

City of Seneca
Planning & Development



REQUEST FOR PROPOSALS
PUBLIC TRANSIT SERVICES
RFP 2019-003

THIS IS NOT AN ORDER

PROJECT REQUEST NUMBER: RFP 2019-003

DATE OF INVITATION: **May 18, 2019**

PROPOSALS WILL BE RECEIVED AT:

City of Seneca City Hall
221 E. North First Street
P.O. Box 4773
Seneca, South Carolina 29679

UNTIL 4:00 P.M. LOCAL TIME ON THURSDAY, JUNE 6, 2019

Project Name: Public Transit Services
Project Location: City of Seneca and surrounding area
City/County/State: Seneca / Oconee / South Carolina 29678
Project Number: RFP 2019-003
Response Deadline: Thursday, June 6, 2019 4:00 P.M. EST

INTRODUCTION

The City of Seneca (herein, Owner / City) is requesting proposals/quotations for transit operating services. The objective of this project is to receive costs associated with operating and managing the transit system for the City of Seneca Electric Bus Service. Only service providers with at least 5 years of experience with electric bus systems shall be qualified to provide a proposal.

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. 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, June 4, 2019**. Questions submitted after that date and time will not be due a response.

Proposal Evaluation Procedures (Includes Pre-Proposal, Pre-Award, and Post-Award Protest Procedures)

This section establishes procedures for Proposers to see clarification or review of the technical specifications, evaluation procedures and addenda. Absent any request for clarification or review of the technical specifications, evaluation procedures, or addenda, the interpretation of the Procuring Agency on the Proposal documents shall be final and controlling. Any protest shall include: name of protestor; solicitation/contract number or description, and statement of grounds for protest. Any protest shall be mailed or hand delivered to the office of the:

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.

Any unapproved deviations, exceptions, substitutions, alterations, or conditional qualifications contained in a Proposal may be cause for its rejection.

(1) PRE-PROPOSAL PROTEST - Requests for clarification of specifications, and protest of specifications must be received by the Procuring Agency, in writing, by 4:00 pm EST on Monday, May 20, 2019. Any request for protest of the specifications must be fully supported with specifications and illustrations or other pertinent information as evidence that the substitute offered is equal to or better than the specifications requirement. The Procuring Agency shall consider requests and take one of the following actions:

- (a) Reject the request because it does not meet the requirements of the Procuring Agency.
- (b) Approve the request.
- (c) Require the Proposer to supply additional information in order to make a proper determination.

A notice shall be furnished to all parties receiving specifications so that all Proposers may Proposal accordingly.

(2) PRE-AWARD PROTEST - A Pre-Award Protest must be received by the Procuring Agency, in writing, by 4:00 pm EST on Tuesday May 28, 2019. Any protest must be fully supported with documentation. The Procuring Agency shall consider protests and take one of the following actions:

- (a) Reject the protest because requirements of the Procuring Agency are not being met.
- (b) Approve the request.
- (c) Require the Proposer to supply additional information relating to the protest in order to make a proper determination.

(3) POST-AWARD PROTEST - A Post-Award Protest must be received by the Procuring Agency, in writing, by 4:00 pm EST on Tuesday, June 11, 2019. Any protest must be fully supported with documentation. The Procuring Agency shall consider protests and take one of the following actions:

- (a) Reject the protest because requirements of the Procuring Agency are not being met.
- (b) Approve the request.
- (c) Require the Proposer to supply additional information relating to the protest in order to make a proper determination.

(4) Appeals of decisions regarding Pre-Proposal, Pre-Award, or Post-Award Protests shall be submitted in writing to the Procuring Agency not later than three (3) days from the date of the response of the Procuring Agency. The appeal shall, at a minimum, identify the decision in question, specify all reasons why the appealing party disagrees with the decision, and shall include all facts and justification, including technical information, in support of its position. The Procuring Agency may request additional information from the appealing party which shall be submitted in writing to the Procuring Agency not later than five (5) working days following receipt of the request for information.

Appeals will be decided on the basis of the written appeal, information and written responses submitted by the appealing party, and information submitted by other Proposers. All parties shall make written submissions as complete as possible. Failure of any party to timely respond to a request for information may be construed that such party does not wish to participate in the proceeding, does not contest the matter, or does not desire to submit a response. In such event, the appeal will proceed and will not be delayed due to a lack of a response.

(5) Upon receipt and review of written submissions and any independent investigation as deemed appropriate, the Procuring Agency shall either:

- Render a decision which shall be final and advise all interested parties of same in writing; or,
- At the discretion of the Procuring Agency, conduct an informal hearing at which the interested participating parties will be afforded an opportunity to present their respective positions, facts, documents, justification, and technical information in support thereof.

Following the informal hearing, the Procuring Agency shall render a decision, which shall be final and advise all interested parties thereof in writing. Parties dissatisfied with the final decision of the Procuring Agency, whether following review of the written submission or informal hearing, may utilize the appeal procedure set forth in FTA Circular 4220.1D.

I. BACKGROUND /SUMMARY/or INTRODUCTION

The City of Seneca offers fare-free deviated-fixed route transportation services five days a week. Current hours of operation are from 6:20 am to 6:20 pm Monday through Friday. The City currently has 3 routes. There is a business loop for Seneca, a residential loop for Seneca, and one express route that runs to and from the city of Clemson. The City currently owns 6 electric buses and is in the process of buying 2 additional buses. The new buses are being purchased to provide a future commuter route to the satellite campus of the local technical college.

It is the intent of this specification to secure a contract for professional electric bus fleet operating and management services, which will provide all labor and materials necessary to operate the bus transit system. This is to include covering the electric fuel costs and providing a dedicated service technician at the Seneca Transit Facility, located at 320 Shiloh Road, to specifically maintain the City of Seneca Electric Bus Fleet. It shall also be the responsibility of the contractor to provide paratransit services and to calculate the costs of providing such services into the proposal.

The contractor will be responsible for the management and day-to-day operation of the City of Seneca's Bus Transit service and for consultation and recommendations to the City on public transportation policy matters. The Contractor shall optimize cost effectiveness; increase ridership; provide superior customer service, financial stability, staff development, innovation and schedule adherence. The Contractor shall present a positive image of the fleet and system including cleanliness, safety, and passenger satisfaction.

II. SCOPE OF WORK

The City of Seneca is soliciting proposals from qualified contractors to provide operation and management services for its electric bus fleet. The specifications listed are the minimum required by the City. Contractors shall commit to provide services that are consistent with these specifications unless the Contractor clearly notes an exception. The City may accept a proposal subject to an exception if, in the sole judgement of the City, the proposal meets or exceeds the City's specifications. If the services offered do not meet or exceed the City's specifications because of the exception, the City will consider the proposal non-responsive.

1. Scheduling of work. Once contract is awarded, the contractor shall provide the City with its operating and management services for one year, beginning July 1, 2019, with the option of renewing the contract annually up to four additional times. As the City receives grant funds to operate the system, it will be necessary for the City to request proposals again after 5 years.

2. Work Required. Contractor shall furnish a crew of reliable and experienced electric bus drivers under its employ to cover all routes. Contractor shall furnish reliable and experienced persons to create and manage routes effectively. Contractor shall employ reliable and experienced personnel to manage and operate the system. The Contractor shall provide an experienced electric bus service technician (mechanic) under their employ to specifically maintain the City's fleet of electric buses at the City's Bus Transit Facility located at 320 Shiloh Road. The electric bus service technician (mechanic) shall reside within 50 miles of the City's Facility. The contractor shall create and retain performance/repair records for each City bus and allow the City access to that information. The contractor shall be responsible to see that all regular, routine, and required maintenance is performed on all of the City buses within and at the time recommended by the manufacturer. The contractor shall keep the City apprised of any incidents/issues involving the City's buses. Contractor shall provide paratransit service and include cost of such in its contract amount. Contractor shall also provide cost per hour proposal for subscription services requested by the City for certain public events requiring the use of the City buses.

3. Supplies and Equipment. The Contractor is responsible for all wages, benefits, and liability for its employees. Contractor shall pay electric costs for charging/running the buses. The contractor is responsible for securing paratransit services and paying for same. The contractor is responsible for keeping the buses clean and shall supply its own equipment and supplies to do so.

4. Contractor Employee Requirements

a. Supervision of Work - Contractor shall be responsible for providing adequate supervision to assure competent and satisfactory performance of the services required under the contract.

b. Primary Contact – Contractor shall designate a person that will be the primary point of contact for the services. The City shall be provided with a telephone number for reaching the primary contact in the event of an emergency. When the primary contact is unavailable, the City shall be provided the name and means to contact the backup single point of contact.

5. Contract Performance

The Respondent shall be responsible for the completion of all work set out in the Contract. All work is subject to inspection, evaluation, and acceptance by City of Seneca. The City may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the Contract.

6. Technical Qualifications

Contractor shall provide response to demonstrate Contractor's comprehension of the objectives and scope of services from the RFP. Contractor shall provide a brief narrative of the background and general qualifications of the Contractor, including experience in transit management and/or contracted paratransit services, as well as, identifying the specific qualifications for the designated service technician. Contractor shall identify qualifications and experience of its key management and operations staff. Contractor shall identify its methods for Safety and Security of personnel and passengers. Contractor shall identify its methods for Training of Drivers and other staff. Contractor shall provide information and/or formal documents regarding its policies for handling passenger complaints and incidents. Contractor shall provide information and/or formal documents regarding its strategic planning for improved quality and efficiency, and marketing goals to increase ridership.

Proposal shall identify the dollar amounts and/or percentage of the proposal broken down into monthly costs showing budgeted amounts affixed to its administrative costs, operating costs, and capital costs (technician cost and parts costs).

The Respondent is invited to describe any particular aspects of its organization or proposal which, by way of background, experience, unique qualifications, or other basis, sets it apart from the competition in its ability to accomplish this particular Scope of Services.

III. REFERENCES

Provide a list of at least three (3) references documenting your experience with electric bus fleets. Each reference should include the company's contact person/individual's name, title and a current telephone number. In addition, please provide a listing of agencies where you have provided similar service. 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 a fixed cost for the project identified in the scope of work. Cost shall be broken down to reflect contractor's administrative costs, operating costs, and capital costs for providing services to the City. Contractor shall be responsible for providing paratransit services and including that cost in the proposal. The contractor shall maintain drivers' insurance for the City's vehicles and all cost associated with such. The contractor shall notify the City of any and all incidents involving a City bus.

V. Evidence of Financial Responsibility.

Contractor shall submit evidence of financial responsibility. This may be a credit rating from a qualified firm preparing credit rating or a bank reference. The City reserves the right to confirm and request clarification of all financial information provided (including requesting audited financial statements by an independent Certified Public Accountant) or to request documentation of the Contractor's ability to comply with all of the requirements in the Proposal Documents. Incomplete disclosures may result in a proposal being deemed non-responsive.

VI. ADDITIONAL INFORMATION

Proposers are advised that their proposals should represent their company's best efforts and most complete responses to this solicitation. Proposals should demonstrate comprehension of the purpose and services requested in the RFP. Cursory responses or responses which merely reiterate the contents of the RFP will be considered unacceptable. Evidence of experience, capability, and qualifications that clearly demonstrate and support the Proposer's claims is essential. The absence of such evidence will adversely influence evaluation of the proposal. Due to the specific experience and qualifications needed to provide the services requested, price will not be the only mitigating factor in determining the best qualified proposal received in response to the City's request for proposals.

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 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 18, 2019
- End "question period" June 4, 2019
- Deadline for Proposals June 6, 2019
- Issue "Intent to Award" June 13, 2019
- Award of Contract June 20, 2019
- Begin Services July 1, 2019

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

IX. EVALUATION OF PROPOSALS

Proposals will be evaluated using the following rubric. Respondents are required to submit the financial proposal in a separate sealed envelope. Financial proposals will be evaluated after the technical submissions have been evaluated and ranked.

EVALUATION RUBRIC

FINANCIAL PROPOSAL	TOTAL FINANCIAL POINTS POSSIBLE	25
TECHNICAL PROPOSAL		
QUALIFICATIONS & EXPERIENCE OF MANAGEMENT STAFF	POINTS POSSIBLE	20
QUALIFICATIONS & EXPERIENCE OF MAINTENANCE TECHNICIAN	POINTS POSSIBLE	25
POLICIES AND PROCEDURES IN PLACE	POINTS POSSIBLE	15
EXPERIENCE AND/OR PAST PERFORMANCE & REFERENCES	POINTS POSSIBLE	15
	TOTAL TECHNICAL POINTS POSSIBLE	75
	TOTAL POINTS POSSIBLE	100

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.

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

PROPOSAL SUBMISSION FORM
City of Seneca Project: RFP 2019-003
Transit Services

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 2019-0023

Transit Services

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 FOR ANNUAL COST _____ 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. Monthly budget breakdown is specified within the proposal.

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.

**THE FOLLOWING
PAGES ARE REQUIRED
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

(BIDDERS ARE REQUESTED TO RETAIN THESE CLAUSES FOR FUTURE REFERENCE)

Charter Bus Requirements – Applicability – Operational Service Contracts except micro-purchases (less than \$2,500)

Contractor shall comply with 49 USC 5323(d) and 49 CFR 604, which state that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under with or detract from the provision of mass transportation.

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

Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy Conservation plan issued in compliance with the Energy Policy & Conservation Act.

Clean Water – Applicability – All Contracts and Subcontracts over \$100,000

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 *et seq.* Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

Lobbying – Applicability - Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts except micro-purchases (less than \$2,500)

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

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.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

(a) The following situations may warrant a performance bond:

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:
 - (i) Fifty percent of the contract price if the contract price is not more than \$1 million;
 - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (iii) Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The (recipient) shall determine the amount of the advance payment bond necessary to protect the (Recipient).

Clean Air – Applicability – All contracts over \$100,000

(1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 *et seq.* Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. (2) Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

Contract Work Hours & Safety Standards Act – Applicability – Contracts over \$100,000

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in para. (1) of this section, contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in para. (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in para. (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** - the recipient shall upon its own action or upon written request of USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours & Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in para. (2) of this section.

(4) **Subcontracts** - Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

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.

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.

Government-wide Debarment and Suspension (Nonprocurement) – Applicability – Contracts over \$25,000

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractors, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. 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 municipal corporation. 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 the requirements of 49 CFR 29, Subpart C 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.

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.

Breaches and Dispute Resolution – Applicability – All contracts over \$100,000

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the municipal corporation's authorized representative. This decision shall be final and conclusive unless within ten days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the municipal corporation's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the municipal corporation's CEO shall be binding upon contractor and contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the municipal corporation, contractor shall continue performance under this contract while matters in dispute are being resolved.

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

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the municipal corporation and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within New York State.

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

Transit Employee Protective Provisions – Applicability – Contracts for transit operations except micro-purchases (less than \$2,500)

(1) Contractor shall comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, contractor shall carry out transit operations work on the underlying contract in compliance with terms and conditions determined by USDOL to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 USC A 5333(b), and USDOL guidelines at 29 CFR 215, and any amendments thereto. These terms and conditions are identified in USDOL's letter of certification to FTA applicable to the municipal corporation's project from which FTA assistance is provided to support work on the underlying contract. Contractor shall carry out that work in compliance with the conditions stated in that USDOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with FTA assistance either for projects for elderly individuals and individuals with disabilities authorized by 49 USC 5310(a)(2), or for projects for non urbanized areas authorized by 49 USC 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 USC 5310(a)(2) for Elderly Individuals & Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with FTA assistance authorized by 49 USC 5310(a)(2), and if USDOT has determined or determines in the future that the employee protective requirements of 49 USC 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, contractor shall carry out the Project in compliance with the terms and conditions determined by USDOL to meet the requirements of 49 USC 5333(b), USDOL guidelines at 29 CFR 215, and any amendments thereto. These terms and conditions are identified in USDOL's letter of certification to FTA, the date of which is set forth in the Grant Agreement or Cooperative Agreement with the state. Contractor shall perform transit operations in connection with the underlying contract in compliance with the conditions stated in that USDOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 USC 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with FTA assistance authorized by 49 USC 5311, the contractor shall comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by USDOT and USDOL, dated May 31, 1979, and the procedures implemented by USDOL or any revision thereto.

(2) Contractor shall also include any applicable requirements in each subcontract involving transit operations financed in whole or in part with FTA assistance.

Disadvantaged Business Enterprise (DBE) – Applicability – Contracts over \$250,000 (exclusive of transit vehicle purchases)

To the extent authorized by Federal law, the Recipient agrees to facilitate participation by Disadvantaged Business Enterprises (DBE) in the Project and assures that each subrecipient, lessee, and third party contractor at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable. Therefore: (1) The Recipient agrees and assures that it will comply with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26. (2) The Recipient agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any third party contract, or subagreement supported with Federal assistance derived from U.S. DOT in the administration of its DBE program and will comply with the requirements of 49 C.F.R. Part 26. The Recipient agrees to take all necessary and reasonable steps set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all third party contracts and subagreements supported with Federal assistance derived from U.S. DOT. As required by 49 C.F.R. Part 26 and approved by U.S. DOT, the Recipient's DBE program, if any, is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees that implementation of this DBE program is a legal obligation, and that failure to carry out that DBE program shall be treated as a violation of the Grant Agreement or Cooperative Agreement for the Project and the Master Agreement. Upon notification by U.S. DOT to the Recipient of its failure to implement its approved DBE program, U.S. DOT may impose sanctions as provided for under 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq.*

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.

Other Federal Requirements

Prohibition Against Exclusionary or Discriminatory Specifications – Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

Access Requirements for Persons with Disabilities – Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

Notification of Federal Participation – To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

Interest of Members or Delegates to Congress - No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

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.

Access to Services for Persons with Limited English Proficiency. To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 *Fed. Reg.* 6733 *et seq.*, January 22, 2001.

Environmental Justice. The Recipient agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing

Federal Single Audit Requirements For State Administered Federally Aid Funded Projects Only

Non-Federal entities that expend \$500,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations. Non-Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non-Federal entities that expend less than \$500,000 in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in '3052.215(a), but records must be available for review or audit by appropriate officials of the Federal agency, the New York State Department of Transportation, the New York State Comptroller's Office and the U.S. General Accounting Office (GAO). Non-Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Rd, Albany, NY 12232.

Assignability Clause. The Recipient agrees to comply with applicable third party procurement requirements of 49 U.S.C. chapter 53, and ensure that for piggybacking purchases made with FTA-assistance, that contract utilized contains assignability clause that authorizes such piggybacking purchases.

Catalog of Federal Domestic Assistance (CFDA) Identification Number

The recipient project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

The CFDA number for the Federal Transit Administration (FTA) Elderly and Disabled Program (Section 5310) is 20.513, Rural & Small Urban Program (Section 5311) is 20.509, Job Access and Reverse Commute Program (Section 5316) is 20.516, and New Freedom Program (Section 5317) is 20.521.