



**West River Transit Authority, Inc
dba Prairie Hills Transit (PHT)
2015 Tumble Weed Trail, Spearfish, SD 57783
Phone: 605-642-6668
www.prairiehillstransit.com**

INVITATION FOR BID

IFB SP 2023-1 Spearfish Boiler System Replacement Project

Sealed Bids are due March 14, 2023, at 2:00 pm local time

**Grant SD-2022-003
Agreement 5339-812020**

Grant Funded by Federal Transit Administration



Prairie Hills Transit, following Title VI of the Civil Rights Act of 1964, 78 Stat., 252.42 U.S.C. 2000d to 2000-4 and Title 49, Code of Federal Regulations Department of Transportation, subtitle A, of the Secretary, Part 21, nondiscrimination in federally assisted programs of the DOT issued pursuant according to, hereby notifies all Bidders that it will affirmatively insure that in any contract entered into according to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color or national origin in consideration for an award. Small and women or minority-owned Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26 are encouraged to submit Bids.

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Section 1: IFB Introduction

IFB SP 2023-1: Prairie Hills Transit of Spearfish, SD – Boiler System Replacement

Since 1989, Prairie Hills Transit (PHT) is a non-profit corporation dedicated to providing public transportation for persons of all ages, including those who may require specialized transportation. PHT provides service in 8 counties and 16 communities in a 16,500 square mile area of western South Dakota or nearly one-third of Western South Dakota. The regional transit facility is located in Spearfish, SD, and serves as the main hub for maintenance, administration staff, and the call center.

1.1 Scope of Work

PHT located at 2015 Tumble Weed Trail, Spearfish, SD 57783 is requesting a “Sealed Bid” from qualified Contractors interested in agreeing with PHT to provide a boiler system replacement for PHT Spearfish, SD facility. The boiler is 13 years old and has had numerous issues. The detailed scope of work and pictures of the boiler system are on Attachment A page 16.

1.2 Bid Documents

Plans, specifications, and addenda for this project are available by contacting Lisa Johnson at ljohnson@prairiehillstransit.com and will be posted on the website www.prairiehillstransit.com

1.3 Questions and Request for Clarifications

All questions, requests for information, and Pre-Bid material substitutions must be submitted by email by **February 24, 2023**, to ljohnson@prairiehillstransit.com. Response to questions and clarifications will be due by **March 7, 2023**. Prairie Hills Transit staff will not answer questions regarding this IFB verbally. All questions must be submitted via email.

PHT reserves the right to amend the IFB at any time following the **Bid Schedule (Section 2.3)**. Any amendments to the IFB shall be described in written addenda. Addenda will be posted on PHT the website <https://www.prairiehillstransit.com>. It is solely the responsibility of the prospective Bidder to monitor the PHT website for any addenda.

If the Agency determines that the addenda may require significant changes in the preparation of Bids, the deadline for submitting the Bids may be postponed to allow Bidders sufficient time to revise their Bids. Any new due date shall be included in the addenda. Any response that is not confirmed by a written addendum shall not be official or binding on PHT.

1.4 Equal Opportunity

It is Prairie Hills Transit’s policy to ensure full compliance with Title VI of the Civil Rights Act of 1964 by prohibiting discrimination against any person based on race, color, national origin, or sex in the provision of benefits and services resulting from Federally assisted programs of the Department of Transportation and in the Award and administration of all Contracts. Small and women or minority-owned Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26 are encouraged to submit Bids.

Section 2: Instruction to Bidders

Defined Terms.

Terms used in these Instructions to Bidders have the meanings assigned to them in the General Condition.

Addenda: A written or graphic document issued to all Bidders and identified as an Addendum before Bid opening, which modifies or supplements the Bid Documents and becomes a part of the Contract.

Bid: The offer of a Bid on a properly completed Bid Form to perform the Contract.

Bidder: means a person, business, or corporation that has made an offer in response to the IFB.

Bid Documents: means the solicitation (IFB) in its entirety, including the Plans provided under separate cover.

Contract: The written agreement between Prairie Hills Transit and the Contractor. The Contract includes the Contract Agreement, these solicitation documents, any Addenda issued, various certifications and affidavits, supplemental agreements, and change orders.

Contractor: The Successful Bidder awarded the Contract and subsequently executed the Contract with Prairie Hills Transit.

IFB: is an abbreviation meaning Invitations for Bid.

Subcontractor: An individual, partnership, business, corporation, or joint venture who is sublet part of the Contract by the Contractor.

Successful Bidder/Bidder: means the lowest responsive and responsible Bidder to whom Award of the Contract shall be made

Surety: A company that is bound with the Contractor to ensure the performance of the Contract, payment of all obligations about the Work, and fulfillment of such other conditions as are specified in the Contract as required by law.

Work: The provisions of all labor, materials, equipment, and everything needed to successfully complete a project according to the Contract.

This IFB provides details of what is required when submitting a Bid for the Work, how PHT will evaluate the Bids, and what the Contractor will require in performing the Work. This IFB also gives the estimated dates in Section 2.3, for the various events in the submission process. While these dates are subject to change, prospective Contractors must be prepared to meet them as they currently stand.

Other sections of the IFB will cover general submission instructions, project overview, Bid and project schedule, consultant qualifications and experience, evaluation criteria, contract terms, and federal clauses.

2.1 Project Details and Specifications

The Boiler System was new when the facility was built in 2010. Due to numerous issues over the past few years, a replacement is necessary to fix issues. The boiler system is a dual boiler system that is used for the 40,000 sq. ft building.

The following lists the specifications for the scope of work, see photos on Attachment A. Complete Attachment B to submit with the bid.

a. Equipment and Components

The replacement boiler system must be the same model or have equal specifications as the old system which are two Knight Commercial XL Smart System Lochinvar KBX-400 boilers equipped for High Altitude 3,000 to 12,000 ft Natural Gas with a 399,000 BTU Output; 399,000 BTU Input and 97% efficiency.

Provide all related support equipment, piping, valves, and controls. The boiler system is to be flushed with fresh water, and inhibitors to be added along with any water conditioning and new glycol. The boilers shall have technology smart-based controls, panels, instrumentation, and be interfaced with all appropriate equipment and systems.

The boilers should connect into the emergency generator.

Ensure all vent, water pipe, drain, and gas connections are following state and local code requirements for each boiler, including obtaining required permits and inspections. Add check valves and pumps as needed to accommodate redundant boiler operation (one or the other or both can run at the same time).

b. Removal and Repairs

Removal and disposal of the old system will be the contractor's responsibility. All building interior and exterior structures, including any ceilings and walls with regulation fire protection and any components affected by the removal of the equipment must be restored to their original condition. Repair any leaky piping and required temp control wiring.

All submitted bids and attachments become the property of PHT and shall remain in effect for at least ninety (90) days after Bid Due Date. The accepted Bid shall remain in effect until the Contract is fully executed and will then become a part of the Contract, including any addenda and all attachments listed in Section 6.

PHT intends to select a Contractor for the boiler replacement that will, in the PHT's sole determination, provide the best product and delivery proposal to the lowest responsible and responsive bidder.

2.2 Bid Due Date

Bids shall be submitted in a sealed envelope and labeled on the front to read **IFB SPEARFISH BOILER SYSTEM REPLACEMENT 2023-1**. The envelope can be mailed or hand-delivered to 2015 Tumble Weed Trail, Spearfish, SD 57783. All Bids must be received **BEFORE 2:00 PM on March 14, 2023**. Late Bids will not be considered.

2.3 Bid Schedule:

Bid Actions	Date and Time
Public Notice in two newspapers and a website	January 2023
Requests for Questions, Clarifications Due by	Friday, February 24, 2023
Response to Questions, Clarifications by PHT due by	Tuesday, March 7, 2023
Sealed Bids Due Date	Tuesday, March 14, 2023 2 pm (MST)
Bid Opening	March 14, 2023, 2 pm (MST)
Notice to Proceed when Contract Award package completed	March 24, 2023
Project Completion Date	July 1, 2023

2.4 Payment

PHT is a public non-profit agency and cannot pay for services that have not been received. Therefore, we cannot provide a deposit or advance payment. At the execution of the contract, PHT will issue a contract for the full value of the project. Payments will be made against that total upon successful completion and acceptance of the total or a portion of the work and receipt of an invoice from the Contractor.

All payments to the Contractor will be remitted by US mail.

Invoices shall be submitted via email to ljohnson@prairiehillstransit.com.

No payment, whether monthly or final, to the Contractor for any services, shall constitute a waiver or release by PHT of any claims, rights, or remedies it may have against the Contractor under this Contract or by law, nor shall such payment constitute a waiver, remission, or discharge by PHT of any failure or fault of the Contractor to satisfactorily perform the services as required under this Contract.

2.5 Disadvantaged Business Enterprise Goal

The goal of the Disadvantaged Business Enterprise (DBE) is to achieve a level playing field by providing small businesses owned and controlled by socially and economically disadvantaged individuals a fair opportunity to compete for federally funded transportation contracts. The participation of qualified and certified DBE subconsultants is encouraged. DBEs may be used as a minimal evaluation standard where appropriate per 49 CFR part 26 and a contracting agency's approved DBE program.

2.6 Title VI

It is the policy of PHT to assure that no person shall, on the grounds of race, color, national origin, and sex, as provided by Title VI of the Civil Rights Act of 1964, be excluded from

participation in, be denied the benefits of, or otherwise be discriminated against under any of its federally funded programs and activities.

2.7 In-State or Local Preference

Will not be used as a factor in the evaluation, ranking, and selection phase. State licensing laws are not preempted by this provision. Professional licensure within a jurisdiction may be established as a requirement for a contractor's minimum qualifications and competence to perform the solicited services.

2.8 Local presence

A local presence may be used as a nominal evaluation factor where appropriate. This criterion shall not be based on political or jurisdictional boundaries and may be applied on a project-by-project basis for contracts where a need has been established for a consultant to provide a local presence, a local presence will add value to the quality and efficiency of the project, and application of this criteria leaves an appropriate number of qualified consultants, given the nature and size of the project. If a consultant from outside of the locality area indicates as part of a proposal that it will satisfy the criteria in some manner, such as establishing a local project office, that commitment shall be considered to have satisfied the local presence criteria.

2.9 Cancellation or Extension

PHT reserves the right to cancel this solicitation or extend the Bid Due Date and time, by written Addendum, at any time *before* the set Bid Due Date and time, or in the event, only a single bid or no bids are received. If a Bidder pursues a protest or a request for reconsideration, its bid is deemed extended until PHT executes the Contract, or until the protest or request for reconsideration is withdrawn by the Bidder.

2.10 Modifications

Bidders will not be allowed to alter bids *after* the Bid Due Date and time. Submitted bids may only be changed if an email request is received by PHT *before* the set Bid Due Date and time. Such requests must be signed by an individual authorized to submit bids on behalf of the firm. All bid modifications shall be made in writing, executed, and submitted in the same form and manner as the original bid. Nothing in this section shall be construed to permit the Bidder to alter its bid *after* it has been submitted under the terms of this solicitation.

2.11 Withdrawal

Bidders will not be allowed to withdraw bids *after* the Bid Due Date and time unless the award is delayed for a period exceeding ninety (90) days. Any bid not so timely withdrawn shall constitute an irrevocable offer, for a period of ninety (90) days, to provide PHT the services described herein, or until one or more of the bids have been approved by PHT, whichever occurs first.

2.12 Award

Prairie Hills Transit reserves the right to make an award within ninety (90) calendar days from the Bid Due Date. Should the award, in whole or part, be delayed beyond the period of ninety (90) days, such award shall be conditioned upon Bidder's acceptance.

Submitted Bids shall be conclusive evidence to PHT that the Bidder has thoroughly examined and understands all requirements of the Bid and the work to complete the Project. The failure or neglect of a Bidder to receive or examine any bid document or any part thereof, work site, statutes, regulations, ordinances, or resolutions shall in no way relieve the Bidder from the obligations concerning its Bid or to the project. No claim for additional compensation shall be allowed based on a lack of knowledge. PHT will not be responsible for any costs incurred by Bidders in preparing, submitting, or presenting their response to this IFB.

All bids and submissions become the property of PHT and are subject to public disclosure unless certain provisions as described in Section 4 pertain.

Section 3: Terms and Conditions of Purchase Order

The Purchase Order (PO) issued by PHT contains the following terms and conditions, and also incorporated herein by reference all terms and conditions contained in any Agreement between the parties, Invitation for Bid and Quotes provided by the Contractor; specifications; plans, and published applicable rules and regulations of PHT. The Federal Transit Administration and the laws of the State of South Dakota.

Definitions: PURCHASER is Prairie Hills Transit (PHT). A CONTRACTOR is a company from which goods or services are purchased.

Acceptance of Terms: Performance of any work by the CONTRACTOR will constitute acceptance of all terms and conditions listed which are a condition of PHT's obligation to pay.

1. **IDENTIFICATION:** All invoices, packages, shipping notices, instruction manuals, and other written documents affecting this order shall contain the applicable Purchase Order number. Packing lists shall be enclosed in each box or package shipped according to this order, indicating the contents therein. Invoices will not be processed for payment until all items invoiced are received.
2. **CHANGES:** No alteration in any of the terms, conditions, delivery, price, quality, quantities, or specifications of this order will be effective without the written consent of the PURCHASER.
3. **SHIPPING INSTRUCTIONS:** All goods are to be shipped freight prepaid, F.O.B. destination unless otherwise stated. CONTRACTOR agrees to prepay all shipping charges and bill as a separate line item on the invoice. PHT reserves the right to refuse COD shipments. CONTRACTOR shall bear the risk of loss or damage to the goods until accepted by PHT.
4. **DELIVERY:** Deliveries are accepted Monday thru Friday, from 8 AM to 3 PM, unless prior arrangements have been made with PHT staff. All deliveries must have a PHT employee's signature verifying receipt of the delivery. PHT may refuse payment of invoices received without a signature to verify proof of delivery. The PO is subject to termination for failure to deliver as specified.

5. **PAYMENT:** Unless otherwise negotiated, the terms of payment shall be net 30 days from receipt of a proper invoice and completion of the project. All payments and cash discounts shall be computed from the date of delivery of completion and acceptance of the material, or from the date of receipt of the invoice whichever is the latest. The PO number must be noted on all invoices.
6. **TAX EXEMPT:** PHT is exempt from the State of South Dakota sales tax, use, tax, and Federal excise tax for the purchase of tangible personal property. The state sales tax exemption number is 1020-0140-RA. PHT will provide a tax-exempt certificate to the CONTRACTOR upon request.
7. **WARRANTIES:** CONTRACTOR represents and warrants that the goods are new, current, and fully warranted by the manufacturer. Delivered goods will comply with specifications and be free from defects in labor, material, and manufacture. All UCC implied and expressed warranties are incorporated in this PO. CONTRACTOR shall transfer all warranties to PHT.
8. **INFRINGEMENTS:** CONTRACTOR warrants that PHT's purchase, installation, and /or use of the goods covered hereby will not result in any claim of infringement, or actual infringement of any patent, trademark, copyright, franchise, or other intellectual property rights. CONTRACTOR shall indemnify and hold PHT harmless from and against all claims, losses, expenses, damages, causes of action, and liabilities of every kind and nature, including without limitation reasonable attorneys' fees (without waiver of CONTRACTOR's obligation to indemnify PHT hereunder), arising from or out of any breach of the foregoing warranty.
9. **EQUAL EMPLOYMENT OPPORTUNITY:** It is PHT's policy to ensure full compliance with Title VI of the Civil Rights Act of 1964 by prohibiting discrimination against any person based on race, color, national origin or gender in the provision of benefits and services resulting from Federally assisted programs of the Department of Transportation and in the Award and administration of all Contracts. Small and women or minority-owned Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26 are encouraged to submit Bids.
10. **GOVERNING LAW/VENUE:** The laws of the State of South Dakota shall govern this order, and the venue of any action brought hereunder may be laid in or transferred to the County of Lawrence, State of South Dakota.
11. **TERMINATION:**
 - i. The parties may terminate this PO by mutual agreement.
 - ii. The PURCHASER may terminate this PO at any time with written notice to the CONTRACTOR. Upon receipt of the written notice, the CONTRACTOR shall stop performance, and the PURCHASER shall pay the CONTRACTOR for goods delivered and accepted.
 - iii. PURCHASER may terminate this PO at any time if the PURCHASER fails to receive funding, appropriations, or other expenditure authority.
 - iv. If CONTRACTOR breaches any PO provisions or is declared insolvent, the PURCHASER may terminate this PO for a cause with written notice to CONTRACTOR, and CONTRACTOR shall be liable for all incidental and consequential damages resulting from its breach, including all damages as provided in the UCC.
12. **ATTORNEY'S FEES AND COSTS:** In any suit or action brought to enforce any term, condition, or covenant herein, or to recover damages arising from any breach of this contract, the losing party shall pay to the prevailing party reasonable attorney's fees and all other costs and expenses which may be incurred by the prevailing party in any such suit or action and any reviews thereof

and appeals thereof.

Section 4: Bid as Public Records

By submitting a bid, the Bidder has thereby agreed to the provision of this Section. Except to the extent permitted by South Dakota State public disclosure codified laws 5-18A-5. PHT will regard bids as public records which will be available for public inspection and/or copying following contract award, regardless of any markings or notices contained in the bid documents. Information will not be released by PHT before the contract award to protect the integrity of the procurement process unless otherwise required by law. All bids will remain confidential until a contract is awarded and fully executed by all parties involved.

In accordance with the State of South Dakota codified law 5-18A-14, an advertisement of the bid will be published as a legal notice. The advertisement shall be printed at least twice, with the first publication at least ten days before the opening of bids or the deadline for the submission of proposals. The advertisement shall state the time and place where the bids will be opened or the deadline for the submission of proposals. In each notice, the purchasing agency shall reserve the right to reject any or all bids or proposals.

Section 5: General Provisions

These General Provisions are complementary to the Contract which is required to properly define and describe the responsibilities and rights of the parties to this Contract.

5.1 Conflict of Interest

The following groups shall not participate in or attempt to use their official position to influence any purchasing decisions in which they, or persons related to them, have a financial interest:

- a. The employee, officer, agent, or board member;
- b. Any member of his/her immediate family;
- c. His or her partner; or
- d. An organization that employs, or is about to employ, any of the above.
- e. Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to PHT; a contractor's objectivity in performing the contract work is or might be otherwise impaired, or a contractor has an unfair competitive advantage;

Members of the groups listed under a conflict of interest section shall be subject to the conflict of interest laws of South Dakota. Anyone who violates the standards of the law shall be subject to the penalties, sanctions, or other disciplinary actions provided for therein.

5.2 Debarment and Suspension

The contractor must not be debarred or suspended to conduct business with PHT. Upon the Bid due date and for the full duration of the Contract, the Contractor will not be debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency.

The bidder must provide a Unique Entity Identification (UEI) number to be listed in Attachment B. The UEI can be obtained on the Federal System for Award Management (SAM) website

found at <https://www.sam.gov/portal/SAM>. No award using federal funds can be made to any Contractor that is debarred, inactive, or has a suspension status on Sam.gov.

5.3 Insurance Requirements

The bidder must maintain a Commercial General Liability insurance policy with a minimum of one-million-dollar coverage for the duration of the project. A certificate of insurance will be required by the successful bidder before issuing a notice to proceed.

5.4 Defective Materials or Services

When and as often as PHT determines that the products or services furnished under the Contract are not fully and completely in accordance with any requirement of the contract, PHT may give written notice and description of such non-compliance to the Contractor. Within seven (7) days of receiving such written notification, the Contractor must supply PHT with a written detailed plan of action that indicates the time and methods needed to bring the products or services within acceptable limits under the Contract. PHT may reject or accept this plan at its discretion.

In the event, this plan is rejected or the defect has not been remedied within thirty (30) days of the Contractor's receipt of the notice, the products or services will be deemed not accepted and returned to the Contractor at the Contractor's expense. PHT, in its sole discretion, may purchase a replacement from another source and charge back the cost for such warranty replacement to the Contractor. This procedure to remedy defects is not intended to limit or preclude any other remedies available to PHT by law, including those available under the Uniform Commercial Code, State of South Dakota codified law 57A.

5.5 Subcontractors

Any Subcontractors and outside associates or consulting firms or individuals, including any substitutions thereof, required by the Contractor in connection with work to be provided under this Contract will be subject to prior authorization by PHT. Each subcontract and a cost summary, therefore, shall be subject to review by PHT before the Subcontractor proceeds with the work. The Contractor shall be responsible for the professional standards, performance, and actions of all persons and firms performing subcontract work. The Contractor shall be responsible for the completion and submission of any federally required forms that may be required of the Subcontractor. The Contractor, at the request and direction of PHT, will provide copies of any written agreements showing their contractual relationship.

5.6 Limitation of Liability

- A. Non-conforming Services - For any services which fail to conform to the scope of the Contract and such failure is caused solely by the negligence of the Contractor, no charge will be invoiced to PHT. If both parties are negligent, they agree to apportion between them the damage attributable to the actions of each.
- B. Damages - Neither party will seek damages, either direct, consequential, or otherwise against the other in addition to the remedies stated herein.
- C. Third Party Claims - If either party is found liable for damages to third parties as a result of the performance of services under this Contract, each party will be financially responsible for the portion of damages attributable to its own acts and responsibilities

under this Contract.

5.7 Confidentiality

After the Bid due date and until a Contract is awarded, no information will be discussed with the competitors or anyone outside PHT staff. No Bidder or other member of the public will be told of the rankings among Bidders, nor the number of firms within the competitive range. Bidders will only be told that their bid was ranked within the competitive range. Names of firms, cost data, or other information from Bidders submitted in response to this IFB shall remain strictly confidential until after the contract award.

5.8 Contract Documents

The successful Bidder will receive an award package from PHT that includes the Final Award Notice, two original duplicates of the Contract for signature, and other documents as required. The contractor must immediately sign and return all requested documents to PHT within ten (10) calendar days unless indicated otherwise, or PHT may utilize their right to cancel the award and go to the next highest scoring Bidder.

5.9 Failure to Execute Contract

Should the awarded Contractor fail to execute the Contract within ten (10) days from the Final Award Notice date, PHT may withdraw the award and present the award to the next highest-scoring Bidder. Should events give rise to this instance, the Bidder failing to execute a contract may be removed from PHT's bid list for any future contracting opportunities.

5.10 Protest Procedures

Protest procedures provide an outlet for potential bidders or contractors' concerns that cannot be informally resolved. These procedures are intended to assist with resolving concerns promptly and minimize costs. These procedures apply to all types of procurement actions, including sealed bids, requests for proposals, etc.

There are three basic types of protests:

- Pre-bid or solicitation phase protests are received before the bid opening or proposal due date.
- Pre-award protests against making an award are received after receipt of proposals or bids but before the award of a contract.
- Post-award protests are received after the award of a contract.

Protests must provide the following information in writing:

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

Protests shall be filed with West River Transit Authority Db a Prairie Hills Transit, 2015 Tumble Weed Trail, Spearfish, SD 57783

Protests will be reviewed by the PHT Executive Director. Unfavorable protest determinations may be appealed to the PHT Board of Directors.

The PHT Executive Director shall respond in detail to each substantive issue raised in the protest. The final determination of the outcome of the protest(s) shall be made by the PHT Executive Director.

If after all local remedies have been exhausted and a complainant alleges the PHT failed to follow its protest procedures or violated Federal law, the potential bidder or contractor may file a protest with FTA.

Section 6: Bidder's Checklist

The following checklist is provided as a guide to all documents and exhibits that **MUST** be submitted with your bid to be considered responsive and complete. Failure to provide **ANY** of these documents could render your bid nonresponsive and may cause it to be rejected.

These forms **MUST** accompany the Bid

- Attachment B - Bid Form
- Attachment C – Signed Acknowledgment of Federal Clauses
- Attachment D – Davis Bacon Act Federal Certification
- Attachment E – Buy America Federal Certification
- Attachment F – Lobbying Federal Certification
- Attachment G –Debarment and Suspension Federal Certification

INSTRUCTIONS

All completed and signed forms listed above shall be submitted in a sealed envelope and labeled on the front to read **IFB SPEARFISH BOILER SYSTEM REPLACEMENT 2023-1**. The envelope can be mailed or hand-delivered to 2015 Tumble Weed Trail, Spearfish, SD 57783. All Bids must be received **BEFORE 2:00 PM on March 14, 2023**. Late Bids will not be considered.

ATTACHMENT A - SCOPE OF WORK & PHOTOS

Prairie Hills Transit is seeking bids from qualified Contractors to provide all labor, materials, tools, equipment, transportation, supplies, permits, and incidentals required to complete all work for the items included in the invitation for bid. The Contract intends to prescribe a complete project. All work shall comply with all local, state, and federal, regulations and industry standards; all of which are incorporated herein by reference as if they were written in their entirety.

The Contractor shall provide a boiler system replacement to Prairie Hills Transit, 2015 Tumble Weed Trail, Spearfish, SD. The system shall be free of lien and provide the standard manufacturer's warranty that shall be fully transferred to Prairie Hills Transit.

a. Equipment and Components

The replacement boiler system must be the same model or have equal specifications as the old system which are two Knight Commercial XL Smart System Lochinvar KBX-400 boilers equipped for High Altitude 3,000 to 12,000 ft Natural Gas with a 399,000 BTU Output; 399,000 BTU Input and 97% efficiency.

Provide all related support equipment, piping, valves, and controls. The system is to be flushed with fresh water, and inhibitors are to be added along with any water conditioning and new glycol. The boilers shall have technology smart-based controls, panels, instrumentation, etc., and be interfaced with all appropriate equipment and systems.

The boilers shall connect to the emergency generator.

Ensure all vent, water pipe, drain, and gas connections according to state and local code requirements for each boiler, including obtaining required permits and inspections. Add check valves and pumps as needed to accommodate redundant boiler operation (one or the other or both can run at the same time).

b. Removal and Repairs

Removal and disposal of the old system will be the contractor's responsibility. All building interior and exterior structures such as ceilings and walls with regulation fire protection and any components affected by the removal of the equipment must be restored to their original condition. Repair any leaky piping and required temp control wiring.

c. Construction and Utility Coordination

The building is occupied Monday through Friday from 6 am to 5 pm and will require the facility's daily operation to be maintained during these times. All equipment demolition, installation procedures, and utility shutdown and switchover will have to be scheduled accordingly with PHT ensuring no business operation interruption.

d. Project Completion

The removal and replacement of the boiler system should be completed 45 days after the signature of award package.

e. Testing, Training, Operation and Maintenance Manuals

All equipment and product testing conducted during the course of construction is the responsibility of the Contractor. The Contractor will schedule and coordinate all equipment training with the representatives of PHT and any costs associated with the training sessions will be the Contractor's responsibility. The contractor will provide the O&M Manuals.



ATTACHMENT B - BID FORM

PRAIRIE HILLS TRANSIT BOILER SYSTEM REPLACEMENT IFB BID SP-2023-1

PART 1 – INSTRUCTIONS

All entries below shall be legible and entered in ink or typed. Do not leave an item blank or your Bid may be considered non-responsive. Mark spaces that do not apply to your firm with the initials “N/A” (Not Applicable).

PART 2 – CONTRACTOR INFORMATION

Business name, as registered on State of South Dakota Division of Business:

Type of Business (sole proprietorship, partnership, corporation, other)

Name & Title of the person preparing the Bid:

Mailing Address, including Zip Code:

Physical Address, including Zip Code:

Telephone including Area Code: _____

E-mail Address: _____

Federal Tax Identification Number: _____

Unique Entity Identification (UEI) Number _____

(replaces DUNS # effective 4-4-22); see www.sams.gov

PART 3 – RECEIPT OF ADDENDA

FAILURE TO ACKNOWLEDGE RECEIPT OF ADDENDA MAY RESULT IN YOUR BID BEING CONSIDERED NON-RESPONSIVE.

Receipt of the following Addenda is acknowledged:

Addendum No. ____ Received by _____ Date _____

Addendum No. ____ Received by _____ Date _____

No Addenda Received _____ (initial)

PART 4 – BIDDER’S CERTIFICATION AND GUARANTEE

I/WE CERTIFY, that to the best of my/our knowledge and belief that I/we fully understand:

- The nature of the Work and the goal of the Project;
- The instructions and requirements of the Contract Documents;
- The terms and conditions of the Contract Documents;
- That all costs are included in this Bid;
- That the information contained in this Bid is accurate and complete;
- The offer shall be kept open for a period of ninety (90) days from the Bid Due Date;
- That I/we have the legal authority to commit this company to a contractual agreement;
- That the submitted Bid will become part of the public record when federal funds are used.

I/WE GUARANTEE to complete the Work following receipt of a Notice to Proceed/ Purchase Order, should I/We be the successful Bidder.

_____ Date

Authorized Signature

Printed Name & Title

Company Name: _____

PART 5: Cost of Installation, Supplies, and Labor

Having carefully examined all documents for this Project, as well as the site of the Work, and the availability of materials and labor we, the above-signed Bidder, propose to perform all Work identified herein in strict compliance with the Specifications, Plans, terms, and conditions contained within the Contract Documents for the amounts set forth below:

Prairie Hills Transit of Spearfish, SD – Boiler System Replacement IFB SP 2023-1

Item #	Description	Unit Qty	Unit Price	Total
1	Knight Commercial XL Lochinvar KBX-400 boilers equipped for High Altitude 3,000 to 12,000 ft Natural Gas with 399,000 BTU Output; 399,000 BTU Input and 97% efficiency. Name of equivalent boiler system if other than Lochinvar: _____	2	\$	\$
2	Boiler Pumps	2		
3	Expansion Tanks	1		\$
4	Piping, seals, and materials needed to complete the project	N/A		\$
5	The system is to be flushed with fresh water, inhibitors are to be added along with any water conditioning and new glycol.	N/A		
6	Disposal of the old system	N/A		
7	Labor			\$
			TOTAL	\$

THIS FORM MUST ACCOMPANY THE BID

**ATTACHMENT C – FEDERAL CLAUSES & CERTIFICATIONS
ACKNOWLEDGMENT**

Bidder:

PHT is a non-profit agency that will be using federal funds for this project. For any acquisition of property or service, recipients must comply with all applicable Federal laws and regulations.

All contractual provisions required by the State DOT and Federal Transit Administration (FTA), as set in FTA Circular 4220.1F are hereby incorporated into this contract by reference. Anything to the contrary herein notwithstanding, FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement.

The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any PHT requests which would cause PHT to violate FTA terms and conditions. Pages 20-35 are the applicable Federal Clauses. By signing this form, acknowledges that you understand the Federal Clauses. The Federal Certifications are on a separate form that must accompany the bid.

Company Name

Signature of Authorized Official and Title

Printed Name

Date

THIS FORM MUST ACCOMPANY THE BID

FEDERAL CLAUSES

ACCESS TO RECORDS AND REPORTS

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

AMERICANS WITH DISABILITIES ACT(ADA)

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

BUY AMERICA REQUIREMENTS

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR § 200.322 Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11. Domestic preferences for procurements. The bidder or offeror must submit to the Agency the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

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

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

1. all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
3. all construction materials⁴⁴ are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

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

Waivers:

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

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

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

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at [link to awarding agency website with information on currently applicable general applicability waivers].

Definitions:

“Construction materials” includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives⁴⁶—that is or consists primarily of:

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

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

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

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

RESTRICTIONS ON LOBBYING

Conditions on use of funds.

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

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

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

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

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

Certification and disclosure.

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

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

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

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

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

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

- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
- (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
- (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

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

- (1) A subcontract exceeding \$100,000 at any tier under a Federal contract;
- (2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;
- (3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,
- (4) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement,

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

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

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

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

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

CARGO PREFERENCE REQUIREMENTS

The contractor agrees:

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

b. to furnish within 20 working days following the date of loading for shipments originating within the United States or 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rate, "onboard" commercial ocean bill of lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590, and to the FTA Recipient (through the contractor in the case of a subcontractor' bill of lading) ; and

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

CIVIL RIGHTS LAWS AND REGULATIONS

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

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

a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.

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

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

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

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

Civil Rights and Equal Opportunity

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

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

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

In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

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

CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

The Contractor agrees to comply with all applicable standards, orders, or regulations issued according to the Clean Air Act (42 U.S.C. § 74017671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 12511387). Violations must be reported to the FTA and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

Clean Air Act

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

Federal Water Pollution Control Act

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

CONFORMANCE WITH ITS NATIONAL ARCHITECTURE

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

DEBARMENT AND SUSPENSION

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

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

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

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

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

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

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

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

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

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

ENERGY CONSERVATION

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

EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

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

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

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

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

NOTICE TO THIRD-PARTY PARTICIPANTS

Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and

Applicable changes to those federal requirements will apply to each Third-Party Agreement and parties thereto at any tier.

FLY AMERICA

a) Definitions. As used in this clause—

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

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

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

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

Statement of Unavailability of U.S. Flag Air Carriers

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

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

FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

(1) The contractor certifies that it:

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

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

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

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

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

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

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

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

NOTIFICATION TO FTA

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

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

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

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

SOLID WASTES

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

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

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

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

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

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

- a. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
 1. Procure or obtain;
 2. Extend or renew a contract to procure or obtain; or
 3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - i. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - ii. Telecommunications or video surveillance services provided by such entities or using such equipment.
 - iii. Telecommunications or video surveillance equipment or services procured or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- b. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- c. See Public Law 115-232, section 889 for additional information.
- d. See also § 200.471.

PROMPT PAYMENT

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

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

SAFE OPERATION OF MOTOR VEHICLES

Seat Belt Use

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

Distracted Driving

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

SPECIAL NOTIFICATION REQUIREMENTS FOR STATES

Applies to States –

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

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

- (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
 - (3) The amount of federal assistance FTA has provided for a State Program or Project.
- b. Documents - the State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

SIMPLIFIED ACQUISITION THRESHOLD

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327.

The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America's eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j) (13).

SEVERABILITY

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

TERMINATION

Termination for Convenience (General Provision)

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

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

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be affected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike,

fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

Opportunity to Cure (General Provision)

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

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

Waiver of Remedies for any Breach

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

Termination for Convenience (Professional or Transit Service Contracts)

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

Termination for Default (Supplies and Service)

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

Termination for Default (Transportation Services)

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

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

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

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

Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Agency may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Agency resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Agency in completing the work.

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

Termination for Convenience or Default (Architect and Engineering)

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

If the termination is for the convenience of the Agency, the Agency's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If the termination is for the failure of the Contractor to fulfill the contract obligations, the Agency may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency. If, after termination for failure to fulfill contract

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

Termination for Convenience or Default (Cost Type Contracts)

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

ATTACHMENT D – DAVIS-BACON FEDERAL CERTIFICATION

The Davis-Bacon and Related Acts apply to contractors and subcontractors performing on federally funded or assisted contracts over \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Davis-Bacon Act and Related Act contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area.

Davis-Bacon Certification Signature Document

Date ___/___/___

Signature of Authorized Official

Name & Title

Company Name

THIS FORM MUST ACCOMPANY THE BID

ATTACHMENT E - BUY AMERICA FEDERAL CERTIFICATION

Certification Requirement for Procurement of Steel or Manufactured Products

This procurement is subject to Federal Transit Administration requirements in 49 CFR Part 661. A

The Buy America Certificate, as shown below, must be completed and submitted with your Bid.

Certificate of Compliance with 49 U.S.C. 5323(j) (1)

The Bidder hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j) (1) and the applicable regulations in 49 CFR Part 661.5. The product will be manufactured in the United States with all components being of US Origin.

Bidder agrees to submit a complete bill of materials with the origin of each component. The bill of materials must be submitted as a condition of retainage release where retainage is part of the contract.

Date: _____

Signature: _____

Title: _____

Company Name: _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j) (1)

The Bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2) (B) or (j) (2) (D) and the regulations in 49 CFR § 661.7.

Date: _____

Signature: _____

Title: _____

Company Name: _____

THIS FORM MUST ACCOMPANY THE BID

ATTACHMENT F – LOBBYING FEDERAL CERTIFICATION

CERTIFICATION AND RESTRICTIONS ON LOBBYING

I, _____ hereby certify
(Name and title of official)

On behalf of _____ that:
(Name of Bidder/Company Name)

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

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

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

Name of Bidder/Company Name: _____

Type or print name: _____

Signature of authorized representative: _____

Date _____/_____/_____

THIS FORM MUST ACCOMPANY THE BID

ATTACHMENT G - DEBARMENT AND SUSPENSION (NONPROCUREMENT)

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

(1) It will comply and facilitate compliance with U.S. DOT regulations, “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 Governmentwide Debarment and Suspension (Non-procurement),” 2 CFR part 180,

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

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

- (1) Debarred,
- (2) Suspended,
- (3) Proposed for debarment,
- (4) Declared ineligible,
- (5) Voluntarily excluded, or
- (6) Disqualified,

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

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

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

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

Certification,

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

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

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

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

- (1) Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
- (2) Assure that each lower-tier participant in its Project is not presently declared by any Federal department or agency to be:
 - a. Debarred from participation in its federally funded Project,
 - b. Suspended from participation in its federally funded Project,
 - c. Proposed for debarment from participation in its federally funded Project,
 - d. Declared ineligible to participate in its federally funded Project,
 - e. Voluntarily excluded from participation in its federally funded Project, or
 - f. Disqualified from participation in its federally funded Project, and

(3) It will provide a written explanation as indicated on a page attached in FTA’s TEAM-Web or the Signature Page if it or any of its principals, including any of its first tier Sub recipients or its Third-Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

Certification

Contractor _____

Signature of Authorized Official _____ Date / / _____

Printed Name & Title _____

THIS FORM MUST ACCOMPANY THE BID