



# REQUEST FOR PROPOSALS (RFP)

FOR

## **Urban Transit Planning, Route Design, Scheduling, and Related Services**

**CVCOG Program:** Concho Valley Transit

**Solicitation Number:** 24-Transit-R-0003

### **PROCUREMENT CONTACTS**

PRIMARY	SECONDARY
Jaylon Seales	Crystal Garcia
Contract & Open Records Manager	Procurement Lead
<a href="mailto:jaylon.seales@cvcog.org">jaylon.seales@cvcog.org</a>	<a href="mailto:crystal.garcia@cvcog.org">crystal.garcia@cvcog.org</a>
325-944-9666 Ext. 282	325-944-9666 Ext. 227

### **SOLICITATION TIMELINE**

EVENT	DATE
CVCOG Date of Solicitation Issuance:	January 12 <sup>th</sup> , 2024
Pre-Submission Conference:	January 31 <sup>st</sup> , 2024 10:00AM CST
Due Date for Written Questions:	February 7 <sup>th</sup> , 2024 5:00PM CST
Anticipated Posting of Agency's Written Answers	February 16 <sup>th</sup> , 2024
Deadline for Submission of Proposals:	March 15 <sup>th</sup> , 2024 4:30PM CST
CVCOG Admin Review & Evaluation of Proposals:	March 18 <sup>th</sup> – March 22 <sup>nd</sup> , 2024
CVCOG Notice of Intent to Award:	April 1 <sup>st</sup> , 2024
Board Review and Decision Date:	April 10 <sup>th</sup> , 2024
Anticipated Commencement of Services:	June 2024
Submission Format:	<b>One (1) original and one (1) combined PDF copy on a USB flash drive.</b>

Concho Valley Council of Governments  
5430 Link Rd. San Angelo, TX 76904  
325-944-9666 | [www.cvcog.org](http://www.cvcog.org)

### **SIGNATURE PAGE**

Submission of a response will constitute acknowledgement and acceptance of all the terms and conditions contained in this Solicitation. Respondents, 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 response 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 and any total fixed price contained therein will remain firm for a period of ninety (90) days following the submission due date and can be further extended by mutual written agreement.

<b>Respondent is REQUIRED to sign this Signature Page and return with the submitted response. An unsigned Submission will be deemed non-responsive.</b>	
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) <b>REQUIRED (See pg. 13)</b>	
Contact Person:	Phone Number:
Email Address:	

<b>Authorized Signature personnel authorized to bind Respondent company to any contract/purchase order that may result from this Solicitation</b>	
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](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.

# 1. AGENCY INFORMATION AND INTRODUCTION

## 1.1. Agency Information

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

## **2. CONTRACTOR REQUIREMENTS: SCOPE OF WORK**

### **2.1. Summary Statement.**

Concho Valley Council of Governments (CVCOG) is issuing this Request for Proposals (RFP) in order to procure the goods and/or services defined in Section 2, as specified in this RFP, from a contract between the successful proposer(s) and the CVCOG.

Concho Valley Transit (CVT), a program of CVCOG, is seeking a software company, on a fixed-price basis, who can provide CVT with transit routing, route design services, and urban transit scheduling as a cohesive software package to assist the agency in its transportation services.

A Proposer, either directly or through its subcontractor(s), must be able to provide all goods and/or services and meet all of the requirements requested in this solicitation and the successful Proposer (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.

### **2.2. Scope of Project.**

Concho Valley Transit currently utilizes transit planning and routing software to plan fixed-route transit services, route deviations, organization of transit stops, and to measure both the financial and rider impact of its planning efforts.

Concho Valley Transit is seeking a software firm that can propose and provide a customized solution to meet CVT's needs including route design, aid in the planning and implementation of route changes by providing information on how route changes will affect route timing, route length, ridership, and environmental justice/demographic statistics and information.

This tool will help CVT make better decisions about new and/or changing existing routes. The software should also display maps that show how far someone at any point on the map can go using transit services within 15, 30 or 60 minutes; thereby demonstrating how changes to routes would affect population coverage and show the financial cost of providing the service(s).

### **2.3. Specifications and Required Base Software Features.**

The scheduling and planning software solution shall be cloud-based with web-portal access provided anytime of the day (24 hours a day, 7 days a week, 365 days a year). The software shall include the minimum capabilities below.

- The system will be hosted by the vendor and accessible via any industry-standard web browser (Edge, Chrome, Firefox, etc.) without the need to install any software or plugins. System should be delivered through a Software as a Service (SaaS) model where users receive access to an easy-to-use platform without the worry of maintenance, hosting, or software updates. The software is maintained by the awarded contractor, which will continue to be enhanced over time.
- Approximately five (5) staff would require access to the system. System will support concurrent logins with no degradation of performance. It is estimated that concurrent users would not exceed three (3). The software shall provide administrative user access

allowing creation of new accounts for instant access and the ability to alter user permissions to control view and edit access.

- System must be able to run on a standard PC and operate on future operating systems.
- Vendor shall back-up and protect, for a minimum of sixty (60) days, any software configuration settings, any Concho Valley Transit provided data that has been modified for use by the software and any new data produced by the software itself. System backups must be encrypted, stored offsite, and air-gapped from the production environment.
- At the time of implementation, vendor's software must be the current version. Concho Valley Transit desires a solution that requires no installation of any kind on Concho Valley Transit's computers or servers with everything stored on vendor's servers/cloud. Vendor must always ensure that Concho Valley Transit is utilizing the latest approved and beta tested software version available.
- Concho Valley Transit requires a software tool to analyze and evaluate its existing and proposed fixed route services. The tool will be used to understand financial, operational, demographic and ridership impacts of existing or altered fixed route services. The planning module within the product shall also be capable of being a centralized solution for management of current route, bus stop, timepoint and service schedule data with the following capabilities.
- Software must be able to generate and run analyses related to demographic information.
- Software must be able to provide key information including average speed travelled, cost of operation, revenue hours, revenue miles, length of routes etc.
- The software shall, at a minimum, have blocking, run cutting and driver scheduling capabilities.

## **Training**

The selected vendor will provide an intensive training program to Concho Valley Transit employees (dispatchers, supervisors, and administrators). The training will cover operation of the entire system supplied in conjunction with this solicitation, including any optional items purchased. This training will prepare Concho Valley Transit attendees for operation, administration, and implementation of the system. Training can be provided onsite at Concho Valley Transit's facilities or via video conferencing at times that are convenient to Concho Valley Transit staff.

Concho Valley Transit prefers a vendor that has recorded video training of modules for use by existing or new staff after the initial training is completed.

The awarded vendor shall deliver five (5) complete sets of training materials in printed, hard copy format. All training materials shall be available in digital format and downloadable by Concho

Valley Transit. Initial training cost must be included in the base system cost. Ongoing training shall also be provided to Concho Valley Transit staff, as needed, for any new product features and updates released by vendor after product implementation at no extra cost.

### **Support and Maintenance**

Ongoing product support shall be included in the fee. Vendor's support will be accessible via phone, web and email with a turnaround response time of less than 3 hours for any mission critical components. Base support shall be available during normal business hours. Standby support shall be available at all other times, including weekends, nights and holidays when needed in case of severe emergencies.

Software enhancements (point releases) shall be included for the duration of the project. A notification from the awarded vendor summarizing changes will be emailed to Concho Valley Transit prior to implementing enhancements or upgrades.

Any proposed ongoing licensing and maintenance fees must include a commitment to maintaining a minimum level of reliability or uptime. A fully functioning scheduling application is essential to maintaining transit operations. Concho Valley Transit's expectation is that the selected product will function as described in this scope and be available.

### **Data Security**

Cloud service and login must be over a secure connection. Data must be encrypted to the latest standards. All data stored in the Cloud must be free from any Personally Identifiable Information (PII). Any PII data requires appropriate protection and shall not be publicly available. Vendors will confirm these items and explain full security measures in their Written Proposal Response.

### **Data Ownership and Protection**

All data in the Cloud environment is understood to be the property of Concho Valley Transit. If the agreement between Concho Valley Transit and cloud provider or vendor is cancelled, it is understood that all data can be exported to Concho Valley Transit. In the event of a contract termination, the contractor agrees to make all necessary good-faith efforts to cooperate in the transition of Concho Valley Transit information back to Concho Valley Transit or to other, new vendors.

The Contractor shall not use, disclose, or distribute any data provided by Concho Valley Transit except as may be requested to Concho Valley Transit and for Concho Valley Transit purposes. In the event the Contractor is contacted by any law enforcement or regulatory agency with any lawful order regarding Concho Valley Transit data, the Contractor shall promptly notify Concho Valley Transit of such contact to the extent allowed by law. The Contractor shall provide copies of Concho Valley Transit data to Concho Valley Transit upon request.

If applicable, GPS data, and specifically route identifiers and location coordinates, are not considered potentially sensitive data. Both parties understand that this GPS data may be an

element of this system and that temporary access to this GPS data may, in fact, may be disclosed to the public through the public's use of an associated application or website to enhance the public's use of Concho Valley Transit.

### **Optional Services**

Concho Valley Transit is open to considering any product capability not listed in the scope described in this RFP. If these items are not already included in the base cost, they should be priced out as separately in the Cost Proposal Form and fully described in the Written Proposal Response for consideration. Concho Valley Transit reserves the right to select or decline any of the optional items or modules included in the proposal. Below are specific options.

GTFS File and Data Management: Concho Valley Transit strongly desires a product that will manage service data related to GTFS files. This includes the ability to import existing GIS compatible files (shape files and/or Geodatabase format) and GTFS files and export Geodatabases, shape files, excel documents, PDF files, PNG files, KML files, and General Transit Feed Specification (GTFS) files.

It is highly preferred that the GTFS file management tool can be maintained and edited by Concho Valley Transit staff. Edits to data would be made by Concho Valley Transit staff in just one location of the product. After any service edits (route, stop, timepoint or schedule changes), the product shall allow easy export of revised GTFS files ready for import into Google's transit feed.

Detour Mapping: Concho Valley Transit would be interested in tools in the Scheduling & Planning software that allow quick editing for purposes of creating route-specific maps to display segment closed, new detour route and any existing bus stops impacted by the detour. After edits are finished in the software, Concho Valley Transit could snip the display or export the results in a PDF file that clearly shows the detour visually and is easily understood by our customers with nearby landmarks and street names.

### **Product Demonstrations**

All Proposers will be afforded the option to schedule a time with Concho Valley Transit staff for a product demonstration. Any demonstration should be approximately one (1) hour or less in length. Demonstrations should take place on or before March 14<sup>th</sup>, 2024 and must be scheduled with the Procurement Contacts listed on page 1. Proposers are expressly prohibited from contacting any other member(s) of Concho Valley Council of Governments or Concho Valley Transit staff regarding this Solicitation.

It is important to note that the product demonstration is solely a time for Concho Valley Transit staff to view a demonstration of services offered and for Concho Valley Transit staff to ask questions. This is not an opportunity for Proposers to ask questions to Concho Valley Transit staff regarding the Solicitation or project. Any proposer questions should be submitted in writing in accordance with Section 5.7 Questions, Clarifications, and Explanation to Prospective Proposers or asked during the Pre-Proposal Conference/Q&A Session.

#### **2.4. 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.

#### **2.5. Project Implementation.**

The awarded vendor shall name one (1) individual as the designated project manager. This individual shall have complete authority and control over all aspects of the project and be the primary contact between the vendor and Concho Valley Transit.

A kick-off meeting must be held and may be on-site in San Angelo, TX or virtually to introduce the project manager and project team. The kick-off meeting will cover lines of communication, project schedule and project work plan. This meeting will also serve to enable Concho Valley Transit to gain a complete understanding of the selected system requirements. The requirements will be summarized and provided as a draft report to Concho Valley Transit.

When the system is prepared with applicable data and staff training, the awarded vendor shall coordinate with Concho Valley Transit staff on scheduling of system tests to ensure correct operation. The awarded vendor will:

- Conduct testing of entire system using current Concho Valley Transit data and verify with Concho Valley Transit staff that all system components and functions perform according to the requirements and specifications in the resulting contract with Concho Valley Transit.
- Review results of tests with Concho Valley Transit and make all corrections as necessary.

Upon successful completion of the system test, Concho Valley Transit and the Contractor shall confirm acceptance of the Scheduling & Planning System within three (3) business days. Final acceptance shall be provided in writing via email.

#### **2.6. Requirements Applicable to Physical Goods.**

In the case of physical goods (e.g., equipment, material, supplies, as opposed to services), all Products offered must comply with any applicable provisions of the Texas Business and Commerce Code, Title 1, Chapter 2 and with at least the following:

- a) Be new, unused, and not refurbished.
- b) Not be a prototype as the general design, operation and performance. This requirement is NOT meant to preclude Respondent from offering new models or configurations which incorporate improvements in a current design or add functionality, but in which new model or configuration may be new to the marketplace.
- c) Include all accessories which may or may not be specifically mentioned in the Solicitation, but which are normally furnished or necessary to make the Product ready



for its intended use upon delivery. Such accessories must be assembled, installed and adjusted to allow continuous operation of Product at time of delivery.

- d) Have assemblies, sub-assemblies and component parts that are standard and interchangeable throughout the entire quantity of a Product as may be purchased simultaneously by any Customer.
- e) Be designed and constructed using current industry accepted engineering and safety practices, and materials.
- f) Be available for inspection at any time prior to or after procurement.

## **2.7. Payment Terms and Invoicing.**

### **2.7.1.General.**

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

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).

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.

Invoices for final payment shall be clearly marked as "FINAL" and submitted when all work requirements have been completed and no further charges are to be incurred under the Contract. In no event shall any invoice be submitted later than 60 calendar days from the Contract termination date.

### **2.7.2.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 work by CVCOG.
- b. For items of work for which there is annual pricing, those items shall be billed in annually for the applicable Contract year in the month following the performance of the services.

### **2.7.3.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 RFP, 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.

## **3. GENERAL CLAUSES AND INFORMATION**

### **3.1. CVCOG Terms & Conditions.**

Proposer, by submitting a proposal, or delivering the supplies or performing the services identified herein, 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/Procurement/CVCOG%20Terms%20&%20Conditions%20Rev%20July%202023.pdf>

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

### **3.2. 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.

### **3.3. Solicitation Cancellation, Postponement, and Changes to Solicitation.**

#### **3.3.1.Solicitation Cancellation.**

CVCOG reserves the right to modify, cancel, or withdraw in part or in its entirety the RFP. The reason for cancellation will be supported, at a minimum, by the agency's reasoned judgment based on evidence or facts contained in the administrative record.

In accordance with FAR 15.206 (e), if, in the judgment of the contracting officer, based on market research or otherwise, an amendment proposed for issuance after offers have been received is so substantial as to exceed what prospective offerors reasonably could have anticipated, so that additional sources likely would have submitted offers had the substance

of the amendment been known to them, the contracting officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition.

**3.3.2.Solicitation Amendments.**

CVCOG reserves the right to revise or amend the specifications up to the due date of submissions. Such revisions and amendments, if any, shall be announced by Addendum to this Solicitation in the same manner as the original advertisement.

**3.3.3.Solicitation Postponement.**

If the revisions and Addenda require changes in quantities or prices proposed, or both, the due date for submission may be postponed by such number of days as in the opinion of the Procurement Department shall enable vendors to revise their responses.

CVCOG reserves the right to postpone a solicitation for any reason deemed necessary by the Procurement Department.

**3.4. Samples.**

Samples, when required, must be submitted at no expense to CVCOG. If not destroyed or consumed during testing, samples will be returned upon request at Offeror's expense. Samples will be used to determine if the proposed items meet the specifications stated in the Solicitation. If Respondent fails to provide samples within five (5) day period, as required, CVCOG may reject the Response and not consider it for further evaluation.

**3.5. Measurements.**

If any measurement stated for items are approximates. CVCOG reserves the right to accept items that are similar in size, if in CVCOG's judgment, the item offered fulfills the intended purpose.

**3.6. Variances.**

Any variance in the specifications or performance of Products offered pursuant to this Solicitation will be deemed acceptable to CVCOG only if the variance MEETS or EXCEEDS the specifications and requirements of this Solicitation.

**3.7. Brand Name or Equivalent.**

Wherever in the specifications any materials or processes are indicated or specified by patent of 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 items(s) proposed 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.

**3.8. 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.

**3.9. Rights to Submitted Material.**

All materials submitted by the Proposer in response to this RFP shall become the property of CVCOG.

**3.10. Public Information.**

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.

**3.11. Confidential/Proprietary Information.**

Proposals will not be opened publicly. All Proposals shall be kept confidential and not disclosed to competing Proposers or any outside individuals until the evaluation process is finished.

The CVCOG will keep confidential any trade secrets and/or proprietary information which the Proposer does not wish to be disclosed. For such information, the Proposer 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 Proposal.

**3.12. No Reimbursement for Costs.**

Contractor acknowledges and accepts that any costs incurred from the contractor’s participation in this Solicitation shall be at the sole risk and responsibility of the Contractor.

**3.13. Taxes.**

Purchases made by CVCOG are exempt from the State Sales Tax and Federal Excise Tax. Agency will furnish Tax Exemption Certificates upon request. Respondent represents and

warrants that it shall pay all taxes or similar amounts resulting from the contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. CVCOG shall not be liable for any taxes resulting from the contract.

**3.14. Funding Source Requirements.**

Grant funds used to purchase these products/services may be provided from local, state, and/or federal sources. The successful Respondent must comply with any and all modifications that are enacted by the federal, state, local governments throughout the life of the Award and for any contract it executes with CVCOG as a result of this solicitation.

All Respondents must certify they are not on the Texas Comptroller's list of ineligible contractors. The single successful Respondent shall be required to comply with all applicable Equal Employment Opportunity laws and regulations. HUB and/or DBE vendors will be afforded full opportunity to submit proposals and compete for subcontracting work and will not be discriminated against on the basis of race, color, religion, sex, national origin, or disability.

## **4. MINIMUM VENDOR QUALIFICATIONS**

**4.1. 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 proposal 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.

**4.2. Unique Entity Identifier and System for Award Management.**

**\*\*Successful Proposer must be registered to do business with the U.S. Government through [www.sam.gov](http://www.sam.gov) prior to award of Contract. \*\***

If not already registered, Proposers 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/propose 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.

**4.3. Historically Underutilized Businesses and Disadvantaged Business Enterprise Contractors (HUB and DBE).**

CVCOG encourages the participation of qualified vendors in the bidding/proposal process, emphasizing opportunities for small businesses, HUB and DBE vendors, and minority and/or women owned businesses.

#### **4.4. Insurance Requirements.**

Providing and maintaining adequate insurance coverage is a material obligation of the Proposer and is of the essence of any contract resulting from this RFP. All such insurance shall meet all laws and requirements of the State of Texas and CVCOG. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business.

The successful Proposer shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing Texas laws or this Contract. The limits of coverage under each insurance policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract resulting from this RFP.

Proposer agrees that Proposer and Proposer's employees and agents have no employer-employee relationship with CVCOG. CVCOG shall not be responsible for the Federal Insurance Contribution Act (FICA) payments, federal or state unemployment taxes, income tax withholding, Workers Compensation Insurance payments, or any other insurance payments, nor will CVCOG furnish any medical or retirement benefits or any paid vacation or sick leave. Proposer is responsible for conduct of business operation, including employee salaries, travel, etc.

The Contractor shall maintain, at a minimum, the insurance coverages outlined below, or any minimum requirements established by law if higher, for the duration of the Contract, including option periods, if exercised:

##### **General Liability**

The Contractor must secure and maintain Commercial General Liability Insurance, including bodily injury, property damage, products, personal and advertising injury, and completed operations. This insurance must provide coverage for all claims that may arise from performance of the Contract or completed operations, whether by the Contractor or anyone directly or indirectly employed by the Contractor. Such insurance must include CVCOG as an additional insured for the entire length of the resulting contract. The Contractor shall provide liability insurance coverage written on the comprehensive form of policy of at least \$500,000 per occurrence.

##### **Commercial Automobile Liability**

The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

### **Workers' Compensation and Employer's Liability**

To the extent required by law during the term of this Agreement, Contractor shall provide workers' compensation insurance for the performance of any of Contractor's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide CVCOG with certification of all such coverages upon request by CVCOG.

## **5. REPRESENTATIONS AND INSTRUCTIONS TO PROPOSERS**

### **5.1. Pre-Proposal Conference/Q&A.**

The CVCOG will hold a virtual pre-proposal conference on the date and time and at the location described below:

Wednesday, January 31<sup>st</sup>, 2024 10:00AM CST

#### **Microsoft Teams Meeting:**

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_NjBjNjgyNWetZDZjMS00YTJkLWE1MjUtOWE0MGQzNTJIMTU3%40tbread.v2/0?context=%7b%22Tid%22%3a%22f743336c-ab3c-45a5-98aa-417387c92e2e%22%2c%22Oid%22%3a%22be91f9ae-c0ff-4abf-bdbd-a525218f6f3d%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_NjBjNjgyNWetZDZjMS00YTJkLWE1MjUtOWE0MGQzNTJIMTU3%40tbread.v2/0?context=%7b%22Tid%22%3a%22f743336c-ab3c-45a5-98aa-417387c92e2e%22%2c%22Oid%22%3a%22be91f9ae-c0ff-4abf-bdbd-a525218f6f3d%22%7d)

Or call in (audio only)

+1 323-489-4171,,793188369# United States, Los Angeles

Phone Conference ID: 793 188 369#

Attendance is optional, but strongly encouraged.

This will be the only opportunity for potential proposers to view the project site and/or gather further information before the submission of Proposals.

### **5.2. Amendments to Request for Proposals.**

If this solicitation is amended, then all terms and conditions which are not modified remain unchanged. Proposers must acknowledge receipt of any amendment to this solicitation. CVCOG must receive the acknowledgement by the time and at the place specified for receipt of proposals.

### **5.3. False Statements.**

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

### **5.4. Contact by Proposers.**

To ensure a fair and competitive environment, direct communication between CVCOG employees other than the Solicitation Contact or any party able to create an unfair advantage to Respondent or disadvantage to other Respondents with respect to the Solicitation process, or the award of a Contract is strictly prohibited. This restriction does not apply to communications to

other CVCOG employees during a Pre-Proposal/Bid or Response conference or other situations where the Solicitation Contact has expressly authorized direct communications with other staff. A Respondent who intentionally violates this requirement of the Solicitation process or otherwise deliberately or unintentionally benefits from such a violation by another party may have its Submission rejected in accordance with CVCOG Policy. Respondent(s) will not offer any gratuities, favors, or anything of monetary value to any official or employee of CVCOG (including any and all members of the evaluation committee) for the purposes of influencing consideration of any Submission.

**5.5. Examination of Documents and Requirements.**

Each Respondent must carefully examine all Solicitation documents and become thoroughly familiar with all requirements prior to submission to ensure the response meets the intent of this Solicitation. Respondent is responsible for making all investigations and examinations that are necessary to ascertain conditions affecting the requirements and become thoroughly informed regarding any plan and/or infrastructure that may be required to support delivery of any Product or Service covered by this Solicitation. Failure to make such investigations and examinations will not relieve the Respondent from obligation to comply, in every detail, with all provisions and requirements of the Solicitation.

**5.6. Submission of Proposals.**

Proposals and proposal modifications shall be submitted in sealed envelopes or packages (unless permitted to submit by electronic means). Proposers shall submit sealed proposals by providing one (1) original and one (1) combined PDF copy on a USB flash drive. Proposers using commercial carrier services must ensure that the proposal is addressed and marked on the outermost envelope or wrapper as prescribed below:

**SOLICITATION #: 24-Transit-R-0003  
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 proposing company or proposer's name.

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

**5.7. Questions, Clarifications, and Explanation to Prospective Proposers.**

Any prospective proposer 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 proposers before the submission of their proposals. Oral explanations or instructions given before the award of a contract will not be binding. Any information given a prospective proposer concerning a solicitation will be furnished promptly to all other prospective proposers



as an amendment to the solicitation, if that information is necessary in submitting proposals or if the lack of it would be prejudicial to other prospective proposers.

All contractors are encouraged to send any questions in writing to Jaylon Seales – Contract & Open Records Manager at [jaylon.seales@cvcog.org](mailto:jaylon.seales@cvcog.org) by the Due Date for Written Questions. Answers and any supplemental materials pertaining to submitted questions will be posted to CVCOG website ([www.cvcog.org](http://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.

***Except as provided in this solicitation and as otherwise necessary for the conduct of ongoing CVCOG business operations, proposers 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 proposal rejection.***

**5.8. Solicitation Postponement and Addendum.**

CVCOG reserves the right to revise or amend the specifications up to the due date for submission of proposals. Such revisions and amendments, if any, shall be announced by Addendum to this Solicitation in the same manner as the original advertisement. If the revisions and Addenda require changes in quantities or prices proposed, or both, the due date may be postponed by such number of days as in the opinion of the Procurement Department shall enable vendors to revise their submissions.

**5.9. Late Submissions, Modifications and Withdrawals.**

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

Any proposal, modification, or withdrawal received by CVCOG after the exact time specified for receipt of proposals is "late" and will not be considered. However, a late modification of an otherwise successful proposal 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 proposal 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 proposals cannot be received at the exact time specified in the RFP and urgent Government requirements preclude amendment of the RFP, the time specified for receipt of proposals 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.

Proposals may be withdrawn by written notice received at any time before the exact time set for receipt of proposals.

**5.10. Preparation of Proposals.**

Proposers are expected to examine the drawings, specifications, Schedule, and all instructions. Failure to do so will be at the proposer's risk.

If applicable, before submitting a proposal, proposers 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 proposer 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.

Each proposer shall furnish the information required by the solicitation. The proposer shall sign the proposal and print or type its name on the Schedule and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

For each item offered, proposers 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.

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

Proposers 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.

**5.11. Minor Technicalities.**

CVCOG reserves the right to waive minor technicalities and informalities; to only accept items as specified in the solicitation package. If either a unit price or extended price is obviously in error or the other is obviously correct, the incorrect price will be disregarded.

**5.12. Request for Revised Proposals and Further Information.**

CVCOG may request revised proposals or request further information from Proposers if it is in the best interest of CVCOG to do so.

**5.13. Negotiations.**

CVCOG may negotiate with the highest ranked Proposer. If CVCOG determines that negotiations have reached an impasse, CVCOG at its discretion may terminate negotiations with the selected Proposer and commence negotiations with the second highest-ranked Proposer. However, CVCOG may select a Proposal or Proposals for award without any discussions or negotiations.

**5.14. Best and Final Offer (BAFO)**

CVCOG may request Best and Final Offers if it is in the best interest of CVCOG to do so. Proposers are hereby notified that the selected firms are expressly prohibited from offering any rebates, parts credits and any other price discounts following contract award. Thus, the initial proposal should represent the “best offer.” However, CVCOG may select a proposal or Proposals for award without a request for BAFO.

**5.15. Multiple Awards.**

In addition to other factors, proposals will be evaluated on the basis of advantages and disadvantages to CVCOG that might result from making more than one award (multiple awards). It is assumed, for the purpose of evaluating proposals, that \$500 would be the administrative cost to CVCOG for issuing and administering each contract awarded under this solicitation, and individual awards will be for the items or combinations of items that result in the lowest aggregate cost to CVCOG, including the assumed administrative costs.

**5.16. Subcontractors.**

The Proposer is required notify the CVCOG of any subcontractor(s) to be used to perform tasks and/or provide equipment on the project. CVCOG reserves the right to reject proposed subcontractors.

**5.17. Solicitation Protests.**

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/CVCOG\\_Procurement\\_Protest\\_Procedures\\_and\\_Standards\\_of\\_Conduct.pdf](https://www.cvcog.org/cvcog/docs/Procurement/CVCOG_Procurement_Protest_Procedures_and_Standards_of_Conduct.pdf)

**5.18. Rejection of Individual Proposals.**

- a) Any proposal that fails to conform to the essential requirements of the request for proposal shall be rejected.
- b) Any proposal that does not conform to the applicable specifications shall be rejected unless the solicitation authorized the submission of alternate proposals and the supplies offered as alternates meet the requirements specified in the solicitation.
- c) Any proposal that fails to conform to the delivery schedule or permissible alternates stated in the solicitation shall be rejected.
- d) A proposal shall be rejected when the proposer imposes conditions that would modify requirements of the solicitation or limit the proposer’s liability to the Government, since to allow the proposer to impose such conditions would be prejudicial to other proposers. For example, proposals shall be rejected in which the proposer-

- Protects against future changes in conditions, such as increased costs, if total possible costs to the Government cannot be determined;
  - Fails to state a price and indicates that price shall be "price in effect at time of delivery;"
  - States a price but qualifies it as being subject to "price in effect at time of delivery;"
  - When not authorized by the solicitation, conditions or qualifies a proposal by stipulating that it is to be considered only if, before date of award, the proposer receives (or does not receive) award under a separate solicitation;
  - Requires that the Government is to determine that the proposer's product meets applicable Government specifications; or
  - Limits rights of the Government under any contract clause.
- e) A proposer may be requested to delete objectionable conditions from a proposal provided the conditions do not go to the substance, as distinguished from the form, of the proposal, or work an injustice on other proposers. A condition goes to the substance of a proposal where it affects price, quantity, quality, or delivery of the items offered.
- f) Any proposal may be rejected if the contracting officer determines in writing that it is unreasonable as to price. Unreasonableness of price includes not only the total price of the proposal, but the prices for individual line items as well.
- g) Any proposal may be rejected if the prices for any line items or subline items are materially unbalanced.
- h) Proposals received from any person or concern that is suspended, debarred, proposed for debarment or declared ineligible as of the due date for submission shall be rejected unless a compelling reason determination is made.
- i) Proposals received from concerns determined to be not responsible pursuant to FAR Subpart 9.1 shall be rejected.
- j) When a bid bond and/or performance bond is required and a proposer fails to furnish the guarantee in accordance with the requirements of the RFP, the proposal shall be rejected, except as otherwise provided in FAR 28.101-4.

**5.19. Rejection of All Proposals.**

This solicitation does not commit CVCOG to award a contract.

In accordance with FAR 15.305 (b), CVCOG may reject all proposals received in response to a solicitation, if doing so is in the best interest of CVCOG.

**5.20. Single Proposal Response.**

If only one Proposal is received in response to this solicitation, a detailed cost analysis may be requested of the single Proposer.

**5.21. Non-Response to Request for Proposals.**

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.

**5.22. Contract Award and Execution.**

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

## **6. EVALUATION CRITERIA**

This proposal will be evaluated by an evaluation committee. An evaluation committee may consist of representatives from CVCOG and other stakeholders. The committee members will individually evaluate and numerically score each submission in accordance with the evaluation criteria section of this Solicitation. Submissions will be evaluated based on a total top score of 100. Respondents with a score of at least 80 may be eligible for a contract award recommendation, at the sole discretion of CVCOG. An award resulting from this Solicitation shall be awarded to the most responsive and responsible respondent whose Proposal is determined to be the most advantageous to CVCOG; taking into consideration best value, which includes price, delivery time, vendor past performance, etc.; moreover, the right is reserved to reject any and all submissions received and in all cases.

**Responsiveness.**

Responsive means that a Solicitation response must conform in all material respects to the requirements stated in any portion of the solicitation package. Responsiveness is determined from the submission documents themselves and, with very few exceptions, is determined with no discussions or further input from the respondent. Examples of submission responsiveness, as identified in other parts of the solicitation package, are:

- Are the submission documents complete and is any part of the response intentionally or inadvertently ambiguous? Is it susceptible to two or more reasonable interpretations?
- Were all Addenda to the solicitation acknowledged?
- Was the Proposal signed?
- Were all material representations and certifications completed and signed, including, but not limited to, federal requirements?

**Responsibility.**

A responsible Proposer is a company, which based on its submission, references, and any other pertinent information, has demonstrated it has the ability, willingness, and integrity to perform successfully under the terms and conditions of the Award and any contract resulting from the Solicitation. Consideration shall be given to such matters as defined elsewhere in this Solicitation. Examples of respondent responsibility, as identified in other parts of the Solicitation Package, are:

- Demonstrable integrity, record of past performance, and financial and technical resources needed to meet the required delivery and performance schedule, taking into consideration all the Proposer's existing commercial and governmental business commitments.
- The necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them;
- Compliance with applicable licensing and tax laws and regulations;
- The necessary production, construction, and technical products and facilities, or the ability to obtain them.
- Compliance with Affirmative Action and Disadvantaged Business Program requirements; and
- Other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations.

In accordance with the above criteria, all proposals will be evaluated based on best value evaluation. Each of these areas will be subjectively scored and added together to get the overall 100 points. The proposer(s) whose RFP response is complete, accepted, and who scores the most points will be selected as the contractor.

CVCOG will evaluate proposals based on the following:

**6.1. Responsiveness (Pass/Fail)**

Submission must be responsive to all material requirements that will enable the evaluation committee to evaluate submissions in accordance with the evaluation criteria to make a recommendation to CVCOG officials. This includes a signed signature page by a person authorized to bind the company to any contract/purchase order that may result from this Solicitation; and if subcontracting, may include the completed Small and Minority Business Affirmation Form.

**6.2. Proposal Organization Evaluation (Up to 10 Points)**

Evaluation of how well the Proposer's submission is organized and structured to facilitate the easy flow of critical information for evaluators. Adequacy and completeness of the proposal with regard to the information specified.

**6.3. Cost or Price Evaluation (Up to 30 Points)**

Reasonable total price schedule. Demonstrated ability to deliver goods/services at a reasonable cost and all elements of cost detail are provided. Cost narrative clearly reflects the cost for providing the goods/services, is detailed and includes all costs required for successful project completion.

**6.4. Technical Evaluation – Proposed Solution and Functionality (Up to 25 Points)**

Evaluation of the proposed solution specifically highlighting the specifications, functionality, and compatibility in regards to the overall need.

**6.5. Qualifications, Experience, and Performance History (Up to 20 Points)**

Acceptable overall qualifications of company and key personnel as demonstrated in detailed narrative and qualifications statement. Demonstrated experience and effectiveness in providing like services for organizations. Demonstrated capability to provide the services outlined in the

Solicitation; Minimum adequate references and samples are submitted and required information is provided; relative licenses or registrations are provided, if applicable.

Proposer has no history of major performance problems as reported in their proposal, and all references report excellent quality work.

**6.6. Capacity and Readiness to Perform (Up to 15 Points)**

Satisfactory evidence of respondent ability to manage and coordinate the types of activities described in this Solicitation and to produce the specified products or services on time. Evidence is provided of the availability and commitment of the firm and its principal(s) and key professionals to undertake the project.

## **7. REQUIRED SUBMISSION CONTENTS**

The items listed below must be included with your proposal. Please reference and utilize the checklist provided in the Submission Forms and Certifications section of this RFP to ensure all required documents and information are included with your submission. Failure to respond to each item may render the Proposal non-responsive, causing it to be rejected. Contents and suggested organization/structure of documents shall be as follows:

**7.1. Signature Page.**

Submit completed and signed Signature Page (**located on page 2**) and all required/applicable forms of the checklist provided on the last page of this solicitation. **Submission will be deemed non-responsive and will not be considered for evaluation if the Signature Page is not signed and submitted.**

**7.2. Cover Letter/Narrative Statement.**

The cover letter shall state the Proposer's name and summarize the main qualifications of the firm. A summary of key aspects of the contractor's qualifications and must indicate the commitment to provide the goods or services proposed and certify that all statements and information prepared and submitted in the response to this Solicitation are current, complete, and accurate; and that the proposed solution for the project meets all the requirements of this Solicitation.

**7.3. Custom Itemized Price Proposal (Tax Exempt).**

Provide a customized, itemized, and tax-exempt price proposal. The price proposal should include (but not be limited to) the following items where applicable:

- Item number
- Quantities
- Descriptions
- Unit Price
- Labor
- Resources
- Materials
- Equipment
- Time

- Delivery/Freight
- Installation
- Other items as deemed necessary by Proposer

**7.4. Information Regarding Proposed Goods and/or Services – Technical Information/Specifications.**

State in precise terms the goods and/or services you propose to provide. Please include a description of the key attributes or features of the goods and/or services. Provide information that is pertinent to your firm's ability to perform this contract.

**7.5. Documentation of Qualifications, Experience, and Performance History.**

**7.5.1. Professional Personnel**

Identify key personnel who will be assigned to service this contract.

**7.5.2. Licenses/Certifications.**

Provide any and all licenses, certificates, credentials, accreditations etc. as required to perform the work services requested.

**7.5.3. Samples of Work/References.**

Provide 2 - 4 references of similar contracts that you or your company has performed in the past 5 years. Provide contact information on the company serviced and the type of services performed. Please highlight any work samples that have been delivered to local government customers.

**7.6. Documentation of Readiness and Capacity to Perform.**

Indicate the time frame in which you would be prepared to begin this proposed service if your company is awarded this contract. Provide satisfactory evidence of ability to manage and coordinate the types of activities described in this Solicitation and to produce the specified products or services on time. Provide a statement about the availability and commitment of the firm and its principal(s) and key professionals to undertake the project.

**7.7. Warranty Information.**

Provide documentation related to any warranty for goods and/or services to be provided to CVCOG as a result of this solicitation.

**7.8. Acknowledgement of Addenda Form.**

**7.9. Certification Regarding Debarment, Suspension, and Other Responsibility Matters.**

**7.10. Historically Underutilized Business (HUB) Certification.**

**7.11. Disadvantaged Business Enterprise (DBE) Certification.**

**7.12. Certification Regarding Lobbying.**

**7.13. Buy America Certification.**

**7.14. Certification of Compliance with Build America, Buy America Act.**

**7.15. Prohibition on Contracts with Companies Boycotting Israel Form.**

**7.16. No Excluded Nation or Foreign Terrorist Organization Certification.**

**7.17. Current W-9 Form with address for check remittance.**

## **8. RESULTING CONTRACT INFORMATION**

**8.1. Type of Contract.**



This is a Fixed Cost contract. Per the desired term of the contract, the pricing submitted by the Proposer 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.

**8.2. Term of Agreement.**

The contract resulting from this RFP shall remain in force and effect for a period of two (2) years, beginning the date of award of contract. Upon completion of the term of the original contract and with mutual agreement of both parties, the contract may be extended for up to three (3) additional one-year terms, five (5) years total, under the terms and conditions of the original contract. In the event a new contract cannot be executed at the anniversary date of the original term or any renewal term, the contract may be renewed month-to-month until a new contract is executed.

**8.3. Change Orders.**

**8.3.1. Effect of Change Order.**

A Change Order authorizes a change in the Scope of the Work or an adjustment in the Contract Sum or the Contract Time. Work performed under a Change Order is subject to all provisions of the Contract Documents.

**8.3.2. Modifications for Which a Change Order is Required.**

All changes in the scope of the Work, the Contract Sum and the Contract Time shall be documented by a Change Order. Change Orders are the exclusive method for modifying the Contract Sum or Contract Time.

**8.3.3. Agreed and Unilateral Change Orders.**

A Change Order may be either an Agreed Change Order or a Unilateral Change Order. An Agreed Change Order is a Change Order jointly executed by the CVCOG and the Contractor, in which each agrees to all of the terms of the amendment. A Unilateral Change Order is a Change Order issued by the CVCOG without the agreement of the Contractor. Contractor shall comply with a Unilateral Change Order but shall be entitled to an equitable adjustment of the Contract Time and Contract Price.

**SUBMISSION FORMS AND CERTIFICATIONS**

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BLANK.**

## PROPOSAL 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/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. See Page 2.	
Cover Letter/Narrative Statement.	
Customized, itemized, and tax-exempt price proposal.	
Information regarding proposed goods and/or services – technical information/specifications.	
Documentation of qualifications, experience and performance history of the proposer/bidder/offeror.	
Provide samples of work or references.	
Statement or documentation regarding proposer/bidder/offeror's readiness and capacity to perform.	
Warranty information related to proposed goods and/or services.	
Proposer/bidder/offeror's acknowledgement of all addenda.	
Debarment and Suspension Certification	
Certification Regarding Lobbying	
Acceptance of CVCOC Terms and Conditions	
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	
Historically Underutilized Business (HUB) Certification	
Certification of HUB Participation	
Disadvantaged Business Enterprise (DBE) Good Faith Effort Certification	

Certification of Disadvantaged Business Enterprise (DBE) Participation	
Current W-9 Form	

## PRICE PROPOSAL FORM

### Instructions:

All proposed pricing shall be submitted as FOB Destination. Pricing shall be clearly stated based on commercial pricing practices. A clear pricing proposal shall be prepared; including the price offered to CVCOG, the offeror's commercial rate, and discount offered to CVCOG.

Pricing should be tax-exempt and itemized documenting all anticipated labor, materials, products, equipment, services, and respective overhead, profit, disbursements and related charges required to provide the goods and/or services set forth in this Solicitation.

CVCOG intends to award this Contract on a fixed-cost basis meaning that the pricing submitted by the Awarded Proposer 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.

Price proposals should be submitted specifically highlighting the total proposed cost for each year of the initial term of Agreement along with pricing for each option year.

### *Example:*

TIMEFRAME	PROPOSED PRICE
Year 1 (Initial Term)	\$100,000.00 (EXAMPLE ONLY)
Year 2 (Initial Term)	\$100,000.00 (EXAMPLE ONLY)
Year 3 (Optional Renewal)	\$115,000.00 (EXAMPLE ONLY)
Year 4 (Optional Renewal)	\$115,000.00 (EXAMPLE ONLY)
Year 5 (Optional Renewal)	\$120,000.00 (EXAMPLE ONLY)

## CONTRACTOR REQUEST FOR CLARIFICATION (RFC) FORM

Requests for clarifications of any plans or specifications for this solicitation may be submitted on this form or sent to the Procurement Contacts via email. Any change or clarification of the project plans and specifications shall be in the form of a written addendum. This form is for informational purposes only and does not modify the proposal. Each Proposal should number all of its RFC forms sequentially starting at 1. Contractors requesting clarification shall complete the following:

Email form to contact(s) listed on page 1.

Firm Name:	
Sender / Contact Name:	
Mailing Address:	
Business Phone:	

RFC No.:	Solicitation Section:
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**Question:**

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RFC No.:	Solicitation Section:
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**Question:**

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**Question:**

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RFC No.:	Solicitation Section:
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**Question:**

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## **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:** \_\_\_\_\_

## ACCEPTANCE OF CVCOG TERMS AND CONDITIONS

Proposer, Bidder, or Offeror, by signing this Bid or Proposal, or delivering the supplies or performing the services identified herein, agrees to comply with all applicable CVCOG Terms and Conditions and all specifications and other documents that this Solicitation incorporates by reference or attachment.

CVCOG Terms and Conditions can be found here:

<https://www.cvcog.org/cvcog/docs/Solicitations/CVCOG%20Terms%20and%20Conditions%20Version%2020241.pdf>

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



## **HISTORICALLY UNDERUTILIZED BUSINESS (HUB) CERTIFICATION**

In accordance with Texas Government Code §2161.252 and the Texas Administrative Code (TAC) Title 34, part 1, Chapter 20 Subchapter B Section §20.14, each state agency as defined by TGC §2151.002 that considers entering into a contract with an expected value of \$100,000 over the life of the contract including any renewal terms shall, before the agency solicits bids, proposals, offers or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract.

If subcontracting opportunities are probable, each state agency's invitation for bids or other purchase solicitation documents, with an expected value of \$100,000 over the life of the contract including any renewal terms, shall state that probability and require a HUB Subcontracting Plan (HSP).

The purpose of the HUB Program is to promote equal business opportunities for economically disadvantaged persons (as defined by TGC §2161) to contract with the State of Texas in accordance with the goals specified in the State of Texas Disparity Study.

If the agency has determined that probable subcontracting opportunities have been identified in the scope of work, then all vendors, (HUB and Non-HUB), must include a completed HUB Subcontracting Plan with their response.

HSP forms can be found at <https://comptroller.texas.gov/purchasing/vendor/hub/forms.php> under the “Historically Underutilized Business (HUB) Program” link.

**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](mailto:jaylon.seales@cvcog.org)

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

**FEDERAL TRANSIT ADMINISTRATION (FTA) CLAUSES**

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## 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](https://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]:*

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(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.