

City of Seneca
Planning & Development



REQUEST FOR PROPOSALS
ONSITE BUS BUILD INSPECTION SERVICES
RFP 2019-002

THIS IS NOT AN ORDER

PROJECT REQUEST NUMBER: RFP 2019-002

DATE OF INVITATION: **MAY 9, 2019**

PROPOSALS WILL BE RECEIVED AT:

City of Seneca Municipal Building

221 E. North First Street

P.O. Box 4773

Seneca, South Carolina 29679

UNTIL 4:00 P.M. LOCAL TIME ON THURSDAY, MAY 30, 2019

Project Name: ONSITE BUS BUILD INSPECTOR

Project Location: PROTERRA – 1 WHITLEE COURT

City/County/State: Greenville / Greenville / South Carolina 29607

Project Number: RFP 2019-002

Response Deadline: Thursday, May 30, 2019 4:00 P.M. EST

INTRODUCTION

The City of Seneca (herein, Owner / City) is having two (2) thirty-five foot (35') electric transit buses manufactured by Proterra, Inc. at their Greenville, SC facility in August of 2019 (date subject to change). The City is requesting proposals/quotations from qualified individuals or firms for onsite bus build inspection services. The objective of this project is to provide production line monitoring and bus inspection services for these two buses.

The selected individual or firm will ensure each bus complies with specifications as is developed and agreed to by the City; is built to the highest level of reliability and maintainability; and is in accordance with Federal Transit Administration requirements, including "Buy America" requirements and Federal Motor Vehicle Safety Standards (FMVSS).

The Federal Transit Administration (FTA) provides funding for the buses and related inspection services; therefore, this project is subject to its federal provisions.

Proposals/Quotations must be submitted on the form contained herein; proposals/quotations may be submitted via facsimile transmission. The submitted quotes shall reference Project Number: RFP 2019-002, and be clearly labeled on the face of the envelope/page/fax sheet/email. Quotes must be complete and in U.S. dollars. See instructions and conditions enclosed herein.

The Owner reserves the right to reject any and all proposals/quotations, or any part thereof, negotiate changes in quotes, accept any quotes or any part thereof, waive minor informalities or defects in any quotes, and not to award a contract if it is in its best interest.

The Owner shall not be held responsible for Bidder's lack of understanding of what is required by this solicitation. Should a Bidder not understand any aspect of this request, or require further explanation or clarification regarding the intent or requirements, it shall be the responsibility of the Bidder to seek guidance from the Owner's designated Project Representative. It shall be the responsibility of the Bidder responding by facsimile to verify Owner's receipt of transmittal.

An Agreement/Contract resulting from this solicitation may be awarded to the responsive Bidder whose quote conforming to this solicitation appears to be the most advantageous to the Owner.

This solicitation is not to be construed as a commitment of any kind nor does it commit the City of Seneca to pay for any costs incurred in the submission of an offer, or for any other incurred cost prior to the execution of a valid Agreement/Contract. BIDDER/RESPONDER TERMS AND CONDITIONS: PROSPECTIVE BIDDERS ARE CAUTIONED TO PAY PARTICULAR ATTENTION TO THIS CLAUSE.

Bidder/Responder imposed terms and conditions which conflict with the terms and conditions of this Request for Proposals are considered counter offers and, as such, will cause the Owner to consider the proposal non-responsive.

If a Bidder attaches additional terms and conditions as part of the proposal/quotation, such attachments must be accompanied by a disclaimer stating that in the event of conflict between the terms and conditions of this Request for Proposals and the terms and conditions of the Bidder/ Responder; the terms and conditions of this Request for Proposals will prevail.

The City of Seneca reserves the right to reject any or all quotes, waive informalities and minor irregularities, if such action is in its best interest.

Please direct all questions concerning this Request for Proposals to:

Barbara L. Dyar
City of Seneca Planning & Development
250 East North Second Street
P.O. Box 4773, Seneca, SC 29679
Telephone: 864.938.7837
Fax Number: 864.888.0879
Email: bdyar@seneca.sc.us.

Questions must be submitted in print form prior to **4:00 P.M. E.S.T. Tuesday, May 28, 2019**. Questions submitted after that date and time will not be due a response.

I. BACKGROUND /SUMMARY/or INTRODUCTION

It is the intent of this specification to secure a contract for a highly qualified onsite bus build inspector, which will provide all means necessary (including travel and accommodations) to perform routine onsite inspections at the manufacturer's (Proterra Inc.) site in Greenville, SC of the two 35' electric buses being built for the City of Seneca, (also herein referenced as "City"). This will include specific inspections noted in the Scope of Work, random checks for verifications, verifying any necessary corrections of deficiencies, witnessing Contractor's pre-delivery tests and inspections, final review of compliance prior to acceptance, and completing post-delivery Buy America Audit & Report. Once build begins, inspector will update the City weekly on the progress of the build. The inspector shall notify the City immediately of any issues out of the ordinary that may arise. All individuals bidding for this work shall be physically able to perform the necessary inspections (climbing, walking, bending down, etc.).

II. SCOPE OF WORK

1. Scheduling of work. Once contract is awarded, the contractor shall provide the inspection services described below, onsite, according to the build schedule provided by Proterra to the City.

2. Work Required. Contractor shall perform the following services:

- a. Review bus specifications, characteristics, manufacturer specs, etc. and develop checklist for inspections.
- b. Conduct production final line inspections for each vehicle, and ensure compliance with technical specifications and the Request for Proposals requirements, including ADA accessibility and electric drive system features.
- c. Visually verify the use of material and components as delineated in the technical specifications and including any changes made during the pre-construction meetings and/or changes made during production.
- d. Monitor and evaluate the build-up of vehicle components:
 - 1) Bus body construction including sidewalls, roof, and floor structure;
 - 2) Installation and markings of circuit terminals and control panels;
 - 3) Installation of ADA equipment including the wheelchair ramp, tie-down spaces, and related equipment;
 - 4) Installation and alignment of doors, windows, hinges, floor covering, interior panels, moldings, stanchions, and seating;
 - 5) Preparation of the chassis and covering of the coach shell with primer and undercoating;
 - 6) Installation of undercoating, interior surfaces, exterior primer, paint and/or coatings;
 - 7) Alignment of front and rear axles;
 - 8) Installation of air condition and heating systems;

9) Installation of insulation and heat/fume shielding;

10) Consistent installation and configuration of electric vehicle components from vehicle to vehicle, including proper insulation and shielding of sensitive components against environmental and road hazards; and

11) Ensure all required electric drive system operation and safety marking are in place.

e. Facilitate the resolution of, and communicate solutions to production line problems and implement approved change orders, which may include gathering of information on vehicles in production as requested by the City.

f. Witness/Participate in Contractor's pre-delivery tests and inspections. Communicate any issues to Manufacturer and the City. Verify correction of any deficiencies.

g. Provide City with a detailed written report of the condition and inspection findings for each bus as it moves through the production process.

h. Perform final review of compliance prior to acceptance and communicate any issues to Manufacturer and the City. Verify correction of any deficiencies. Make recommendation for acceptance to City.

i. Ensure compliance with, and complete post-delivery Buy America Audit & Report.

j. Ensure compliance with, and complete audit of, Federal Motor Vehicle Safety Standards. Provide assistance as needed with post-delivery fleet defect identification and resolution.

3. Supplies and Equipment. The Contractor is responsible for all supplies and equipment necessary to properly perform the above work. The Contractor shall include cost of travel and accommodations in the proposal.

III. REFERENCES

Provide a list of at least three (3) references documenting your experience. Each reference should include the company's contact person/individual's name, title and a current telephone number. In addition, please provide:

- a. A listing of all entities for which inspections have been done in the past or currently; and
- b. Information on the experience and/or qualifications of personnel to be assigned to the project.

Individuals identified as references will be assured of anonymity to the fullest degree possible under the Freedom of Information Law.

IV. COST OF WORK

Respondents shall provide fixed costs for the inspection services identified in the scope of work.

V. CONTENT OF PROPOSAL

Contractor's Proposal shall include the following:

- a. Title Page showing the City's RFP number and title; contractor's name, address, telephone number, and date of the proposal quote.

- b. A description outlining the qualifications and experience of the contractor performing transit bus line monitoring and inspection services.
- c. Proposal shall be placed in a sealed envelope with outside markings indicating the following:

**City of Seneca Planning & Development
Attn: Request for Proposals
Onsite Bus Build Inspection Services
RFP 2019-002
PO Box 4773
Seneca, SC 29679**

V. ADDITIONAL INFORMATION

The City of Seneca retains the right to request any additional information pertaining to the company ability, qualifications, procedures, and personnel used to accomplish all work under the contract as it deems necessary to ensure safe and satisfactory work.

VI. PAYMENT

Invoices must be fully itemized, and provide sufficient information for approving payment and for auditing purposes. Invoices shall reference contract name and project/account number and shall be mailed to the City of Seneca:

City of Seneca
Planning & Development
P.O. Box 4773
Seneca, SC 29679-4773

The City of Seneca will make payment to the vendor within 30 days of receipt of a correct and complete invoice.

VII. OTHER REQUIREMENTS

1. Insurance:

The selected contractor will be required to maintain general liability insurance in the minimum amount of \$1,000,000 and automobile liability insurance in the minimum amount of \$1,000,000 to cover any claims arising out of the performance of the contract. The general liability and automobile insurance must name the City of Seneca, its officers, agents, volunteers and employees as additional insureds.

2. Worker's Compensation Insurance:

The selected contractor who employs any person shall maintain workers' compensation insurance in accordance with state requirements. Sole proprietors with no employees are not required to carry Worker's Compensation Insurance. (Worker's Compensation Insurance cannot be waived for any person who employs others.)

3. Business License:

Virtually every contractor that does business with the City must obtain a City of Seneca business license. The business license requirement applies whether or not the contractor has an office within the City limits. Vendor must apply for a City business license and show proof of application within seven days of being selected as the intended contractor.

4. Conflict of Interest:

In the sole judgment of the City, any and all proposals are subject to disqualification on the basis of a conflict of interest. The City may not contract with a vendor if the vendor or an employee, officer or director of the vendor's firm, or any immediate family member of the preceding, has served as an elected official, employee, board or commission member of the City who influences the making of the contract. The City, at its sole option, may disqualify any proposal on the basis of such a conflict of interest. Please identify any person associated with the firm that has a potential conflict of interest.

VIII. SCHEDULE (dates are subject to change)

- Public Notice of RFP: May 9, 2019
- End "question period" May 28, 2019
- Deadline for Proposals May 30, 2019
- Issue "Intent to Award" June 10, 2019
- Award of Contract June 17, 2019
- Start of Contract August 1, 2019

Thank you for your interest in working with the City of Seneca for this service. We look forward to receiving your proposal.

DEFINITIONS

“Owner” “City” means City of Seneca (Authorized representative: Planning-Development Department).

“Contract” “Agreement” means a contract for services issued to formalize the accepted Proposal.

“Contractor” means the person(s), firm(s), or corporations(s) selected, by the Owner, to carry out all duties, obligations, work and service described in the Request for Proposals and all associated documentation, which may also include mutually agreed revisions subsequent to the submission of a Proposal. Both “Contractor” and “Proponent” are complementary in terms of duties, obligations and responsibilities at the Request of Proposals stage, through evaluation process, execution and delivery of the services.

“Responder” “Bidder” “Proponent” means anyone submitting a valid response to this Request for Proposals.

“Proposals/Quotations” means the submission by the Proponent.

“RFP” “Request for Proposals” shall mean the solicitation of cost estimates to complete a designated work; including complete set documents, specifications, addenda incorporated therein, and included in the Request for Proposals.

“Services” means and includes the provision by the selected Proponent of all services, work, duties and expectations as further described in the RFP. This will also mean the whole of the work, tools, materials, labor, equipment, travel, and all that is required to be completed and furnished by the Contractor.

“Supply” “Provide” shall mean supply and pay for and provide and pay for the equipment, goods, materials or other items to be provided by the Contractor/Vendor to the Owner under the Contract.

“Shall” “Must” “Will” “Mandatory” means a requirement that is required to be met.

Certification Regarding Debarment & Other Responsibility Matters

Signed copies of the Certification Regarding Debarment and Other Responsibility Matters must be included in the proposal package.

All recipients and sub recipients including private contractors are required to register with www.sam.gov and provide registration credentials annually.

By submitting a Proposal, the responder/bidder certifies, to the best of his/her knowledge and belief, that:

I. Responder and/or any of its Principals

(A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency;

(B) Have not, within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of proposals; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission or any of the offenses enumerated in paragraph I (B) of this provision.

II. Bidder has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any public (Federal, state, or local) entity.

(A) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; business manager; head of a subsidiary, division, or business segment, and similar positions).

(B) Bidder will provide immediate written notice to the Owner if, at any time prior to contract award, Bidder learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(C) If the Bidder is unable to certify the representations stated in paragraphs (I), Bidder must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the Bidders responsibility. Failure of the Bidder to furnish additional information as requested by the Owner may render the Proposal non-responsive.

(D) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (A) of this provision. The knowledge and information of a Bidder is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(E) The certification in paragraph I (A) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Bidder knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the City of Seneca Planning and Development, the Owner, may terminate the Contract resulting from this solicitation for default.

Authorized Signature

Date

**EQUAL EMPLOYMENT OPPORTUNITY
CERTIFICATIONS**

Vendor _____

(1) Equal Employment Opportunity

The vendor named above, is required to comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and supplemented in U.S. Department of Labor regulation (41 CFR Part 60).

Certification: I hereby certify, for the vendor named above, that it has complied with the provisions of Executive Order 11246, as amended by Executive Order 11375, and supplemented in U.S. Dept. of Labor Regulation (41 CFR Part 60) and that I am duly authorized by said vendor to make this certification.

(Date of Signature)

(Signature of Representative)

Appendix C

CERTIFICATION TO FEDERAL GOVERNMENT REQUIRED CLAUSES (FTA)

AFFIRMATION OF THE VENDOR'S AUTHORIZED REPRESENTATIVE

Name of Vendor:

Name and Relationship of Authorized Representative:

BY SIGNING BELOW, on behalf of the Vendor, I declare that the Vendor has duly authorized me to make this certification and bind the Vendor's compliance. Thus, the Vendor agrees to comply with all Federal statutes and regulations, and follow applicable Federal directives, and comply with the requirements of these clauses as indicated on the ensuing pages, Federal Government Required Clauses (FTA).

The Vendor affirms the truthfulness of this certification it has made, and acknowledges that the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq.*, and implementing U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31 apply to any certification, assurance or submission made to FTA. The criminal provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with a Federal public transportation program authorized in 49 U.S.C. Chapter 53 or any other statute.

In signing this document, I declare that the foregoing certification and any other statements made by me on behalf of the Vendor are true and correct.

Signature: _____ Date:

Name (print) _____

Authorized Representative of Applicant

PROPOSAL SUBMISSION FORM
City of Seneca Project: RFP 2019-002
Onsite Bus Build Inspections at Proterra Inc., Greenville

BIDDER'S QUESTIONNAIRE

Note: Failure to provide the information requested in this questionnaire may be cause for rejection of the solicitation on the basis of non-responsiveness.

Name of Your Business: _____

Street Address: _____

Mailing Address if Different: _____

City: _____ State: _____ Mailing Zip: _____

Telephone: _____ Fax: _____ E-Mail: _____

How many years has the business been under the above name? _____

Previous business name(s) if any: _____

My Proposal Acceptance Period is _____ Days. (Proposals providing less than thirty (30) calendar days for acceptance may be considered non-responsive and may be rejected.)

Are you acting as a broker or the primary supplier in this transaction?

Primary Supplier Broker

Business Information (Please check all that apply):

My business is Individual

My business is a Partnership

My business is a Non-Profit

My business is a Joint-Venture

My business is a Corporation incorporated under the laws of the State of _____

My business is full-time

My business is part-time

The Bidder shall list any variations from or exceptions to the Terms, Conditions or Specifications of the Solicitation:

Completed by: _____ Title: _____

Signature: _____ Date: _____

PROPOSAL QUOTE FORM

Project: RFP 2019-002

Onsite Bus Build Inspections at Proterra Inc., Greenville

The Proposer represents and warrants for the attached proposal that:

1. It has sufficiently informed itself in all matters affecting the performance of the work, or the furnishing of the labor, supplies, material, or equipment called for in carrying out the Project.
2. Its proposal has been thoroughly checked for errors and omissions and all prices and fees percentages stated are complete and correct statements of its proposal for performing all project work required by the contract documents.
3. Its proposal is genuine, not sham or collusive, nor made in the interest of any person not herein named; that it has not induced or solicited any other Proposer to submit a sham proposal or to refrain from proposing; and that it has not in any illegal manner sought to secure for himself any advantage over any other Proposer.
4. Its proposal is valid for ninety (90) days following the proposal due date.

TOTAL QUOTE _____ Dollars (\$) _____ .00)

Amounts are shown both in words and figures. If any discrepancy; the amount shown in words shall govern. The above quote prices includes all labor, materials, and equipment, as required; cleaning, removal, overhead, profit, fees, insurance, etc., to cover the several kinds called for.

COMPANY NAME

SIGNATURE BY AND FOR THE BIDDER

COMPANY ADDRESS

PRINTED NAME OF ABOVE BIDDER

CONTACT PHONE NUMBER

CONTACT EMAIL

DATE OF QUOTE

City of Seneca Planning & Development reserves the right to reject any or all quotes and to waive any irregularities as deemed necessary.

FEDERAL CERTIFICATIONS

DUNS & SAM.GOV

The bidder or proposer in order to bid on FTA funded projects must be an active, current member in good standing with no debarments at www.sam.gov (System for Award Management)

In order to register at SAM.gov you must have a DUNS number which can be obtained at www.dnd.com

All bidder, proposers not with an active, current registration or debarred at sam.gov will be considered non-responsive, non-responsible and will not be considered for this solicitation.

By signing and submitting its bid or proposal, the bidder or proposer certifies that they are compliant with all applicable FTA certifications and clauses listed below and in FTA C 4220.IF:

If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the municipal corporation, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with these requirements.

Date of Signature

Signature of bidder

Bus Testing – Applicability – Rolling Stock/Turnkey

Contractor [manufacturer] shall comply with 49 USC A5323(c) and FTA's implementing regulation 49 CFR 665 and shall perform the following: 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient prior to the recipient's final acceptance of the first vehicle. 2) A manufacturer who releases a report under para. 1 above shall provide notice to the operator of the testing facility that the report is available to the public. 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to the recipient's final acceptance of the first vehicle. If configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing. 4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the US before Oct. 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

Pre-Award & Post-Delivery Audit Requirements - Applicability – Rolling Stock/Turnkey

Contractor shall comply with 49 USC 5323(l) and FTA's implementing regulation 49 CFR 663 and submit the following certifications: (1) Buy America Requirements: Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If contractor certifies compliance with Buy America, it shall submit documentation listing 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly. (2) Solicitation Specification Requirements: Contractor shall submit evidence that it will be capable of meeting the bid specifications. (3) Federal Motor Vehicle Safety Standards (FMVSS): Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the buses will not be subject to FMVSS regulations.

Access to Records and Reports– Applicability – As shown below. These requirements do not apply to micro-purchases (less than \$2,500)

The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a sub grantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a sub grantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. 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 contractor agrees to maintain same until the municipal corporation, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).
FTA does not require the inclusion of these requirements in subcontracts.

Federal Changes – Applicability – All Contracts except micro-purchases (less than \$2,500)

Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the municipal corporation and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract

No Government Obligation to Third Parties - Applicability – All contracts except micro-purchases (less than \$2,500)

(1) the recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

Program Fraud and False or Fraudulent Statements or Related Acts – Applicability – All contracts except micropurchases (less than \$2,500)

(1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 *et seq.* and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.

(3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

of higher learning, where the threshold is \$100,000

a. Termination for Convenience (General Provision) the municipal corporation may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the municipal corporation's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the municipal corporation. If contractor is in possession of any the municipal corporation property, contractor shall account for same, and dispose of it as the municipal corporation directs.

b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the municipal corporation may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the municipal corporation that 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 contractor, the municipal corporation, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) the municipal corporation in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions

If contractor fails to remedy to the municipal corporation's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the municipal corporation setting forth the nature of said breach or default, the municipal corporation 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 the municipal corporation from also pursuing all available remedies against contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that the municipal corporation elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the municipal corporation shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) the municipal corporation, by written notice, may terminate this contract, in whole or in part, when it is in the municipal corporation's interest. If the contract is terminated, the municipal corporation shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If 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 municipal corporation may terminate this contract for default. the municipal corporation shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall 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 contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the municipal corporation's convenience.

g. Termination for Default (Transportation Services) If 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 contractor fails to comply with any other provisions of this contract, the municipal corporation may terminate this contract for default. the municipal corporation shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall 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 contractor has possession of the municipal corporation goods, contractor shall, as directed by the municipal corporation, protect and preserve the goods until surrendered to the municipal corporation or its agent. Contractor and the municipal corporation shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the municipal corporation's convenience.

h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the municipal corporation may terminate this contract for default. the municipal corporation shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the municipal corporation 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. Contractor and its sureties shall be liable for any damage to the municipal corporation resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the municipal corporation in completing the work.

Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the municipal corporation, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. Contractor, within 10 days from the beginning of any delay, notifies the municipal corporation in writing of the causes of delay. If in the municipal corporation's judgment, delay is excusable, the time for completing the work shall be extended. the municipal corporation's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses. If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the municipal corporation's convenience. in whole or in part, for the municipal corporation's convenience or because of contractor's failure to fulfill contract obligations. the municipal corporation shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the municipal corporation all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the municipal corporation's convenience, it shall make an

equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the municipal corporation may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the municipal corporation.

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

j. Termination for Convenience or Default (Cost-Type Contracts) the municipal corporation may terminate this contract, or any portion of it, by serving a notice of termination on contractor. The notice shall state whether termination is for convenience of the municipal corporation or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the municipal corporation, or property supplied to contractor by the municipal corporation. If termination is for default, the municipal corporation may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the municipal corporation and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the municipal corporation's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after serving a notice of termination for default, the municipal corporation determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the municipal corporation, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

Contracts Involving Federal Privacy Act Requirements – Applicability - When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (less than \$2,500)

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- (2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Civil Rights Requirements– Applicability – All contracts except micro-purchases (less than \$2,500)

The following requirements apply to the underlying contract:

- (1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 USC 2000d, Sec. 303 of the Age Discrimination Act (1975), as amended, 42 USC 6102, Sec. 202 of the Americans with Disabilities Act (1990), 42 USC 12132, and 49 USC 5332, contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. Contractor shall also comply with applicable Federal implementing regulations and other requirements FTA may issue.
- (2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
 - a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 USC 2000e, and 49 USC 5332, contractor shall comply with all applicable equal employment opportunity requirements of USDOL, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, USDOL," 41 CFR 60 *et seq.*, (implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC 2000e), and any applicable Federal statutes, executive orders, regulations, and policies that may in the future affect construction activities undertaken in the course of the project. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, contractor shall comply with any implementing requirements FTA may issue.

(b) Age - In accordance with Sec. 4 of the Age Discrimination in Employment Act (1967), as amended, 29 USC 623 and 49 USC 5332, contractor shall refrain from discrimination against present and prospective employees for reason of age. Contractor shall also comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with Sec. 102 of the Americans with Disabilities Act (ADA), as amended, 42 USC 12112, contractor shall comply with the requirements of US Equal Employment Opportunity Commission (EEOC), Regulations to Implement Equal Employment Provisions of the Americans with Disabilities Act, 29 CFR 1630, pertaining to employment of persons with disabilities. Contractor shall also comply with any implementing requirements FTA may issue.

(3) Contractor shall include these requirements in each subcontract financed in whole or in part with FTA assistance, modified only if necessary to identify the affected parties.

Incorporation of Federal Transit Administration (FTA) Terms – Applicability – All contracts except micro-purchases (less than \$2,500)

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the municipal corporation to be in violation of FTA terms and conditions.

Drug & Alcohol Testing – Applicability – Operational service contracts except micro-purchases (less than \$2,500)

The Contractor agrees to comply with the following Federal substance abuse regulations: a. Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants), " 49 C.F.R. Part 29, Subpart F, as modified by 41 U.S.C. §§§§ 702 et seq. b. Alcohol Misuse and Drug Use. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655, to the extent applicable.

Ineligible Contractors and Subcontractors - Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

Other Contract Requirements - To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

Compliance With Federal Regulations - Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the municipal corporation and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

