israel during the term of the contract Pursuant to Section 2270.001, Texas Government Code:
 - a. “Boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and
 - b. “Company” means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.

The undersigned hereby warrants that the contractor:

- 1) Does not boycott Israel currently; and
- 2) Will not boycott Israel during the term of the contract; and
- 3) Is not currently listed on the State of Texas Comptroller’s Companies that Boycott Israel List located at <https://comptroller.texas.gov/purchasing/publications/divestment.php>

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

NO EXCLUDED NATION OR FOREIGN TERRORIST ORGANIZATION CERTIFICATION

Effective September 1, 2017, Chapter 2252 of the Texas Government Code provides that a Texas governmental entity may not enter into a contract with a company engaged in active business operations with Sudan, Iran, or a foreign terrorist organization – specifically, any company identified on a list prepared and maintained by the Texas Comptroller under Texas Government Code §§806.051, 807.051, or 2252.153. (A company that the U.S. Government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, Iran, or any federal sanctions regime relating to a foreign terrorist organization is not subject to the contract prohibition.)

By signature below, I certify and verify that the Contractor is not on the Texas Comptroller's list identified above; that this certification is true, complete and accurate; and that I am authorized by my company to make this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

CERTIFICATION OF HUB PARTICIPATION

****This Certification is only to be completed by current HUB Contractors.***

I hereby declare and affirm that I am a Historically Underutilized Business (HUB) as defined by Texas Government Code §2161 and that I will provide information requested by CVCOG to document this fact.

I do solemnly declare and affirm, under the penalties of perjury, that the contents of the aforementioned document are true and correct and that I am authorized, on behalf of the above firm, to execute this certification.

***IF YOU ARE A CURRENT HUB CERTIFIED BY A STATE, PLEASE SUBMIT A COPY OF YOUR HUB CERTIFICATION WITH YOUR RESPONSE TO THIS SOLICITATION.**

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOOD FAITH EFFORT CERTIFICATION

Policy: It is the policy of the U.S. Department of Transportation and the Texas Department of Transportation that DBE's as defined in 49 CFR Part 23 as amended, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with the Federal and/or state funds under the agreement which results from the Purchaser's acceptance of the contractor's offer. Consequently, the DBE requirements of 49 CFR Part 23, as amended, applies to that agreement.

Obligation: The Contractor agrees to ensure that DBE's as defined in 49 CFR Part 23, as amended, 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 which results from the Purchaser's acceptance of the contractor's offer. In this regard, all Contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23, as amended, to ensure that DBE's have the maximum opportunity to compete for and perform contracts. Contractors shall not discriminate on the basis of race, color, national origin, or sex in award and performance of Department of Transportation assisted contracts.

Information regarding the DBE Program can be found here: <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise>

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

CERTIFICATION OF DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

**This Certification is only to be completed by current DBE Contractors.*

I hereby declare and affirm that I am a Disadvantaged Business Enterprise as defined by the Texas DBE Unified Certification Program specifications and that I will provide information requested by CVCOG to document this fact.

I do solemnly declare and affirm, under the penalties of perjury, that the contents of the aforementioned document are true and correct and that I am authorized, on behalf of the above firm, to execute this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

***PLEASE SUBMIT A COPY OF YOUR DBE CERTIFICATION WITH YOUR RESPONSE TO THIS SOLICITATION.**

If you feel that your firm qualifies as a Disadvantaged Business Enterprise (DBE) under 49 CFR Part 26, please contact:

Jaylon Seales, DBE Liaison Officer
c/o CVCOG Procurement Department
5430 Link Road
San Angelo, TX 76904
Telephone: 325-944-9666 ext. 282
Email: jaylon.seales@cvcog.org

Information regarding the DBE Program can be found here: <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise>

SECTION 10: SOLICITATION EXHIBITS

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EXHIBIT A

FEDERAL TRANSIT ADMINISTRATION CONTRACT CLAUSES

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Federal Transit Administration (FTA) Clauses
Updated February 2023

TYPE OF PROCUREMENT					
Provision	Professional Services/A&E	Operations/Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	ALL	ALL	ALL	ALL	ALL
False Statements or Claims Civil and Criminal Fraud	ALL	ALL	ALL	ALL	ALL
Access to Third Party Contract Records	ALL	ALL	ALL	ALL	ALL
Changes to Federal Requirements	ALL	ALL	ALL	ALL	ALL
Termination	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Civil Rights (Title VI, ADA, EEO except Special DOL EEO clause for construction projects)	ALL	ALL	ALL >\$10,000	ALL	ALL
Special DOL EEO clause for construction projects				>\$10,000	
Veteran's Employment Preference				ALL	
Disadvantaged Business Enterprise (DBEs)	ALL	ALL	ALL	ALL	ALL
Prompt Payment to Subcontractors (if not part of DBE clause)	ALL	ALL	ALL	ALL	ALL
Incorporation of FTA Terms	ALL	ALL	ALL	ALL	ALL
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$150,000 49 USC 5323(j)(13)	>\$150,000 49 USC 5323(j)(13)	>\$150,000 49 USC 5323(j)(13)
Resolution of Disputes, Breaches, or Other Litigation – Notification of Contractor and/or Subcontractor to Agency and Agency notification to FTA	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Clean Water	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Cargo Preference			Transport by ocean vessel.	Transport by ocean vessel.	Transport by ocean vessel.
Fly America	Foreign air transp./travel.	Foreign air transp./travel.	Foreign air transp./travel.	Foreign air transp./travel.	Foreign air transp./travel.
Davis-Bacon Act				>\$2,000 (also ferries).	

Provision	Professional Services/ A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Contract Work Hours and Safety Standards Act		>\$100,000 (transportation services excepted).	>\$100,000	>\$100,000 (also ferries).	
Copeland Anti-Kickback Act				ALL >\$2,000 (also ferries).	
Bonding				>\$250,000	
Seismic Safety	A&E for new buildings & additions.			New buildings & additions.	
Transit Employee Protective Arrangements		Transit operations.			
Charter Service Operations		ALL			
School Bus Operations		ALL			
Drug Use and Testing		Transit operations.			
Alcohol Misuse and Testing		Transit operations.			
Patent Rights	R&D				
Rights in Data and Copyrights	R&D				
Rights to Inventions Made Under a Contract or Agreement	R&D with Small Business or Non-Profit				
Energy Conservation	ALL	ALL	ALL	ALL	ALL
Recycled Products		EPA-selected items \$10,000 or more annually.		EPA-selected items \$10,000 or more annually.	EPA-selected items \$10,000 or more annually.
Conformance with ITS National Architecture	ITS projects.	ITS projects.	ITS projects.	ITS projects.	ITS projects.
ADA Access	A&E	ALL	ALL	ALL	ALL
Notification of Federal Participation for States	Limited to States.	Limited to States.	Limited to States.	Limited to States.	Limited to States.
Safe Operation of Motor Vehicles 1. Seat Belt Use 2. Distracted Driving	ALL	ALL	ALL	ALL	ALL
Prohibition on certain telecommunications and video surveillance services or equipment	ALL	ALL	ALL	ALL	ALL

FEDERAL TRANSIT ADMINISTRATION (FTA) CLAUSES

(Revised 02/2023)

Contractor shall comply with the following FTA requirements. For purposes of these clauses, the AGENCY is the FTA recipient or subrecipient that is entering the Contract with Contractor.

1. **NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES.** *[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]*

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

2. **NOTIFICATION TO FTA.** *[These requirements apply to all contracts and subcontracts in excess of \$25,000.]*

If a current or prospective legal matter that may affect the Federal Government emerges, Contractor must promptly notify the AGENCY, which must then promptly notify the FTA Chief Counsel and FTA Regional Counsel for Region 6. Contractor must 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.

- A. **Types of Legal Matters Requiring Notification.** The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- B. **Matters Affecting the Federal Government.** Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the Contract, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
- C. **Additional Notice to U.S. DOT Inspector General.** Contractor must promptly notify the AGENCY, which must then promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for Region 6 if Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Contract or another agreement between the AGENCY and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the AGENCY. 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 Contractor. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision also applies to all divisions of the AGENCY, including divisions tasked with law enforcement or investigatory functions.

3. PROGRAM FRAUD & FALSE/FRAUDULENT STATEMENTS OR RELATED ACTS.

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

- A. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31, apply to its actions pertaining to this Project. Upon execution of the Contract, 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 Contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, 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 Contractor to the extent the Federal Government deems appropriate.
- B. Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on Contractor, to the extent the Federal Government deems appropriate.
- C. Contractor shall include the above two paragraphs 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. ACCESS TO RECORDS, REPORTS, & SITES.

- A. **Record Retention.** Contractor shall retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- B. **Retention Period.** Contractor shall comply with the record retention requirements in accordance with 2 CFR § 200.333. Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three 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.** Contractor shall provide sufficient access to the U.S. Secretary of Transportation, the Comptroller General of the United States, FTA, the Agency, and their duly authorized representatives to inspect and audit records and information

related to performance of this contract as reasonably may be required.

- D. Access to the Sites of Performance.** Contractor shall permit FTA, the Agency, and their duly authorized representatives access to the sites of performance under this Contract as reasonably may be required.

- 5. FEDERAL CHANGES.** Contractor shall at all times comply with all applicable federal laws, regulations, requirements, policies, procedures, guidance, and directives, including without limitation those listed directly or by reference in the FTA Master Agreement between the Concho Valley Council of Governments and/or Concho Valley Transit District and the FTA, as they may be amended or promulgated from time to time during the term of the Contract. Contractor's failure to so comply shall constitute a material breach of the Contract.

- 6. CIVIL RIGHTS.** The AGENCY must comply with applicable federal civil rights laws, regulations, and requirements, and follow applicable federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless an AGENCY or federal program, including any Indian Tribe or Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with each civil rights statute, including compliance with equity in service requirements.

A. Nondiscrimination in Federal Public Transportation Programs.

1. Contractor must prohibit: **(a)** discrimination based on race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age; **(b)** exclusion from participation in employment or a business opportunity for reasons identified in 49 U.S.C. § 5332; **(c)** denial of program benefits in employment or a business opportunity identified in 49 U.S.C. § 5332; and **(d)** discrimination identified in 49 U.S.C. § 5332, including discrimination in employment or a business opportunity identified in 49 U.S.C. § 5332.
2. Contractor must follow the most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance. However, FTA does not require an Indian Tribe to comply with FTA program specific guidelines for Title VI when administering its agreement supported with federal assistance under the Tribal Transit Program.

B. Nondiscrimination – Title VI of the Civil Rights Act. Contractor must:

1. Contractor must prohibit discrimination based on race, color, or national origin,
2. Contractor must comply with: **(a)** Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, et seq.; **(b)** U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 CFR Part 21; and **(c)** Federal transit law, specifically 49 U.S.C. § 5332; and
3. Contractor must follow: **(a)** the most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance; **(b)** U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3; and **(c)** all other applicable federal guidance that may be issued.

C. Equal Employment Opportunity.

1. **Federal Requirements and Guidance.** Contractor must prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor must also comply with: **(a)** Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.; **(b)** Title I of the Americans with

Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.; **(c)** Executive Order No. 11246, "Equal Employment Opportunity" September 24, 1965 (42 U.S.C. § 2000e note), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs; **(d)** federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement; and **(e)** FTA Circular 4704.1 "Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients." Further, Contractor must follow other federal guidance pertaining to EEO laws, regulations, and requirements.

2. **Affirmative Action.** If required to do so by U.S. DOT regulations (49 CFR Part 21) or U.S. Department of Labor regulations (41 C.F.R. chapter 60), Contractor must take affirmative action that includes, but is not limited to: **(a)** recruitment advertising, recruitment, and employment; **(b)** rates of pay and other forms of compensation; **(c)** selection for training, including apprenticeship, and upgrading; and **(d)** transfers, demotions, layoffs, and terminations.
3. **Indian Tribe.** Contractor recognizes that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer."
4. **Equal Employment Opportunity for Construction Activities.** When undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), Contractor must comply with: **(a)** U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60; and **(b)** Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note (30 Fed. Reg. 12319, 12935), as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.

7. INCORPORATION OF FTA TERMS. *[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]*

The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, and 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 the contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests of the AGENCY that would cause the AGENCY to be in violation of the FTA terms and conditions. Contractor shall include this clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA.

8. **FREE SPEECH & RELIGIOUS LIBERTY.** All Federal funding must be expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements, including but not limited to those prohibiting discrimination and protecting free speech, religious liberty, public welfare, and the environment.
9. **FEDERAL TERMINATION RIGHTS.** The termination rights under this Contract are in addition to, and in no way limit, the Federal Government's right to terminate as described in 2 CFR § 200.340.
10. **DEBARMENT, SUSPENSION, INELIGIBILITY, & VOLUNTARY EXCLUSION.** *[This requirement does not apply to contracts and subcontracts under \$25,000.]*

- A. Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Non-procurement Suspension and Debarment,” 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Government-Wide Debarment and Suspension (Non-procurement),” 2 CFR part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount.
- B. Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally-funded contract (which includes review of SAM at sam.gov, if necessary to comply with U.S. DOT regulations, 2 CFR Part 1200) and are not presently declared by any Federal department or AGENCY to be: **(1)** debarred from participation in any federally-assisted Award; **(2)** suspended from participation in any federally-assisted Award; **(3)** proposed for debarment from participation in any federally-assisted Award; **(4)** declared ineligible to participate in any federally-assisted Award; **(5)** voluntarily excluded from participation in any federally-assisted Award; or **(6)** disqualified from participation in any federally-assisted Award.
- C. 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 Contractor 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. Contractor shall comply with the requirements of 2 CFR part 180, subpart C, as supplemented by 2 CFR part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

11. TERMINATION.

Termination for Convenience

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

Termination for Default [Breach or Cause]

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

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.

12. VIOLATION & BREACH OF CONTRACT. *[These requirements are not applicable to contracts and subcontracts under the simplified acquisition threshold (currently set at \$250,000).]*

Unless otherwise provided for by the AGENCY, the following provisions shall apply:

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

decision.

B. Performance During Disputes. Notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the Contract, Contractor shall continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by a Texas Court of competent jurisdiction.

C. Rights and Remedies. The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the AGENCY or Contractor shall constitute a waiver of any right or duty afforded any of them under this 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 upon in writing.

13. LOBBYING RESTRICTIONS. *[These requirements do not apply to contracts and subcontracts under \$100,000.]*

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the AGENCY.

14. CARGO PREFERENCE (USE OF U.S.-FLAG VESSELS). *[These requirements apply to all contracts involving equipment, material, or commodities that may be transported by ocean vessels.]*

A. Contractor shall 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 Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

B. Contractor shall 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 Contractor in the case of a subcontractor's bill-of-lading); and

C. Contractor shall 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.

15. FLY AMERICA. *[These requirements apply to contracts and subcontracts involving the*

transportation of persons or property by air between a place in the United States and a place outside of the United States, or between places outside the United States, when the FTA will participate in the cost of such air transportation.]

- A. 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; and **(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, recipients, 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, 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. If Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, then 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]:*

(End of statement)

- 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.

16. EMPLOYEE PROTECTIONS.

- A. **Prevailing Wage & Anti-Kickback.** *[These requirements apply to all prime construction, alteration, or repair contracts in excess of \$2,000.]*

- 1. For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the

statute, Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

2. In addition, Contractor shall pay wages not less than once a week. Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

B. Contract Work Hours/Safety Standards for Awards Involving Construction.

[These requirements apply to all contracts involving construction in excess of \$100,000 that involve the employment of mechanics or laborers.]

1. For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 CFR part 5. Under 40 U.S.C. § 3702 of the Act, Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.
2. In the event of any violation of the clause set forth herein, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause 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 this clause.
3. The FTA 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 Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.
4. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these

clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this Contract.

C. Contract Work Hours/Safety Standards for Awards Not Involving Construction.

[These requirements apply to all contracts (not involving construction) in excess of \$100,000 that involve the employment of mechanics or laborers.]

1. Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR part 5.
2. Contractor 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.
3. Such records maintained under this paragraph shall be made available by Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and Contractor will permit such representatives to interview employees during working hours on the job.
4. Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

17. SEISMIC SAFETY. *[These requirements apply only to contracts for the construction of new buildings or additions to existing buildings.]*

Contractor shall design and construct any new building or addition to an existing building in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations (49 CFR part 41) and will certify its compliance to the extent required by the regulation. Contractor shall 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.

18. VETERANS EMPLOYMENT. *[These requirements apply only to capital projects. See 49 U.S.C. § 5302(3).]*

Contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in U.S.C. Section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the Contract. This requirement shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

19. **BONDING.** *[These requirements are applicable to all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold (currently set at \$250,000). See FTA Circular C 4220.1F for specific bonding requirements.]*

Bonds are required for all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold. FTA may accept the bonding policy and requirements of the AGENCY if FTA has determined that the Federal interest is adequately protected. If such a determination has not been made, the following minimum requirements apply:

- A. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- B. A performance bond on the part of Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all of Contractor's obligations under such contract.
- C. A payment bond on the part of Contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

20. **PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS.** *[These requirements apply only to contracts for transit operations performed by employees of contractors and subcontractors recognized by FTA to be a transit operator.]*

Contractor shall comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

- A. **U.S. DOL Certification.** Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
- B. **Special Warranty.** When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.
- C. **Special Arrangements.** The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.
- D. **Flow Down.** Contractor shall include the substance of this clause in each subcontract that may involve operating public transit services.

21. **CHARTER SERVICE.** *[These requirements apply to contracts for operating public transportation service.]*

- A. Contractor shall comply with 49 U.S.C. 5323(d), (g), and (r), and 49 CFR part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally-funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under: **(1)** federal transit laws, specifically 49 U.S.C. § 5323(d); **(2)** FTA regulations, "Charter Service," 49 CFR part 604; **(3)** any other federal Charter Service regulations; or **(4)** Federal guidance, except as FTA determines otherwise in writing.
- B. If Contractor engages in a pattern of violations of FTA's Charter Service regulations, then FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include: **(1)** barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA; **(2)** withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or **(3)** any other appropriate remedy that may apply.
- C. Contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

22. SCHOOL BUS OPERATIONS. *[These requirements apply to contracts for operating public transportation service.]*

Contractor shall comply with 49 U.S.C. 5323(f) and (g), and 49 CFR part 605, and not engage in school bus operations using federally-funded equipment or facilities in competition with private operators of school buses, except as permitted under: **(A)** federal transit laws, specifically 49 U.S.C. § 5323(f); **(B)** FTA regulations, "School Bus Operations," 49 CFR part 605; **(C)** any other Federal School Bus regulations; or **(D)** federal guidance, except as FTA determines otherwise in writing. If Contractor violates these school bus requirements, then FTA may bar Contractor from receiving Federal assistance for public transportation or require Contractor to take such remedial measures as FTA considers appropriate. When operating exclusive school bus service under an allowable exemption, Contractor may not use federally-funded equipment, vehicles, or facilities. Contractor should include the substance of this clause in each subcontract or purchase under this Contract that may operate public transportation services.

23. MOTOR CARRIER SAFETY. *[These requirements apply to contracts for operating bus operation service.]*

- A. **Financial Responsibility.** Contractor shall comply with the economic and insurance registration requirements of: **(1)** U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, "Minimum Levels of Financial Responsibility for Motor Carriers," 49 C.F.R. part 387, if Contractor is: **(a)** engaged in operations requiring compliance with 49 C.F.R. part 387, **(b)** engaged in interstate commerce, and **(c)** not within a defined commercial zone; and **(2)** provisions of 49 U.S.C. § 31138(e)(4), which supersede inconsistent provisions of 49 C.F.R. part 387, and reduce the amount of insurance the Recipient must obtain to the highest amount required by any state in which the public transportation provider operates, if it operates within a public transportation service area located in more than one state, and receives federal assistance under 49 U.S.C. §§ 5307, 5310, and 5311.
- B. **U.S. FMCSA Requirements.** Contractor shall comply with: **(1)** safety requirements of U.S. Federal Motor Carrier Safety Administration (**U.S. FMCSA**) regulations, "Federal Motor Carrier Safety Regulations," 49 C.F.R. parts 390 – 397, to the extent applicable; and **(2)** driver's license requirements of U.S. FMCSA regulations, "Commercial

Driver's License Standards, Requirements, and Penalties," 49 C.F.R. part 383, and "State Compliance with Commercial Driver's License," 49 C.F.R. part 384, to the extent applicable, with the substance abuse requirements and guidance of U.S. FMCSA's regulations, "Drug and Alcohol Use and Testing Requirements," 49 C.F.R. part 382, and implementing federal guidance, to the extent applicable.

24. SAFE OPERATIONS OF MOTOR VEHICLES.

- A. Seat Belt Use.** 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 Contractor or AGENCY.
- B. Distracted Driving.** Contractor shall 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.
- C. Subcontracts.** Contractor shall insert the substance of this clause, including this paragraph, in all subcontracts that exceed the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

25. CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING. *[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]*

- A. Definitions.** As used in this clause: **(1) "driving"** means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise (**note:** "driving" does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary); and **(2) "text messaging"** means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication (**note:** "text messaging" does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park).
- B. Executive Order.** This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, dated October 1, 2009. Contractor is encouraged to adopt and enforce policies that ban text messaging while driving company-owned/rented vehicles, Government-owned vehicles, and privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government. Contractor is also encouraged to conduct initiatives in a manner commensurate with the size of the business, such as: **(1)** establishment of new rules and programs or reevaluation of existing programs to prohibit text messaging while driving; and **(2)** education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

- C. **Subcontracts.** Contractor shall insert the substance of this clause, including this paragraph, in all subcontracts that exceed the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.
26. **SUBSTANCE ABUSE (DRUG & ALCOHOL TESTING).** *[These requirements apply to contracts with contractors who perform safety-sensitive functions, as defined in 49 CFR Part 655.4, "Definitions."]*
- A. Contractor shall establish and implement a drug and alcohol testing program that complies with "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" (49 CFR Part 40) and "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations" (49 CFR Part 655), produce any documentation necessary to establish its compliance with parts 655 and 40, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State of Texas, the Concho Valley Council of Governments, or Concho Valley Transit District, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR part 655 and 49 CFR part 40 and review the testing process.
 - B. Contractor shall also submit for review and approval a copy of its substance abuse prevention policy developed to implement its drug and alcohol testing program. To certify compliance, Contractor 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.
 - C. Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers involving the performance of a safety-sensitive function under the Contract.
27. **BUY AMERICA.** *[These requirements apply to contracts over \$150,000 if they involve the purchase of iron, steel, manufactured goods, or rolling stock.]*
- A. Contractor shall comply with 49 U.S.C. 5323(j) and 49 CFR part 661, which provide that federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 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, and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR § 661.11. Contractor must submit to AGENCY the appropriate Buy America certification with its offer. Offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.
 - B. Construction materials used in FTA-funded projects are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA.
28. **PROHIBITED TELECOMMUNICATIONS/SURVEILLANCE SERVICES/EQUIPMENT.**
The AGENCY is prohibited from obligating or expending loan or grant funds to: procure or obtain, extend or renew a contract to procure or obtain, or 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. Contractor shall not provide covered telecommunications equipment or services in the performance of the Contract. As described in Public Law 115-232, section 889, covered telecommunications equipment is: **(A)** telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); **(B)** 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) for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes; **(C)** Telecommunications or video surveillance services provided by such entities or using such equipment; and **(D)** telecommunications or video surveillance equipment or services produced 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.

29. AIR POLLUTION & FUEL ECONOMY. *[These requirements apply to contracts for the purchase of rolling stock.]*

The Contractor agrees to comply with applicable Federal air pollution control and fuel economy regulations, such as: EPA regulations, "Control of Air Pollution from Mobile Sources," 40 CFR Part 85; EPA regulations, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 CFR Part 86; and EPA regulations, "Fuel Economy of Motor Vehicles," 40 CFR Part 600.

30. ROLLING STOCK LIMITATIONS. *[These requirements apply to contracts for the purchase of rolling stock.]*

Contractor and its subcontractors must comply with the limitation on certain rolling stock procurements at 49 U.S.C. § 5323(u), prohibiting the procurement of rolling stock from specified manufacturers for public transportation use.

31. PRE-AWARD & POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES. *[These requirements apply to contracts for the purchase of rolling stock.]*

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

32. BUS TESTING. *[These requirements apply to contracts for the purchase/lease of any bus model that is new or has any major change in configuration/components to be acquired/leased.]*

Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 CFR part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon

completion of the testing, Contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the grantee.

- 33. ENVIRONMENTAL PROTECTIONS.** Contractor shall comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.

A. National Environmental Policy Act.

1. Contractor shall comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to: **(a)** federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139; **(b)** the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321 et seq., as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations 40 C.F.R. part 1500 – 1508; **(c)** joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. part 771 and 49 C.F.R. part 622; **(d)** Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note; and **(e)** other federal environmental protection laws, regulations, and requirements applicable to Contractor.
2. Contractor shall follow federal guidance to the extent that the guidance is consistent with applicable authorizing legislation, which may include: **(a)** joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319, Accelerated Decision making in Environmental Reviews," January 14, 2013; **(b)** joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Pub. L. 109-59)," 71 Fed. Reg. 66576, November 15, 2006; and **(c)** other federal environmental guidance applicable to the Contractor.

- B. Environmental Justice.** Contractor shall promote environmental justice by following: **(1)** Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order; **(2)** U.S. DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997; and **(3)** the most recent edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

- C. Other Environmental Federal Laws.** Contractor shall comply or facilitate compliance with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to "Protection of Wetlands," and Executive Order Nos. 11988 and 13690 relating to "Floodplain Management."

- D. Use of Certain Public Lands.** Contractor shall comply with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as "section 4(f)"), and joint FHWA and FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. part 774, and referenced in 49 C.F.R. part 622.

- E. **Historic Preservation.** Contractor shall comply with: **(1)** U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as “section 4(f)”), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places; **(2)** federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108; **(3)** the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501 et seq.; **(4)** U.S. Advisory Council on Historic Preservation regulations, “Protection of Historic Properties,” 36 C.F.R. part 800; and **(5)** other federal requirements and federal guidance to avoid or mitigate adverse effects on historic properties.
- F. **Indian Sacred Sites.** Contractor shall facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, “Indian Sacred Sites,” May 24, 1996, 42 U.S.C. § 3161 note.

34. CLEAN AIR ACT & FEDERAL WATER POLLUTION CONTROL ACT. *[These requirements do not apply to contracts and subcontracts under \$150,000.]*

Contractor shall ensure that it: **(A)** will not use any violating facilities; **(B)** will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;” **(C)** will report violations of use of prohibited facilities to FTA; and **(D)** will comply with the inspection and other requirements of the Clean Air Act, as amended (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387).

35. ENERGY CONSERVATION. Contractor shall 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. §§ 6321 et seq.).

36. RECYCLED PRODUCTS (SOLID WASTES). *[These requirements apply to all contracts and subcontracts involving the purchase of items designated by the EPA (that contain the highest percentage of recovered materials practicable) in excess of \$10,000. See 40 C.F.R part 247 for federal designation of items.]*

Contractor shall provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 CFR part 247. The requirements of Section 6002 include: **(A)** procuring only items designated in guidelines of the U.S. EPA at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; **(B)** procuring solid waste management services in a manner that maximizes energy and resource recovery; and **(C)** establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

37. INTELLECTUAL PROPERTY/PATENT RIGHTS & RIGHTS IN DATA. *[These requirements apply to contracts for the performance of experimental, developmental, or research work.]*

- A.** This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. Contractor shall grant the AGENCY intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions: Except for its own internal use, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of FTA, until such time as FTA 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. For purposes of this Contract, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.
- B.** 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": **(1)** any subject data developed under the Contract, whether or not a copyright has been obtained; and **(2)** any rights of copyright purchased by Contractor using federal assistance in whole or in part by the FTA. 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.
- C.** Unless FTA determines otherwise, Contractor performing experimental, developmental, or research work required as part of this Contract 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 the 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 this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
- D.** Unless prohibited by state law, upon request by the Federal Government, Contractor shall 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 Contractor 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. Contractor 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 Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the Contract is exempt from the requirements herein, provided that Contractor identifies those data in writing at the time of delivery of the Contract work.
- G. Contractor shall include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

38. COMPLIANCE WITH NATIONAL ITS ARCHITECTURE POLICY. *[These requirements apply only to contracts for National Intelligent Transportation System projects.]*

Contractor shall conform to the National Intelligent Transportation Systems **(ITS)** Architecture requirements of 23 U.S.C. § 517(d), unless it obtains an exemption from those requirements, and follow FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 Fed. Reg. 1455, January 8, 2001, and all other applicable federal guidance.

39. NTD REPORTING. As a condition of benefitting from federal assistance for public transportation operations, Contractor and its subcontractors must: **(A)** facilitate compliance with 49 U.S.C. § 5335(a), which authorizes the National Transit Database **(NTD)**; **(B)** conform to the NTD reporting system and the Uniform System of Accounts and Records; **(C)** comply with FTA regulations, "Uniform System of Accounts and Records and Reporting System," 49 CFR Part 630; **(D)** report when required to the National Transit Database in accordance with FTA regulation 49 CFR Part 630, "National Transit Database," and applicable FTA instructions: **(1)** any information relating to a transit asset inventory or condition assessment; **(2)** any data on assaults on transit workers; **(3)** any data on fatalities that result from an impact with a bus; and **(4)** such other information as FTA may require; **(E)** comply with any other applicable reporting regulations, and requirements; and **(F)** follow FTA guidance.

40. TRAFFICKING IN PERSONS. Contractor and its subcontractors or their employees shall not: **(A)** engage in severe forms of trafficking in persons during the Contract Term; **(B)** procure a commercial sex act during the Contract Term; or **(C)** use forced labor in the performance of the Contract. Contractor shall inform AGENCY immediately of any information Contractor receives from any source alleging a violation of a prohibition in this section. AGENCY may terminate this Contract for any violation of this section; such right of termination is in addition to all other remedies for noncompliance that are available to the AGENCY.