



**CENTRAL OREGON
INTERGOVERNMENTAL COUNCIL**

**COIC COMMUNITY CONNECTOR
BUS STOP IMPROVEMENTS**

INVITATION FOR BIDS CET 21-6

April 7, 2021

PLANS PREPARED BY
HICKMAN, WILLIAMS & ASSOCIATES, INC
62930 O.B. RILEY ROAD
BEND, OR 97701
MAY 2020

RETURN BID TO:
DREW ORR, COIC PROCUMENT
DORR@COIC.ORG

DESCRIPTION OF WORK:

The Central Oregon Intergovernmental Council, hereinafter referred to as “COIC”, is requesting bids for the construction of ten (10) public transit bus stops throughout Central Oregon. These bus stops serve Cascades East Transit’s (a division within COIC) Community Connector Regional transit service.

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Section 1 - PROPOSAL REQUIREMENTS AND CONDITIONS

- 1.1 Emailed bids will be received until 4:00 p.m. on April 27, 2021. Bids received after the time and date specified in the Bid will not be accepted for consideration. Due to COVID-19 social distancing concerns, Bids will not be received at any of the COIC offices. COIC will conduct a public zoom meeting, available through COIC's procurement webpage, in which Bids will be opened.
- 1.2 COIC reserves the right to make changes to the Bid. All changes to the Bid, prior to receipt of proposals, shall be made by an addendum to the Invitation to Bid which shall be made available to all firms that have registered for this Bid via the contact information provided in Section 1.3. Following receipt of Bid, any changes to COIC's Bid will be conveyed in writing by COIC to those Proposers determined to be in the competitive range.
- 1.3 Proposers may submit questions, request clarification, requests for equal substitutions or request a change to the Bid until 4:00 p.m. on April 15, 2021 by emailing a written request to dorr@coic.org. The request shall specify the provision of the Bid in question, and, if a change is requested, contain an explanation for the requested change. COIC may decline to respond to questions or change requests received after April 15, 2021.
- 1.4 COIC shall evaluate any question or request submitted, but reserves the right to determine whether to respond or accept the requested change. Proposers shall not rely on oral or written representations regarding this Bid unless issued in writing as an addendum by the Transportation Fiscal Administrator.
- 1.5 Proposers are cautioned that until submission of their proposal, they may have contact with only those COIC representatives, agents, or personnel designated in writing within this Bid. Discussions or communications in any capacity with COIC Managers, COIC employees, its CONTRACTOR'S, or members of the Board of Directors, are strictly prohibited. Any violation of this restriction may result in disqualification of the Proposer from further participation in this procurement and from award of any contract or subcontract under this solicitation.
- 1.6 SUBMISSION NOTICE NOTE: All proposals submitted in response to this Bid shall become the property of COIC and may be utilized in any manner and for any lawful purpose by COIC. Be advised that proposals and all documents submitted in response to this Bid are subject to public disclosure as required by applicable state and/or federal laws. If you intend to submit any information with your Bid which you believe is confidential, proprietary, or otherwise protected from public disclosure (trade secret, etc.), you must separately bind and clearly identify all such material. The cover page of the separate binding must be red, and the header or footer for each page must provide as follows: "Not Subject to Public Disclosure". Where authorized by law, and at its sole discretion, all materials submitted with regard to this Bid become the property of COIC and may be returned only at COIC's option.
- 1.7 Paragraph headings and other titles used in this solicitation are for convenience only, and are not to be used for interpretation.
- 1.8 COIC reserves the right to analyze, examine, and interpret any proposal for a period of not more than sixty (60) days, commencing from the proposal due date and time. Bids shall not be conditioned to allow for less than a sixty (60) day acceptance period.
- 1.9 A Bid is late if COIC receives it after the deadline stated in this Bid for delivery of proposals. A Bid shall be deemed received by COIC when COIC's Transportation Fiscal Administrator has

received the email. Delays due to technical issues, including but not limited to COIC's internal email handling, will not excuse late delivery of a proposal.

- 1.10 COIC reserves the right to cancel this Bid at any time without liability prior to execution of a contract by COIC.
- 1.11 COIC reserves the right to waive minor irregularities and omissions if the best interest of COIC will be served by doing so. If any proposal indicates minor noncompliance or variance with the Bid, COIC may, but need not, request that the proposal be supplemented. If requested, the Proposer may submit a supplement to the proposal responsive to such a request within the period established in such request, which COIC will receive and evaluate in conjunction with the proposal. Supplements shall not be considered to be Best and Final Offers unless so indicated.
- 1.12 Proposer shall promptly notify the COIC Transportation Fiscal Administrator in the manner described in Section 1.3 of any ambiguity, inconsistency, or error, which they discover upon examination of this solicitation.
- 1.13 Proposers are cautioned that the rules and regulations under the State of Oregon may be stricter than other jurisdictions. Compliance with all applicable regulations and laws, such as Oregon OSHA (Occupational Safety and Health Administration) are the responsibility of the selected CONTRACTOR.
- 1.14 [this section is intentionally left blank]
- 1.15 COIC shall evaluate proposals for award purposes by including the total price for the basic requirement together with any option pricing; i.e., option pricing will be included in the evaluation for award purposes. Optional items shall not necessarily be purchased under this solicitation.
- 1.16 Prior to award of any contract as a result of this solicitation, COIC, at its sole discretion, may perform, or have performed, a pre-award accounting system review to ascertain the CONTRACTOR'S ability to accurately accumulate and bill program costs under any resulting contract. COIC shall be responsible for only its own costs associated with the pre-award accounting system review. The CONTRACTOR, by submission of a proposal, agrees to assist COIC or its designated representative(s) in performing the pre-award accounting system review.
- 1.17 Whenever a particular make of material is shown or specified herein, such make of material shall be regarded as a standard. Any other make of material will be accepted, upon Transportation Fiscal Administrator's approval, which is comparably equal to or better than, that specified in formulation, quality, quantity, workmanship, economy in operation, and suitability for the purpose intended.
- 1.18 Proposer may seek administrative remedies under Cascades East Transit Procurement Protest Procedures can be found here: <https://www.coic.org/open-procurements/>
- 1.19 By submitting their Bid, Proposers certify that they have all requisite authority to perform the work.
- 1.20 COIC shall not, in any event, be liable for any pre-contractual expenses incurred by Proposer in the preparation of a proposal. Pre-contractual expenses defined as expenses incurred by the Proposer in:
 - 1.20.1 Preparing its proposal in response to the Bid;
 - 1.20.2 Submitting the proposal to COIC;

- 1.20.3 Negotiating any matter related to this proposal with COIC;
- 1.20.4 Proposer staff time involved in pre-award accounting system review; or,
- 1.20.5 Any other expenses incurred by the Proposer prior to the date of award, if any, of the proposed contract.
- 1.21 The responsibility for submission of the proposal to COIC on or before 4:00 p.m. on April 27, 2021 will be solely and strictly the responsibility of the proposer. COIC will in no way be responsible for delays in the internet or delay by other occurrence or means of delivery.
- 1.22 Submission Procedure - With current COVID-19 social distancing guidelines in place, proposals shall be emailed to Drew Orr, dorr@coic.org
- 1.23 Ownership of Bids: All Bids shall become the sole property of COIC and will not be returned.
- 1.24 It is the responsibility of the Proposer to review the Invitation for Bids carefully to determine the applicability and cost for any Local, City, County, State, Franchise or Income taxes, tariffs, fees, business licenses and special taxes, or licenses that will need to be paid and/or purchased by the successful bidder/proposer as part of the performance of this contract or option of this contract. The Contractor is responsible for ascertaining and paying the taxes when due. The total proposed price shall include compensation for all taxes the Contractor is required to pay by laws in effect on the Proposal Due Date.

Section 2 - BID EVALUATION

- 2.1 Bids shall be prepared simply and economically, providing a straightforward, concise description of the Proposer's capabilities to satisfy the requirements of the Bid.
- 2.2 COIC will consider all of the Proposer's materials to determine whether the Proposer's Bid is in compliance with the terms and conditions set forth in this Invitation to Bid. Proposers must submit all required information in the manner provided, unless otherwise waived by COIC, in order for the Bid to be considered responsive. Unacceptable exceptions, conditions, substitutions of equals, reservations or understandings, if not withdrawn by the Proposer upon request by COIC, would be cause for the proposal to be rejected.

Section 3 - GENERAL PROVISIONS

- 3.1 COIC shall pay the CONTRACTOR, upon the submission of proper invoices and deliverables, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. COIC shall pay the CONTRACTOR within thirty (30) days of the receipt of a proper invoice.
 - 3.1.1 Notwithstanding any other additional requirements of this contract, invoices shall contain the purchase order number; the date(s) goods or services furnished, and a description of the goods furnished. Failure to strictly comply with this provision may result in a delay of payment. All invoices shall be submitted to the following address:

Central Oregon Intergovernmental Council
Attn: Accounts Payable
334 NE Hawthorne Ave.
Bend, OR 97504
payables@coic.org

- 3.2 The CONTRACTOR shall maintain and COIC, or an authorized representative of COIC, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed as incurred or anticipated, directly or indirectly, in performance of this Bid. This right of examination shall include inspection at all reasonable times and places engaged in performing the contract.
- 3.3 If the CONTRACTOR has been required to submit cost or pricing data in connection with any pricing action relating to this contract, COIC, or an authorized representative of COIC, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the CONTRACTOR'S records, including computations and projections, related to:
- 3.3.1 The proposal for the contract, subcontract, or modification;
 - 3.3.2 The discussions conducted on the proposal(s), including those related to negotiating;
 - 3.3.3 Pricing of the contract, subcontract, or modification; or,
 - 3.3.4 Performance of the contract, subcontract or modification.
- 3.4 The CONTRACTOR shall make available at its office at all reasonable times the records, materials, and other evidence described in Section 11 within Exhibit N, or for any longer period required by statute or by other clauses of this contract.
- 3.5 [this section is intentionally left blank]
- 3.6 To the fullest extent permitted by law, CONTRACTOR agrees to fully indemnify, hold harmless, and defend COIC, its directors, officers, employees, and agents from and against all claims, damages (of any kind), proceedings, liabilities, losses, attorney fees, expenses, and each whether known or unknown, incidental to the investigation or defense thereof, caused directly or indirectly by the intentional misconduct, recklessness, or negligence of Contractor, Contractor's Representatives, Agents, employees, or its SUB-CONTRACTOR's, or based upon or arising out of or incidental to damages or injuries to persons or property, caused by the fault or negligence in whole or in part from the performance of the work. COIC intends this indemnification clause be read and interpreted as broadly as possible.

CONTRACTOR shall, upon COIC's request, defend with counsel approved by COIC (which approval shall not be unreasonably withheld), at CONTRACTOR's sole cost and expense, any action, claim, suit, cause of action or portion thereof which asserts or alleges liabilities resulting from any allegedly negligent act, omission, misconduct or other legal fault of CONTRACTOR, its officers, employees, sub consultants, subcontractors, or agents in connection with the performance or nonperformance of this contract, whether or not such action, claim, suit, cause of action or portion thereof is well founded.

In the event that a final decision or judgment allocates liability by determining that any portion of damages awarded is attributable to COIC's negligence or willful misconduct, COIC shall pay the portion of damages which is allocated to COIC's negligence or willful misconduct, provided that COIC shall not be liable for any passive negligence of COIC, its officers or employees in reviewing, accepting, or approving any service or work product performed or provided by CONTRACTOR.

This indemnity shall survive the termination of this Bid or final payment hereunder. This indemnity is in addition to any other rights or remedies which COIC and the other parties to be indemnified may have under the law or under this Bid. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, COIC may in its sole discretion

reserve, retain, or apply any monies due to the CONTRACTOR under the contract for the purpose of resolving such claims; provided, however, that COIC may release such funds if the CONTRACTOR provides COIC with adequate assurance of the protection of COIC's interests. COIC shall be the sole judge of whether such assurances are adequate.

- 3.7 It is understood and acknowledged that Agreement is not a contract of employment between COIC and CONTRACTOR, or any agents, officers, or employees of CONTRACTOR. CONTRACTOR is, and shall at all times be, deemed to be an independent contractor. CONTRACTOR is not authorized to bind COIC to any contracts or other obligations. CONTRACTOR is not an agent or employee of COIC, and shall at no time represent itself to be such agent or employee. Neither CONTRACTOR nor any of its employees or subcontractors shall be entitled to any benefits accorded to COIC employees including but not limited to Workers Compensation, disability insurance, unemployment compensation, retirement benefits, vacation, or sick leave. CONTRACTOR is an independent CONTRACTOR for all purposes and is not entitled to compensation from COIC other than that provided by this contract. CONTRACTOR shall inform COIC of CONTRACTOR'S Federal Internal Revenue Service Employer Identification Number, or, if CONTRACTOR is an individual with no employer identification number, CONTRACTOR'S Social Security Number. The CONTRACTOR and its officers, employees, and agents are not officers, employees or agents of COIC as those terms are used in ORS 30.265. The CONTRACTOR, its employees or officers shall not hold themselves out either explicitly or implicitly as officers, employees or agents of COIC for any purpose whatsoever, nor are they authorized to do so.
- 3.8 COIC must adhere to and be in conformance with the State Statutes (primarily section ORS 279), the Attorney General Model Rules and the COIC adopted Procurement Policy. In this regard, all protests/disputes will be subject to these rules and policy. Termination or other disputes which may result in judicial review are subject to Sections ORS 279B.400, 279A.065 as applicable, and Attorney General Model Rules Section 137-047-700 (Legal remedies) "Protests and Judicial Review of Special Procurement". These rules state that before seeking judicial review of termination action, or other procurement-related action, that the affected CONTRACTOR must file a written protest directed to COIC and must exhaust all administrative remedies.
- 3.9 In performing its obligations under any resulting contract, the CONTRACTOR agrees to comply with all applicable state laws including, without limitation, ORS 279B.020, 279B.220 -279B.240, each of which is incorporated herein by reference. In addition, the potential CONTRACTOR agrees to comply with the relevant FTA contract clauses attached hereto and incorporated by reference herein. The nature of the obligations of a party under any resulting contract will determine which requirements of state law and FTA contract clauses will apply. Requirements that do not apply will not be enforced.
- 3.9.1 CONTRACTOR acknowledges that the Oregon Government Standards and Practices laws ("Ethics Laws"), as set forth in ORS 244.010 et seq. are applicable to CONTRACTOR'S when performing certain work on behalf of COIC under contract and that the individual employees and agents of CONTRACTOR may be treated as public officials under ORS 244.020 (15). CONTRACTOR agrees to determine whether and under what circumstances it or its agents are subject to the Ethics Laws, as referenced herein and incorporated by reference, and shall comply and ensure compliance by those subject to CONTRACTOR'S control when performing work under this Contract.
- 3.10 CONTRACTOR shall not permit any lien or claim to be filed or prosecuted against COIC, its property or its right-of-way because of any labor or material furnished or any other reason for work arising out of this Contract. If any lien shall be filed, CONTRACTOR shall satisfy and discharge or cause such lien to be satisfied and discharged immediately at CONTRACTOR'S sole expense.

- 3.11 Notwithstanding any safety provisions elsewhere in this contract, and in addition to CONTRACTOR'S own safety procedures, CONTRACTOR shall implement and enforce all safety requirements that are known standards in the industry and/or that are required by COIC.
- 3.12 [this section is intentionally left blank]
- 3.13 No COIC Board member, officer, employee or agent shall have any direct or indirect interest in this contract or its proceeds during that person's tenure with COIC, except to the extent such interest is permitted and disclosed as may be required under applicable law and COIC policy.
- 3.13.1 No COIC Board member, officer, employee, or agent shall solicit or accept, and CONTRACTOR shall not offer or give to any COIC Board member, officer, employee or agent, any gratuities, favors, or anything of monetary value in connection with the administration of this contract, except to the extent permitted by applicable law and COIC policy.
- 3.14 [this section is intentionally left blank]
- 3.15 Termination for Default [Breach or Cause]: If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, COIC may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. COIC may, by written notice of default to the CONTRACTOR, terminate this contract in whole or in part if the CONTRACTOR fails to (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension; (ii) Make progress, so as to endanger performance of this contract; or (iii) Perform any of the other provisions of this contract. If it is later determined by COIC that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, COIC, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.
- 3.16 Opportunity to Cure: COIC in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to COIC's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from COIC setting forth the nature of said breach or default, COIC shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default does not preclude COIC from also pursuing all available remedies against Contractor and its sureties for said breach or default.
- 3.17 Waiver of Remedies for any Breach: In the event that COIC elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by COIC shall not limit COIC's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- 3.18 [this section is intentionally left blank]
- 3.19 CONTRACTOR shall maintain a complete set of records relating to this Contract in accordance with generally accepted accounting procedures. CONTRACTOR shall permit the authorized

representatives of COIC, the Oregon Department of Transportation, the Oregon Secretary of State, or the Comptroller General of the United States to inspect and audit all work, materials, payrolls, books, accounts, and other data and records of CONTRACTOR relating to its performance under this contract until the expiration of three (3) years after final payment under this contract.

3.19.1 CONTRACTOR further agrees to include in all of its subcontracts under this Contract a provision to the effect that the sub-CONTRACTOR agrees that COIC, the U.S. Department of Transportation, the Comptroller General of the United States, or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and other records of the sub-CONTRACTOR. The term "subcontract" as used in this Section excludes (1) purchase orders not exceeding \$10,000.00 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

3.19.2 The periods of access and examination described under section 3.22 and 3.22.1 are for records that relate to (1) disputes between COIC and CONTRACTOR, (2) litigation or settlement of claims arising out of the performance of this Contract, or (3) costs and expenses of this Contract as to which exception has been taken by the Comptroller General or any of his or her duly authorized representatives, shall continue until all disputes, claims, litigation, appeals, and exceptions have been resolved.

3.20 This Bid shall be construed and enforced pursuant to the laws of the State of Oregon. Venue for any suits brought under this Invitation for Bid shall be exclusively vested in the State Courts of the County of Deschutes. The federal statutes, ORS 279 statutes, and the Oregon State Attorney General's Model Public Contract Rules are applicable to this work. If there are any conflicts between federal and state regulations, federal laws, rules and regulations shall govern/prevail on this project (ORS 279A.030).

3.21 During the term of this contract, CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability or national origin.

3.22 The validity, legality, or enforceability, in whole, or in part of any provision of Agreement, shall not affect or impair the validity, legality, or enforceability, of other provisions. If any of the provisions contained in this contract are held by a court of law or arbitrator to be illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired, and the parties shall negotiate an equitable adjustment of this contract so that the purposes of this contract are affected. All provisions concerning indemnity survive the termination or expiration of this contract for any cause.

3.23 [this section is intentionally left blank]

3.24 This contract is funded in part under a financial assistance agreement between COIC and the U.S. Department of Transportation, Federal Transit Administration (FTA). This contract is subject to all provisions prescribed for third party contracts by that financial assistance agreement, including, but not necessarily limited to, the provisions in Exhibit N, which is attached to and made a part of this contract.

3.25 [this section is intentionally left blank]

3.26 [this section is intentionally left blank]

3.27 [this section is intentionally left blank]

- 3.28 If this contract is for the supply of goods, CONTRACTOR shall bear the risk of loss until the goods have been delivered to the site designated by COIC and an authorized COIC employee or agent has taken possession of them. Title to goods shall pass to COIC upon COIC's payment for those goods. If this contract is for the rental or lease of CONTRACTOR'S goods, the CONTRACTOR shall bear the risk of loss to CONTRACTOR'S goods. CONTRACTOR agrees to carry insurance to cover any such losses. Title to the CONTRACTOR'S goods shall remain with CONTRACTOR while goods are in COIC's possession. If this contract is for the repair or servicing of COIC owned goods, CONTRACTOR shall bear the risk of loss until the goods have been delivered to the site designated by COIC and an authorized COIC employee or agent has taken possession of them. Title to COIC owned goods shall remain with COIC while goods are in CONTRACTOR'S possession. CONTRACTOR agrees to carry insurance to cover any losses/damages to COIC's goods while in CONTRACTOR'S possession.
- 3.29 [this section is intentionally left blank]
- 3.30 [this section is intentionally left blank]
- 3.31 CONTRACTOR agrees that he/she shall not assign, sell, transfer, or sublet his/her rights, delegate or subcontract his/her responsibilities under this contract, in whole or in part, without the expressed written consent of COIC.
- 3.32 If this contract is for the supply of goods or equipment, then COIC shall be deemed to have accepted goods only after the goods have been delivered by CONTRACTOR, and COIC has had a reasonable opportunity after delivery to inspect the goods. Prior to acceptance, COIC may reject any goods that fail to conform to the requirements of this contract. COIC may revoke its acceptance of goods that fail to conform to this contract if the failure to conform was not reasonably discoverable by ordinary pre-acceptance inspection or evaluation. Acceptance may be revoked under this Paragraph even if COIC has started using the goods before discovering that they do not conform to the contract. Upon request by COIC, CONTRACTOR shall replace or repair to COIC's satisfaction any goods that have been rejected by COIC or the acceptance of which has been revoked by COIC under this Paragraph. Failure to replace or repair those goods within a reasonable time after COIC's request shall be a material breach of this contract.
- 3.33 Contractor will comply with all applicable federal, state, and local laws, regulations, and ordinances. Contractor will obtain and maintain all licenses, permits, registrations, and other governmental authorizations required to conduct its business and perform the services described in the Scope of Work.
- 3.34 [this section is intentionally left blank]
- 3.35 Administration of Agreement: CONTRACTOR's compliance with Agreement shall be supervised and administered by COIC Transportation Director or designee.
- 3.36 [this section is intentionally left blank]
- 3.37 Notice of Deficiencies: COIC's Transportation Director or designee may issue a Notice of Deficiencies to CONTRACTOR, specifying areas of unsatisfactory performance, and specifying what improvements are necessary to correct the deficiency or deficiencies. Such notice shall specify the provision(s) of Agreement which address the issue. CONTRACTOR shall correct deficiency within reasonable time limits specified by COIC not to exceed 30 days unless agreed to in advance by COIC in writing.
- 3.38 [this section is intentionally left blank]

3.39 Notices and other communications shall be made by hand-delivering personally, or by telegram, email, facsimile, or regular mail to the contacts listed below:

COIC: Transportation Director
 Central Oregon Intergovernmental Council
 334 NE Hawthorne Avenue
 Bend, OR 97701
 contracts@coic.org

CONTRACTOR: TBD

Service of such notices shall be deemed complete four (4) business days after deposit in the US Mail or on the date hand-delivered.

3.40 Continuity: Agreement is binding upon each of the parties and their respective heirs, shareholders, directors, partners, executors, and successors. Should the CONTRACTOR entity be purchased by another entity or otherwise change its corporate structure during the term of this Agreement, COIC reserves the right to terminate this Agreement and to solicit new vendors for this service.

3.41 Assignment (COIC): COIC reserves the right to assign its responsibilities under Agreement to any existing or future governmental entity for the provision of public transportation services. The CONTRACTOR hereby approves the assignment and agrees such assignment shall constitute a complete novation between COIC and CONTRACTOR; and receipt by CONTRACTOR from COIC of sums then due and payable for services rendered pursuant to Agreement prior to assignment shall constitute a complete accord and satisfaction as between COIC and CONTRACTOR.

3.42 [this section is intentionally left blank]

3.43 Successors: Agreement shall be binding upon, and shall inure to the parties hereto, and their respective shareholders, partners, directors, agents, personal representatives, successors-in-interest, and assigns. CONTRACTOR shall not assign, sublet, or subcontract Agreement without prior written consent from COIC.

3.44 CET PROCUREMENT PROTEST PROCEDURES - <https://www.coic.org/open-procurements/>

Section 4 -SCOPE OF WORK

The required submittal listing for the “COIC Community Connector Bus Stop Improvements CET 21-6 Project” is as follows:

#	ITEM	# OF	√
1	BID SCHEDULE	2	
2	CONTRACTOR EXPERIENCE FORM	2	
3	BID BOND	2	
4	FIRST TIER SUBCONTRACTOR DISCLOSURE FORM (OPTIONAL, NOT MANDATORY)	1	
5	BID FORM (EXHIBIT A)	3	
6	NON-COLLUSION AFFIDAVIT (EXHIBIT D)	2	
7	PREVAILING WAGE COMPLIANCE STATEMENT	1	
8	DRUG TESTING POLICY STATEMENT	1	

9	FEDERAL 3 rd PARTY CONTRACT CLAUSE CERTIFICATION (EXHIBIT H)	1	
10	DEBARMENT CHECK CERTIFICATION (EXHIBIT E)	2	
11	COMPLIANCE WITH DBE AND EEO (EXHIBIT F)	1	

TOTAL BID WILL CONTAIN A MINIMUM OF: 18 PAGES

PROJECT OVERVIEW

Project improvements generally consist of removal of surfaces, grading, sidewalks, asphalt overlays, and sign support installation for improvements to 10 bus stops in the municipalities described in Exhibit L, and other related and incidental work.

COIC may choose to convert bus stop elements identified in the plans as HMAC to concrete depending on weather conditions, at the discretion of COIC. All changes to project quantities will be formally adjusted via a contract modification.

Construction plans titled, COIC Community Connector Bus Stop Improvements CET 21-6 Project dated June 2020, consisting of 13 sheets and project specifications are herein incorporated into the bid documents for detail of the overall scope of the project including the scope of services for this portion of the project. All workmanship, materials, and conditions shall conform to the current Oregon Standard Specifications for Construction and the Improvement Construction Procedure Standards & Specifications of the municipalities where each of the stops are to be constructed.

This is a Public Works Contract and subject to Oregon Bureau of Labor and Industries (BOLI) Prevailing Wage Rates Effective January 1, 2021 for Region 10, and any new wage rates issued by BOLI before the execution of a Contract. This project is also subject to Davis Bacon Prevailing Wage per General Decision Number OR20190001. The higher of the two prevailing wages shall apply.

PROJECT TIMELINE

Advertisement	April 7, 2021
Deadline for Requests for changes/clarification	4:00 p.m. on April 15, 2021
Response to Requests	April 16, 2021
Bid Submittal Deadline	4:00 p.m. on April 27, 2021
Bid Opening	April 27, 2021
Bid Review	April 28, 2021
Notice of Intent to Award	April 29, 2021
Contract Award	May 14, 2021
Work to Begin by	July 1, 2021
Work Completed by	October 22, 2021

LIQUIDATED DAMAGES

Liquidated damages will be assessed at \$200 per workday should the Contractor fail to complete the work within the time allowed. Days of unseasonable weather will not be counted against the contract time if requested in writing by the Contractor and approved by the Owner.

CONTRACT DOCUMENTS

Addendums issued during the advertisement phase of the project will be posted on the Central Oregon Builders Exchange website only. Bidders shall submit their bid on the bid forms contained within the contract documents or on alternate forms as prescribed by the bid documents. COIC will not accept any bid that is not submitted as prescribed in the Bid Documents package.

REQUIREMENTS FOR BIDDERS

Each bid must be submitted on the prescribed forms and accompanied by a certified check or Bid Bond executed on the prescribed form, payable to the COIC, in an amount not less than 10% (10 percent) of the amount bid. The successful Bidder will be required to furnish the necessary additional bond(s) for the faithful performance of the Contract, as prescribed in the Contract Documents.

The attention of bidders is directed to the State government requirements and conditions of employment to be observed and minimum wage rates to be paid under the Contract.

COIC will closely review the Contractor's Experience form to ensure a Contractor with acceptable experience is awarded the Contract for the COIC Community Connector Bus Stop Improvements CET 21-6 Project.

Bidder must be registered with the Construction Contractors Board (ORS 701.055) or the bid will not be received or considered.

Bidders must submit all required information in the manner described in order for the Bid to be considered responsive. Unresponsive bids shall be rejected.

PRE-BID MEETING

There will be no pre-bid meeting for the COIC Community Connector Bus Stop Improvements CET 21-6 Project.

All requests for clarification shall be made in writing and a Clarification Addenda will be issued prior to bid opening.

NOTIFICATION

The notification of Intent to Award will be made to all responsive bidders within seven (7) calendar days of the bid opening.

COIC Cascades East Transit has established formal procedures for the filing and handling of protests in connection with the agency's procurement activities using FTA funds. These procedures may be examined and downloaded from COIC's procurement webpage <https://www.coic.org/open-procurements/>. All protests must be in accordance with the Cascades East Transit Procurement Protest Procedures.

LOCATION:

Various locations throughout Central Oregon. See construction plans for locations.

OWNER:

COIC
334 NE Hawthorne Avenue
Bend, Oregon 97701

AWARD OF CONTRACT

A fixed-price contract will be awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the bids, is the lowest in prices. COIC may choose to do only a portion of the project within funds allotted. The competency and responsibility of bidders and of their proposed subcontractors will be considered in making the award.

To establish whether a bidder is responsible, COIC will complete a debarment check [www.sam.gov] of the company and its principals. Offerors must be listed to be considered.

Owner reserves the right to reject bid of any bidder who has previously failed to perform properly and to complete on time contracts of a similar nature, who is not in a position to perform the Contract, who has habitually and without cause neglected the payment of bills or otherwise disregarded their obligation to subcontractors, material men or employees.

Bidder should notify Owner prior to bid opening date, should omissions or errors be found in Contract Documents. Owner will clarify by sending written instructions to all bidders in the form of Addenda which will become a part of the Contract.

Owner will not be responsible for any oral instructions or interpretations.

EXAMINATIONS

Bidder is responsible for verifying dimensions and bid quantities prior to bidding.

Before submitting a bid, the bidder shall carefully examine all Contract Documents, visit the site of the work, and fully inform themselves of all existing conditions and limitations. Bidders shall include in the Bid, sum or sums sufficient to cover the cost of all items in this Contract.

Bidder should notify Owner prior to bid opening date, should omissions or errors be found in Contract Documents. Owner will clarify by issuing instructions in the form of Addenda which will become a part of the Contract.

Owner will not be responsible for any oral instructions or interpretations.

Bidder is responsible to review all documents he/she will submit in the Bid as complete. All pages listed on the Bidder's Required Submittal Listing are required to be included in the Bid.

ANY ADDENDA

Any addenda issued during the time of bidding are to be covered in the Bid, and in closing a Contract, they will become part thereof. Signed copy of the addenda is to be included with the bid submittal. All addenda will be made in PDF format, available on the Central Oregon Builders Exchange's website. COIC will not mail or fax notice of Addenda, but will publish notice of any addenda on the Central Oregon Builders Exchange. Addenda may be downloaded off the Central Oregon Business Exchange's website. Bidders should frequently check the website at least once weekly until the week of bid opening. COIC will issue the last addenda at least three business days prior to bid opening. Any addenda issued during the time of bidding are to be covered in the Bid, and in closing a Contract they will become part thereof.

SUBSTITUTIONS

In order to obtain approval of material, products, methods, as equal to those specified, submit to Owner substitution request at least five (5) days before bid opening.

PAYMENT ON CONTRACT

Payment will be made as provided in the Contract. The contractor and subcontractors must pay not less than the minimum hourly rate of wage as determined by the Commissioner of Bureau of Labor for the City of Bend, and which is not less than prevailing wage. They or their sureties must execute a statement under oath in a form prescribed by the State Labor Commissioner, certifying the hourly rate of wage paid and that no workman was paid less than prevailing rate of wage or less than the minimum hourly rate of wage and file with the Clerk of the District prior to any disbursement under the Contract and in accordance with ORS 279C.800 thru 279C.870. Contractors shall make payments in accordance with the Contract, ORS 279C.840 to 279C.870 and the laws of the State of Oregon. Contractor is required to have

a \$30,000 Public Works Bond filed with CCB before starting work on the project, unless exempt (SB 477, Sections 2-5). Contractor is required to verify their subcontractors have filed bond.

PECUNIARY INTEREST

No director or employee of Owner shall have any pecuniary interest in the project.

LOCAL LABOR

Contractor and subcontractors are encouraged to use local labor when available.

QUALIFICATIONS AS A CONDITION PRECEDENT TO BIDDING

All Contractors submitting a bid will be evaluated per the COIC Responsible Bidder.

All questions will be responded to in a written Addendum issued 3 days prior to bid opening. It will be available on the Central Oregon Builder's Exchange and downloaded from COIC's procurement webpage <https://www.coic.org/open-procurements/>. All questions received after this date will not receive response.

2. TOTAL AMOUNT OF BID \$ _____

Total Bid price written out in words:

All Unit Price Bids should be considered as “Furnished and Installed” unless otherwise noted in these bid documents. Please invoice referencing the above exact line item numbers and line items. All quantities must be approved by the Project Engineer before invoicing. Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid items shall be based on actual quantities, determined as provided in the Contract documents.

To Be Considered Responsive, the following must be signed and completed by your firm:

We hereby certify to do the work as specified and at the price as quoted in conformance to all the City, State and Federal Regulations that are applicable and will indemnify COIC against all claims arising out of any actions caused by our company during the performance of this contract. We also hereby certify that we have read and understood this entire Invitation For Bid, including attachments and references.

Bidders Official Company Name _____

Address _____

Executed this _____ day of _____, of 20 ____

Signature of Authorized Official: _____

Printed Name: _____

Title of Authorized Official _____

Federal I.D. # _____ FAX # _____ Email _____

3. CONTRACTOR'S EXPERIENCE

Please list at least five similar projects to the COIC Community Connector Bus Stop Improvements CET 21- 6 that have been completed in the last five years.

Project #1	Project #2	Project #3	Project #4	Project #5
Project Owner:				
Description of Project:				
Project Engineer:				
Total Cost of Project:				
Contact Name/Info:				

4. BID BOND

KNOW ALL BY THESE PRESENTS, That _____ hereinafter called the PRINCIPAL, and _____, an entity duly organized under the laws of the State of _____ having its principal place of business at _____ in the State of _____, and authorized to do business in the State of Oregon, as SURETY, are held and firmly bound unto the Central Oregon Intergovernmental Council Bend, OR, as obligee, hereinafter called COIC, in the penal sum of _____ dollars(\$ _____) for the payment of which, well and truly to be made, we bond ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by the presents.

THE CONDITIONS OF THIS BOND ARE SUCH that, whereas the PRINCIPAL herein is herewith submitting its bid for the COIC Community Connector Bus Stop Improvements CET 21-6, said bid, by reference thereto, being hereby made a part hereof.

NOW, THEREFORE, if the said bid submitted by the said PRINCIPAL be accepted, and the contract be awarded to said PRINCIPAL, and if the said PRINCIPAL shall execute the proposed Agreement and shall furnish such performance and payment bonds as required by the bidding and Contract Documents within the time fixed by said documents, then this obligation shall be void; however, if the PRINCIPAL shall fail to execute the proposed Agreement and furnish said bond, the SURETY hereby agrees to pay to the COIC the penal sum as liquidated damages.

Signed and sealed this day of _____, 2021

By

Principal Surety

By Attorney-in-Fact

A certified copy of the agent's power-of-attorney must be attached hereto.

5. FIRST TIER SUBCONTRACTOR DISCLOSURE

FIRST TIER SUBCONTRACTOR DISCLOSURE FORM (OPTIONAL, NOT MANDATORY)

(OAR 137-040-0017)

PROJECT NAME: COIC Community Connector Bus Stop Improvements CET 21-6

BID SUBMITTAL:

DATE: _____ TIME: _____

DISCLOSURE DEADLINE:

DATE: _____ TIME: _____

List below the Name, Address, Contact Name and Telephone Number of each subcontractor that will be furnishing labor or labor and materials that are required to be disclosed. Enter "NONE" if there are no subcontractors that need to be disclosed. (Attach additional sheets if needed).

Name/Address	Nature of Work Performed	Contact Phone #	Contract Amount
1.			
2.			
3.			
4.			
5.			

The above listed First-Tier Subcontractor(s) are providing labor or labor and materials with a dollar value equal to or greater than: 5% of the total Contract Price, but at least \$15,000 (including all alternates). If the dollar value is less than \$15,000 do not list the subcontractor above; or \$350,000 regardless of the percentage of the total Contract Price.

FORM SUBMITTED BY (BIDDER NAME):

CONTACT NAME: PHONE #:

DELIVER FORM TO AGENCY: COIC

PERSON DESIGNATED TO RECEIVE FORM: Fiscal Administrator Transportation

PHONE #: 541.548.9525

AGENCY ADDRESS: 334 NE Hawthorne Avenue, Bend, OR 97701

UNLESS OTHERWISE STATED IN THE ORIGINAL SOLICITATION, THIS DOCUMENT SHALL NOT BE FAXED. IT IS THE RESPONSIBILITY OF THE BIDDERS TO SUBMIT THIS DISCLOSURE FORM AND ANY ADDITIONAL SHEETS, WITH THE PROJECT NAME CLEARLY MARKED, AT THE LOCATION INDICATED BY THE SPECIFIED DISCLOSURE DEADLINE. SEE INSTRUCTIONS TO BIDDERS.

Rev: 03-09-2000 Agency will insert "N/A" above if the Contract amount value is anticipated to be less than \$100,000. Otherwise this form must be submitted within two working hours of the advertised bid closing date and time; no later than the DISCLOSURE DEADLINE stated above.

**EXHIBIT A
BID FORM**

BIDDER'S DECLARATION:

The undersigned, hereinafter called the Bidder, declares that the only persons or parties interested in this bid are those named herein, that this bid is, in all respects, fair and without fraud, that it is made without collusion with any official of COIC, and that the bid is made without any connection or collusion with any person making another bid on this Agreement.

The Bidder further declares that they have carefully examined the Invitation to Bid, Exhibits, and related Contract Documents for the construction of the project, that they have personally inspected the site, that they have satisfied themselves as to the quantities involved, and that this bid is made according to the provisions and under the terms of the Contract Documents, which documents are hereby made a part of this bid.

Bidder further declares it is has had opportunity to place this Invitation to Bid, its exhibits, and related documents found on the COIC procurement web page, in front of its (Bidder's) legal counsel.

The Bidder further declares that the provisions required by ORS 279C.800 to 279C.870 relating to prevailing wage rates shall be complied with.

The Bidder further agrees that they have exercised their own judgment regarding subsurface condition and has utilized all data, which they believe pertinent from COIC and other sources in arriving at their conclusions.

CONTRACT EXECUTION:

The Bidder agrees that if this bid is accepted, they will, within ten (7) days, not including Sundays and legal holidays, after notice of award, sign the Agreement in the form annexed hereto, and will at that time, deliver to COIC the PERFORMANCE BOND and the PAYMENT BOND required herein, and will to the extent of their bid, furnish all machinery, tools, apparatus, and other means of construction and do the work and furnish all the materials necessary to complete the work in the manner, in the time, and according to the methods specified in the Contract Documents and required by COIC thereunder.

In the event that the Bidder shall fail to enter into a contract within such time, the bid security in the amount stated in the INVITATION TO BID and deposited herewith, shall be retained by COIC and it is agreed that said sum is a fair measure of the amount of damage that COIC will sustain because of such failure to enter into a contract.

CERTIFICATES OF INSURANCE:

The Bidder further agrees to furnish COIC, before commencing the work under the Contract, the certificates of insurance as specified in these documents.

CONSTRUCTION TIME LIMITS:

The Bidder agrees to begin work within ten (7) calendar days after the date of COIC's written notice to proceed, and to complete all work to be done under the contract in the time frames noted in the INVITATION FOR BIDS after the date of COIC's written notice to proceed.

SUBCONTRACTORS:

The Bidder will list all proposed subcontractors by their proper corporate name and the portion of the work the subcontractor intends to perform in the spaces provided below. Contractor is also required to comply with the regulations regarding First Tier Subcontractors and applicable submittals.

SUBCONTRACTOR/WORK PERFORMED

1. _____

2. _____

3. _____

4. _____

COIC reserves the right to reject any subcontractor COIC deems unfit for the scope of the work proposed.

LUMP SUM OR UNIT PRICES:

The Bidder further proposes to accept as full payment for the work proposed herein the amounts computed under the provisions of the Contract Documents and based on the following lump sum or unit price amounts. The Bidder agrees that the lump sum prices and the unit prices represent a true measure of the labor and materials required to perform the work, including all allowances for overhead and profit for each type and unit of work called for in these Contract Documents. COIC reserves the right to reject any and all bids, to waive any informalities and to accept the bid of the lowest responsible Bidder.

ADDENDA:

The Bidder acknowledges that addenda numbers have been received and examined as part of these Contract Documents.

SURETY:

If the bidder is awarded the construction contract on this bid, the Surety who provides the "Performance Bond" and "Payment Bond" will be:

Name:

Address:

Bidder:

The name of the bidder submitting this bid:

Name:

Address:

The above stated address is the address to which all communications concerned with this bid and with the contract are to be sent. The names of the principal officers of the corporation, or partnership, or of all persons interested in this bid as principals are as follows:

Acknowledged and Executed this _____ day of _____, of 20____

Signature of Authorized Official: _____

Printed Name: _____

Title of Authorized Official _____

EXHIBIT B
PREVAILING WAGE RATE STATEMENT

The Bidder represents, covenants, and warrants its full compliance with provisions of ORS 279C.800 – 279C.870 (Oregon Prevailing Wage Rates) and the Federal Davis Bacon Act on the COIC Community Connector Bus Stop Improvements - CET 21-6.

Applicable prevailing wage rates are those in effect at the time the initial specifications are first advertised for bid solicitation. ORS 279C.830(1)(c); OAR 839-025-0020(4) and (5). The workers must be paid not less than the applicable state prevailing wage rate. ORS 279C.830; OAR 839-020-0115(3).

The contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the project. ORS 279C.830(2)(a). Every subcontractor is required to have a public works bond filed with the Construction Contractors Board before starting work on the project. ORS 279C.830 (2)(b).

If the contractor fails to pay for labor and services, COIC can pay for them and withhold these amounts from payments to the contractor. ORS 279C.515; OAR 839.025.0020(2) (a).

The contractor must pay daily, weekly, weekend and holiday overtime as required. ORS 279C.520; OAR 839-025-020(2) (c).

The contractor must make prompt payment for all medical services for which the contractor has agreed to pay, and for all amounts for which the contractor collects or deducts from the worker's wages. ORS 279C.530; OAR 839-025-0020(2) (d).

The employer must give written notice to the workers of the number of hours per day and days per week they may be required to work. OAR 839-025-0020(2) (c).

BOLI Contact:
Bureau of Labor and Industries Wage and Hour Division Prevailing Wage Unit
800 N.E. Oregon Street, #32
Portland, OR 97232
www.oregon.gov/BOLI

Acknowledged and Executed this _____ day of _____, of 20____

Signature of Authorized Official: _____

Printed Name: _____

Title of Authorized Official _____

EXHIBIT C
DRUG TESTING POLICY STATEMENT

The bidder states that provisions of ORS 279C.505 [Chapter 794.138] requiring an employee drug-testing program will be complied with the COIC Community Connector Bus Stop Improvements CET 21-6.

Executed this _____ day of _____, of 20____

Signature of Authorized Official: _____

Printed Name: _____

Title of Authorized Official _____

Subscribed and sworn to me this _____ day of _____, 20_____

Notary Public for Oregon

My commission expires: _____

If the Offeror is unable to complete this form then it needs to disclose and attach to this form a detailed statement fully disclosing any exceptions and why it believes, in light of the interest(s) identified that performance of the proposed contract can be accomplished in an impartial and objective manner. COIC reserves the right to request more information, to disqualify the Offeror, to contract with the Offeror if it is in COIC's best interest and include appropriate provision to mitigate or avoid such conflict in the contract awarded. Refusal to provide the disclosure or representation or any additional information required, may result in disqualification of the Offeror for award. If nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated. If after award the Contractor discovers a conflict of interest with respect to the contract awarded as a result of this solicitation, which could not reasonably have been known prior to award, an immediate and full disclosure shall be made in writing to COIC. The disclosure shall include a full description of the conflict, a description of the action the contractor has taken, or proposes to take, to avoid or mitigate such conflict. COIC may, however, terminate the contract for convenience if it deems that termination is in the best interest of COIC.

(Failure to complete this form and to submit it with your offer may render this offer non-responsive)

EXHIBIT E

BIDDER CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

Suspended or debarred Contractors, consulting engineers, suppliers, materialmen, lessors or other vendors may not submit proposals for a State contract or subcontract during the period of suspension or debarment regardless of their anticipated status at the time of contract award or commencement of work. COIC, as a part of its obligation to determine if a Vendor meets the responsibility criteria for federal and state contract award, will check prior to the System for Award Management (SAM). SAM is the Official U.S. Government system that consolidated the capabilities of CCR/FedReg, ORCA, and EPLS. There is NO fee to register for this site. Entities may register at: <https://www.sam.gov/SAM/> User guides and webinars are available under the Help tab.

a. The signature on the Agreement by the Second Party shall constitute certification that to the best of its knowledge and belief the Second Party or any person associated therewith in the capacity of owner, partner, director, officer, principal investigator, project director, manager, auditor or any position involving the administration of State and Federal funds:

(1) Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any State department or agency;

(2) Has not within the prescribed statutory time period preceding this agreement, 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) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and,

(4) Has not within a five-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, the Second Party shall attach an explanation to this agreement. The Second Party agrees to ensure that the following certification be included in each subcontract Agreement to which it is a party, and further, to require said certification to be included in any subcontracts, sub-contracts and purchase orders resulting directly from this contract.

(1) The prospective subcontractors, sub-subcontractors participants certifies, by submission of it/their proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal or State department or agency; and,

(2) Where the prospective subcontractors, sub-subcontractors participants are unable to certify to any of the statements in this certification, such prospective participants shall attach an explanation to this proposal.

I have fully informed myself regarding the accuracy of the statement made in this affidavit.

Executed this _____ day of _____, of 20 ____

Signature of Authorized Official: _____

Printed Name: _____

Title of Authorized Official _____

Please note: Proposers must be registered with SAM which requires a DUNS number. Please carefully review this section under the state and federal suspension and debarment requirements contained in the procurement documents. We reserve the right to determine the Proposer non-responsive if it fails to be registered with SAM at the time of the proposal submittal.

EXHIBIT F
CERTIFICATION OF COMPLIANCE WITH FTA DISADVANTAGED BUSINESS
ENTERPRISE AND EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS

BIDDER:

As a recipient of Federal funds, the Central Oregon Intergovernmental Council (COIC) is required to follow Title 49, Code of Federal Regulation, Part 26, and other applicable Disadvantaged Business Enterprise (“DBE”) and Equal Employment Opportunity (“EEO”) rules and regulations.

All requests for proposal and invitation for bids issued by COIC require the bidder or proposer to certify that it does not discriminate against any employee or applicant for employment because of race, religion, sex, age, creed, color, disability, or national origin; that it is in compliance with all executive orders and federal, state, and local laws regarding fair employment practices and non-discrimination in employment; and that it agrees to demonstrate positively and aggressively the principle of equal opportunity in employment.

Signing this certification, on the signature portion below, constitutes agreement to follow Title 49, Code of Federal Regulation, Part 26, and other applicable Disadvantaged Business Enterprise (“DBE”) and Equal Employment Opportunity (“EEO”) rules and further certifies that the proposer does not discriminate against any employee or applicant for employment because of race, religion, sex, age, creed, color, disability, or national origin; that it is in compliance with all executive orders and federal, state, and local laws regarding fair employment practices and non-discrimination in employment; and that it agrees to demonstrate positively and aggressively the principle of equal opportunity in employment.

PROPOSER: _____

Disadvantaged Business Enterprise

I hereby certify that the Proposer has complied with the requirements of 49 CFR 26.49, Participation by Disadvantaged Business Enterprises in COIC’s Programs, and that our goals have not been disapproved by the Federal Transit Administration.

Executed this _____ day of _____, of 20 _____

Signature of Authorized Official: _____

Printed Name: _____

Title of Authorized Official _____

and

Equal Employment Opportunity

The Proposer, and any and all subcontractors of the Proposer, are 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 Proposer named above, that it has complied with the provisions of Executive Order 11246, as amended by Executive Order 11375, and supplemented un U.S. Dept. of Labor Regulation (41 CFR Part 60) and that I am duly authorized by said Proposer to make this certification.

Executed this _____ day of _____, of 20____

Signature of Authorized Official: _____

Printed Name: _____

Title of Authorized Official _____

EXHIBIT G
CERTIFICATION OF RESTRICTIONS ON LOBBYING

I, _____, hereby certify on behalf of _____, that:

No Federal appropriated funds have been paid or will be paid, by on or behalf of the undersigned, to any person for influencing, or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL "Disclosure Form to Report Lobbying", in accordance with its instructions. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including sub grants, loans, and cooperative agreements) which exceed \$100,000, and that all such sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made, or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, USC. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ day of _____, of 20____

Signature of Authorized Official: _____

Printed Name: _____

Title of Authorized Official _____

EXHIBIT H

**CERTIFICATION TO FEDERAL GOVERNMENT REQUIRED CLAUSES (FTA)
AFFIRMATION OF THE BIDDER'S AUTHORIZED REPRESENTATIVE**

Name of Proposer: _____

BY SIGNING BELOW, on behalf of the Proposer, I declare that the Proposer has duly authorized me to make this certification and bind the Proposer's compliance. Thus; the Proposer 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 Proposer 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 Proposer are true and correct.

Executed this _____ day of _____, of 20 ____

Signature of Authorized Official: _____

Printed Name: _____

Title of Authorized Official _____

EXHIBIT I

Contractor Insurance Requirements

GENERAL

Contractor (including its subcontractors, agents, etc) shall i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION, and CERTIFICATES OF INSURANCE before performance under the contract commences, and ii) maintain the insurance in full force, through annually renewing policies, throughout the duration of the contract. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are reasonably acceptable to State. Contractor shall not start work described herein until the insurance is in full force.

The CONTRACTOR shall insure all of the CET revenue vehicles and trailers within the Bend service fleet (fixed, dial-a-ride and Ride the River) for business auto coverage, hired & non-owned auto; and shall provide comprehensive & collision for such vehicles. The CONTRACTOR shall provide COIC with a list of the CET Bend fleet vehicles insured each quarter and update it as required between quarters.

CONTRACTOR shall be solely responsible for payment of all insurance coverage deductibles, for general and automobile liability and for automobile physical damage coverage, per occurrence, for all losses, damages, or costs incurred as a result of the CONTRACTOR'S action or inaction.

TYPES AND AMOUNTS.

i. WORKERS COMPENSATION. Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers liability insurance with coverage limits of not less than \$500,000 per accident, \$500,000 policy limit for bodily injury by disease and \$500,000 each employee for bodily injury by disease must be included. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of COIC for all work performed by the contractors, its employees, agents and subcontractors.

ii. COMMERCIAL GENERAL LIABILITY. Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are reasonably satisfactory to State. This insurance shall include personal injury liability, products, and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts:

Bodily Injury, Death and Property Damage: \$5,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence), \$10,000,000 General Aggregate and \$4,000,000 Products/Completed Operations Aggregate.

iii. AUTOMOBILE Liability Insurance: Automobile Liability. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Automobile Liability Insurance must be in not less than the following amounts as determined by State: Bodily Injury, Death, and Property Damage:

\$5,000,000 per accident (for all claimants for claims arising out of a single accident or occurrence).

iv. PROFESSIONAL LIABILITY INSURANCE. Professional liability insurance with limits of not less than \$1,000,000 per claim, and \$2,000,000 in the aggregate.

ADDITIONAL INSURED. The Commercial General Liability Insurance, Automobile Liability and any Umbrella/Excess Liability insurance must include Central Oregon Intergovernmental Council, its directors, officers, employees, volunteers, and agents as Additional Insureds but only with respect to the contractor's activities to be performed under this Agreement. Coverage must be primary and non-contributory with any other insurance and self-insurance. Any insurance or self-insurance maintained by COIC, its officers, officials, employees and volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

"TAIL" COVERAGE. If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the Contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Agreement, for a minimum of 24 months following the later of: (i) the Contractor's completion and COIC's acceptance of all Services required under this Agreement or, (ii) the expiration of all warranty periods provided under this Agreement. Notwithstanding the foregoing 24-month requirement, if the Contractor elects to maintain "tail" coverage and if the maximum time "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the Contractor may request and COIC may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If COIC approval is granted, the Contractor shall maintain "tail" coverage for the maximum period that "tail" coverage is reasonably available in the marketplace.

NOTICE OF CANCELLATION OR NON-RENEWAL. Contractor or its insurer must provide 30 days' written notice to COIC before cancellation of or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) OF INSURANCE. Contractor shall provide COIC a certificate(s) of insurance for all required insurance before the Contractor performs under the Contract. The certificate(s) or an attached endorsement must specify all entities and individuals who are endorsed on the policy as Additional Insured.

EXHIBIT J
ADDENDUM RECEIPT

ADDENDA RECEIVED (If none received, write "None Received"):

Addendum No. _____ Date Received _____

Executed this _____ day of _____, of 20____

Signature of Authorized Official: _____

Printed Name: _____

Title of Authorized Official _____

EXHIBIT K

STATE OF OREGON GENERAL CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS STATE OF OREGON

GENERAL CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS NOTICE TO STATE AGENCIES AND PUBLIC IMPROVEMENT CONTRACTORS

January 1, 2012 Edition

Changes to the General Conditions (including any additions, deletions or substitutions) should only be made by Supplemental General Conditions, unless the General Conditions are specifically modified in the Public Improvement Agreement (which has a higher order of precedence under Section A.3 of the General Conditions). The text of these General Conditions should not otherwise be altered.

NOTE: THE FOLLOWING GENERAL CONDITIONS HAVE BEEN REVIEWED AS TO FORM BY THE OREGON DEPARTMENT OF JUSTICE. THE LEGAL SUFFICIENCY AND APPROVAL REQUIREMENTS OF ORS 291.047 ARE STILL APPLICABLE FOR INDIVIDUAL PROCUREMENTS OF STATE AGENCIES, UNLESS AN EXEMPTION HAS BEEN GRANTED PURSUANT TO THAT STATUTE AND ADMINISTRATIVE RULES AT OAR CHAPTER 137, DIVISION 45.

2012 Rules Stated at

<https://www.oregon.gov/das/Procurement/Guiddoc/GenCon4PI.pdf>

Oregon 2021 Standard Specifications stated at

[https://www.oregon.gov/odot/Business/Specs/2021_STANDARD_SPECIFICATION S.pdf](https://www.oregon.gov/odot/Business/Specs/2021_STANDARD_SPECIFICATION_S.pdf)

Special Provisions related to this IFB can be found at <https://www.coic.org/open-procurements/>

EXHIBIT L

**CONSTRUCTION DRAWINGS
BOUND SEPERATELY**

Please find this Exhibit at:

<https://www.coic.org/open-procurements/>

EXHIBIT M
GENERAL STANDARDS OF PROPOSER RESPONSIBILITY

To be determined responsible, a prospective contractor must meet all of the following requirements:

- Neither the firm, nor its principles show up on the Federal government’s debarment and suspension website, www.sam.gov. This site denotes those individuals and firms that currently are prohibited from participating in federally funded contracts.
- Financial resources adequate to perform the contact, or the ability to obtain them;
- Ability to meet the required delivery or performance schedule, taking into consideration of all existing commercial and governmental business commitments;
- A satisfactory performance record;
- A satisfactory record of integrity and business ethics;
- The necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them;
- Compliance with applicable licensing and tax laws and regulations;
- The necessary production, construction and technical equipment and facilities, or the ability to obtain them;
- Full compliance with prevailing wage law (Davis Bacon Act Prevailing Wage General Decision ODOT OR140001 Decision);
- Compliance with Affirmative Action and Disadvantaged Business Program requirements; and,
- Other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations.

Acknowledged and executed this _____ day of _____, of 20____

Signature of Authorized Official: _____

Printed Name: _____

Title of Authorized Official _____

EXHIBIT N
FEDERAL REGULATIONS & REQUIRED THIRD-PARTY CONTRACT CLAUSES

ALL OR PART OF THIS CONTRACT IS FEDERALLY FUNDED. CONTRACTOR shall comply with the following applicable federal regulations in addition to all other specifications, terms and conditions of this Invitation for Bid or Request for Proposal. As used in these regulations,

1. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Obligation by the Federal Government.

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

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

**2. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS
AND RELATED ACTS**

49 U.S.C. § 5323(1) (1)

31 U.S.C. §§ 3801-3812

18 U.S.C. § 1001

49 C.F.R. part 31

Program Fraud and False or Fraudulent Statements or Related Acts.

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

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

3. ACCESS TO RECORDS AND REPORTS

49 U.S.C. § 5325

2 C.F.R. § 200.333

18 CFR 18.36 (i)

49 CFR 633.17

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major 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 the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with 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 any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

7. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

8. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3). years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

9. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
10. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.
11. FTA does not require the inclusion of these requirements in subcontracts.

4. FEDERAL CHANGES 49 CFR Part 18

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they 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.

5. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.
49 U.S.C. Chapter 53, Executive Order No. 11246
20 U.S.C. § 1681 et seq., 49 C.F.R. part 25
42 U.S.C. § 6101 et seq., 45 C.F.R. part 90
29 U.S.C. § 621 et seq., 29 C.F.R. part 1625
42 U.S.C. § 12101 et seq.

Civil Rights and Equal Opportunity- COIC is an Equal Opportunity Employer. As such, COIC agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, COIC agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

- (1) Nondiscrimination - In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- (2) 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 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project.

The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, 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, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

(d) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

6. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1F

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, 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 contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any COIC requests which would cause COIC to be in violation of the FTA terms and conditions.

7. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.

49 C.F.R. part 622, subpart C

Energy Conservation - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

8. TERMINATION

2 C.F.R. § 200.339

2 C.F.R. part 200, Appendix II (B)

FTA Circular 4220.1F

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

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

If it is later determined by COIC that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, COIC, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) COIC in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to COIC's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days] after receipt by Contractor of written notice from COIC setting forth the nature of said breach or default, COIC 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 COIC 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 COIC elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by COIC shall not limit COIC's 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) COIC, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient 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 the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, COIC may terminate this contract for default. COIC shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

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

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of COIC, protect and preserve the goods until surrendered to the Recipient or its agent. The

Contractor and COIC shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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

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

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Contractor, within [10] days from the beginning of any delay, notifies COIC in writing of the causes of delay. If in the judgment of COIC, the delay is excusable, the time for completing the work shall be extended. The judgment of COIC shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

i. Termination for Convenience or Default (Architect and Engineering) COIC may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. COIC shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

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

j. Termination for Convenience of Default (Cost-Type Contracts) COIC may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of COIC or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from COIC, or property supplied to the Contractor by COIC. If the termination is for default, COIC may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination.

The Contractor shall promptly submit its termination claim to COIC and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of COIC, the 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, COIC determines that the 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 the contractor, COIC, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

9. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

2 C.F.R. part 180

2 C.F.R. part 1200

2 C.F.R. § 200.213

2 C.F.R. part 200 Appendix II (I)

Executive Order 12549

Executive Order 12689

Debarment, Suspension, Ineligibility and Voluntary Exclusion

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

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

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

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

10. BUY AMERICA
49 U.S.C. § 5323(j)
49 CFR Part 661

Buy America - Contractor shall at all times comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal Funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR Part 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

11. BREACHES AND DISPUTE RESOLUTION
2 C.F.R. § 200.326
2 C.F.R. part 200, Appendix II (A)

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by COIC's Transportation Director. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to COIC's Transportation Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of COIC's Transportation Director shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by COIC, 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 a reasonable time after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between COIC and the Contractor arising out of or relating to this contract or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which COIC is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by COIC 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.

12. LOBBYING
31 U.S.C. § 1352
2 C.F.R. § 200.450
2 C.F.R. part 200 appendix II (J)
49 CFR Part 20

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.

13. CLEAN AIR
42 U.S.C. §§ 7401 – 7671q
40 CFR 15.61
49 CFR Part 18
2 C.F.R. part 200, Appendix II (G)

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

14. CLEAN WATER REQUIREMENTS
33 U.S.C. §§ 1251-1387
2 C.F.R. part 200, Appendix II (G)

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

16 & 17. Davis-Bacon and Copeland Anti-Kickback Acts
40 USC 3145(a),
29 CFR 5.2(h),
49 CFR 18.36(i)(5)
29 CFR 5.5(a)

Background and Application

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, et seq. and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating." 29 CFR 5.5(a). The requirements of

both Acts are incorporated into a single clause (see 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

The clause language is drawn directly from 29 CFR 5.5(a) and any deviation from the model clause below should be coordinated with counsel to ensure the Acts' requirements are satisfied.

Clause Language Davis-Bacon and Copeland Anti-Kickback Acts

(1) Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1. Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
4. With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including

the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) Withholding - The [insert name of grantee] shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so

much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the [insert name of grantee] may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the [insert name of grantee] for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

1. (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
2. (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
3. (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

- (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau,

withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the

payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

18. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

40 U.S.C. §§ 3701 et seq

29 C.F.R. Part 5

The Contractor agrees to comply with and shall assure compliance of all subcontractors with applicable employee protection requirements for non-construction employees of section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 et seq, and implementing USDOL regulations, Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act), 29 C.F.R. Part 5.

a. 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 forty 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 forty hours in such workweek.

b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States 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 paragraph (a) 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 forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

c. Withholding for unpaid wages and liquidated damages. The Procuring Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the 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 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 paragraph (b) of this section.

d. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

e. Payrolls and basic records. (i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

19. BONDING FTA C 4220.1F

Construction—Special Requirements. The following Federal laws and regulations impose requirements that may affect FTA assisted construction projects:

(1) Bonding. The Common Grant Rules require bonds for all construction contracts exceeding the simplified acquisition threshold (see, Chapter II, Subsection 3.b) unless FTA determines that other arrangements adequately protect the Federal interest. FTA's bonding policies are as follows:

(a) Bid Guarantee. Both FTA and the Common Grant Rules generally require each bidder to provide a bid guarantee equivalent to 5 percent of its bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid to ensure that the bidder will honor its bid upon acceptance.

(b) Performance Bond. Both FTA and the Common Grant Rules generally require the third party contractor to obtain a performance bond for 100 percent of the contract price. A “performance bond” is obtained to ensure completion of the obligations under the third party contract.

(c) Payment Bond. The Common Grant Rules generally require the third party contractor to obtain a standard payment bond for 100 percent of the contract price. A “payment bond” is obtained to ensure that the contractor will pay all people supplying labor and material for the third party contract as required by law. FTA, however, has determined that payment bonds in the following amounts are adequate to protect FTA’s interest and will accept a local bonding policy that meets the following minimums:

1 Less Than \$1 Million. Fifty percent of the contract price if the contract price is not more than \$1 million,

2 More Than \$1 Million but Less Than \$5 Million. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million, or

3 More Than \$5 Million. Two and one half million dollars if the contract price is more than \$5 million.

(d) Acceptable Sureties. The Common Grant Rule for non-governmental recipients requires the non-governmental recipient to obtain construction bonds from companies holding certificates of authority as acceptable sureties under Department of the Treasury regulations, “Surety Companies Doing Business with the United States,” 31 CFR Part 223. For a current list of approved sureties, see Department of the Treasury’s Listing of Approved Sureties (Department Circular 570), <http://fms.treas.gov/c570/c570.html>. FTA encourages each governmental recipient to require similarly acceptable sureties.

(e) Reduced Bonding. FTA recognizes that bonding costs can be expensive. FTA will accept a local bonding policy that conforms to the minimums described in this subparagraph 2.h(1) of this Chapter. FTA reserves the right to approve bonding amounts that do not conform to these minimums if the local bonding policy adequately protects the Federal interest. A recipient that wishes to adopt less stringent bonding requirements, for a specific class of projects, or for a particular project should submit its policy and rationale to the Regional Administrator for the region administering the project.

(f) Excessive Bonding. Compliance with State and local bonding policies that are greater than FTA’s bonding requirements do not require FTA approval. FTA recognizes that in some situations bond requirements can be useful if the recipient has a material risk of loss because of a failure of the prospective contractor. This is particularly so if the risk results from the likelihood of the contractor’s bankruptcy or financial failure when the work is partially completed. Nevertheless, if the recipient’s “excessive bonding” requirements would violate the Common Grant Rules as restrictive of competition, FTA will not provide Federal assistance for procurements encumbered by those requirements. Consequently, if the recipient’s bonding policies far exceed those described in this subsection; FTA reminds the recipient that it may find it useful to submit its policy and rationale to the Regional Administrator for the region administering the project.

27. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

Disadvantaged Business Enterprises

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The

national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 0.09 %. A separate contract goal has not been established for this procurement.

b. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Agency deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. The successful Contractor will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

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

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

28. PROMPT PAYMENT 49 CFR § 26.29

The prime Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

30. ADA ACCESS 42 U.S.C. § 12101 et seq., 29 U.S.C. § 794, 49 U.S.C. § 5301(d)

American with Disabilities Act (ADA) Access - 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.

31. VETERANS EMPLOYMENT 49 U.S.C. 5325 (k)

Veterans Employment. As provided by 49 U.S.C. § 5325(k): a. To the extent practicable, Contractor agrees that it: 1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and 2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and b. Contractor also assures that its sub-recipients will: 1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and 2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.