BEAVER ISLAND TRANSPORTATION AUTHORITY (BITA)

Request for Proposal (RFP) For Naval Engineer/Architect/Designer Services

BITA RFP #2017-1

DATE ISSUED: *January 15, 2018*

PROPOSALS DUE: *February 28, 2018, 12 noon EST*

Issuing Office: Beaver Island Transportation Authority
PO Box 426
26195 Main Street
Beaver Island, MI 49782

Section I

Schedule of Activities

BITA RFP #2017-1 Released:	Monday, January 15, 2018
Written Questions from Vendor Due:	Friday, February 2, 2018 @ 4:00 PM (EST)
BITA's Responses to Questions Released:	Monday, February 12, 2018
Proposal Due Date:	Wednesday, February 28, 2018, 12 noon (EST)
Anticipated Award Date:	March 2018

Section II

Background Information

M/V Emerald Isle

The M/V Emerald Isle designer was Timothy Graul Marine Design and was built by Washburn & Doughty with a launch date of June 1997. The owner of the vessel is the Beaver Island Transportation Authority (BITA) and the operator is the Beaver Island Boat Company (BIBCO). The BITA receives funding from the State of Michigan Marine Capital and the Federal Ferryboat Discretionary Fund for capital improvements to the vessel. The Emerald Isle provides scheduled ferry service between Charlevoix, Michigan and Beaver Island, Michigan on Lake Michigan, operating between mid-April through late December. The vessel transports around 35,000 passengers annually. This is a combination of year round residents, seasonal residents, and tourists. The crossing takes slightly over two hours and is 32 miles.

M/V Emerald Isle Features

- Twin Caterpillar 3512B diesel main engines 1500hp
- Two Caterpillar 3304 diesel generators 100kw each
- Caterpillar 3116 diesel powered bow thruster 210hp
- 130 feet long, beam 39 feet, draft 8.5 feet, 95 gross tons, speed 14.25 knots
- 298 passengers (including crew), 20 vehicles, 8800 gallons of fuel, 500 gallons of fresh water

Section III

Scope of Services

BITA is seeking Naval Engineer/Architect/Designer Services to design the following Project A, Project B, Project C and Project D. Designs must be fully ADA-compliant and comply with all United States Coast Guard (USCG) regulations. The selected firm will develop an Independent Cost Estimate (ICE) for each project. The ICEs must include staging, materials, labor and all other costs necessary to complete the projects. The selected firm will also prepare and assist with the issuance of a solicitation to select qualified a contractor, including drydock services, to perform the work necessary to complete the Scope of Services.

Designs and design options will be developed with input from BITA and BIBCO. BITA and BIBCO will have final approval of the designs and design options. BITA reserves the right to modify projects. All designs become the property of BITA.

This project is funded by federal/state grants and is subject to federal and state guidelines. The federal clauses for this project are the Federal Contract Clauses Materials and Supplies Less Than $150,000 as attached as Attachment 3. The selected firm may also have to have a third party subcontract approved by the Michigan Department of Transportation (MDOT). The awarded subcontract serves as BITA's award to the selected firm and is the firm's Notice to Proceed. If an MDOT-approved subcontract is not required, the agency will issue its own written Notice To Proceed.

This solicitation will result in a firm, fixed price contract.

Project Descriptions

Project A: Design package for renovations of passenger areas

Includes the possible redesign of passenger areas with renovations to the walls, doors, lighting, monitors, seating, ceilings, carpeting, table replacements, pilot house, bathrooms, and other components.

Project B: Bow thruster tunnel replacement design

The existing tunnel is pitting and BITA is seeking recommendations if the tunnel and associated equipment needs to be modified. If so, the design must be completed before going to dry dock.

Project C: Capstan and winch replacement specifications

The existing capstans and winch are in need of replacement.

Project D: Painting of vessel/in phases specifications

Specifications written for painting the vessel in sections such as compartments, water line and above, hull, deck and other areas.

Separate prices for Projects A, B, C and D must be listed on Attachment 2 – Price Proposal Form. Two prices must be submitted for Project A. One is for design of passenger area and the other is for overseeing the project at the time of renovations. Three prices must be submitted for Project B. One is for inspecting the bow thruster tunnel. The second is for designing the replacement bow thruster tunnel if replacement is needed. The third is for overseeing the project at dry dock.

A separate, detailed, cost breakdown for each project must be attached to Attachment 2 – Price Proposal Form.

Section IV

Submission Content

Submissions must include a signed copy of Attachment 1, Proposal Signature Page, signed in ink by an official of the submitting organization authorized to bind the submitter to the provisions of the RFP. The complete Proposal Signature Page must be returned with the submission. No copies will be accepted. All documents are to be mailed to the address listed and received by the due date on the Proposal Signature Page.

Submissions must include a signed copy of Attachment 2, Price Proposal Form. A separate, detailed, cost breakdown for each project must be attached to Attachment 2.

The Attachment 2, Price Proposal Form, and the detailed, cost breakdowns attached to it, **must** be submitted with the proposal in a separate, sealed envelope. **Failure** to submit the Price Proposal Form and the attached, cost breakdowns in a separate, sealed envelope will result in the **immediate disqualification** of the proposer as non-responsive. This requirement is to prevent the possibility of the proposed price influencing the scoring of the other evaluation criteria.

Submissions must also include:

- Full business name and address, legal entity type, primary contact(s), authorized negotiator(s), and contact information.
- Certifications of all staff to be involved in the project. For engineers, this must include PE documentation and any other special certifications for naval engineering expertise.
- Descriptions of similar projects performed.
- Documented knowledge of USCG requirements.
- Proof of bonding and insurance.
- Three references, including company name, address, contact person, phone and e-mail.
- An acknowledgement of having the willingness and ability to complete Projects A, B, C and D by the timeframe in Section VI, Project Timeframe.

Section V

Submission Conditions

The contents of the submitted proposal remain valid for 120 days after the submission deadline. Submitted proposals become the property of BITA and will not be returned.

Incurring Costs: BITA is not liable for any costs incurred by respondent's incidental to this RFP.

Rejection of Proposals: BITA reserves the right to reject any or all proposals received as a result of this RFP for sound, documentable, business reasons. BITA also reserves the right to negotiate separately with any source whatsoever in any manner necessary. BITA is not obligated to award any contracts solely on the basis of any responses made or obtained. BITA reserves the right to waive any minor informalities or irregularities.

Proposal Due Date: BITA reserves the right to postpone the proposal due date, for sound, documentable, business reasons.

Late Submissions: Late submissions will not be accepted.

Disclosure of Proposal Content: After evaluation, all information contained in submitted proposals is subject to release to the public under Michigan's Freedom of Information Act (1976 PA 422).

Section VI

Project Timeframe

The general timeframe is for design work is to be completed in the spring of 2018, the renovation project RFPs issued and a contractor selected in mid 2018 with passenger area renovations completed by the winter of 2018/2019. Bow thruster tunnel project to be redone at dry dock the fall of 2019. This project timeframe is subject to change.

The project is not complete until all USCG inspections have been successfully completed including Sea Trials and BITA issues a written, Notice of Final Acceptance.

Section VII

Questions

Questions must be submitted by e-mail to Mary Cook, BITA Executive Director, at bitrans@tds.net Verbal comments are not part of this RFP. Questions and answers will be emailed to all firms sent an RFP, who submitted an RFP and to every firm who has submitted qualifications or a question, and will be posted on BIBCO's website at www.bibco.com. Questions must be received at least ten (10) working days prior to the proposal due date.

Section VIII

Vessel Inspection

An optional, vessel inspection will be on January 31, 2018, at the vessel's home port on Beaver Island, Michigan. Questions about the optional, vessel inspection must be submitted by e-mail to Mary Cook, BITA Executive Director, at bitrans@tds.net A CD with the vessel's as built plans can also be requested from Mary Cook, BITA Executive Director, at bitrans@tds.net Requests for a CD must be received at least ten (10) working days prior to the proposal due date. BITA is only responsible for mailing the CD to the address given and is not responsible for undeliverable mailings or mailings received late by firms requesting a CD.

Section IX

Evaluation

Proposals will be evaluated by BITA according to the evaluation criteria. The selection panel members are the BITA executive director, BIBCO president, BITA board member and two boat captains. After the initial scoring, the committee may choose to interview in person, by phone or by video conference the top proposers in a competitive range. The purpose of the interviews will be to clarify any information or questions the evaluation team may have concerning the proposal. Original scoring may be modified based on the results of the interview.

After the scoring is complete, the envelopes containing the Attachment 2 – Price Proposal Form will be opened and evaluated to determine which proposal represents the Best Value to BITA. Best Value is defined by federal guidance as a competitive procurement process in which the grant recipient reserves the right to select the most advantageous offer by evaluating and comparing factors in addition to cost or price such that a recipient may acquire technical superiority even it if must pay a higher price.

The evaluation criteria below are listed in order of importance. The agency reserves the right to award to other than the lowest price proposal and to the proposal representing the Best Value to the agency. The award will only be made to a responsive and responsible firm.

The following criteria are listed in order of importance.

1. **Qualifications and Experience**

    - Identification of staff and qualifications
    - Previous similar work
    - Familiarity with ferry operation and USCG requirements

2. **Quality of Preparation**

- Organization and clarity
- Completeness

3. **Understanding of Request and Technical Approach**

- Thoroughness of proposed solutions

Section X

Other Terms and Conditions

This will be a firm, fixed price contract. Final payment will not be made until all USCG inspections have been successfully completed including Sea Trials and BITA issues a written, Notice of Final Acceptance. BITA complies with all Federal and State civil rights, equal opportunity, ADA, and Title VI of the Civil Rights Act of 1964.

All applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over the project shall apply to the contract. BITA exempt from federal, state, and local taxes. The agency will not be responsible for any taxes levied on the respondent as a result of the contract resulting from this RFP. The agency reserves the right to cancel the contract with thirty (30) days written notice.

The offeror understands if awarded that progress payments can be arranged and final payment will be made when scope of the work is completed. Payments will be subject to allow for time to request payment and receipt from MDOT. Final payment will not be made until and all USCG inspections have been successfully completed including Sea Trials and BITA issues a written, Notice of Final Acceptance.

The selected firm is not entitled to time extensions or compensation for delays or inconvenience.

Oversight:

The selected firm must provide the agency and its authorized representatives safe access to the work at all times. The selected firm must provide the agency and its authorized representatives with the information and assistance necessary for them to make complete and detailed inspections. The selected firm is not entitled to a time extension or compensation for reasonable delays, inconvenience, or any other cause attributed to the agency's reasonable inspection of the work.

Withdrawal of Offers

Submissions may be withdrawn by written request prior to due date. Withdrawn proposals may be resubmitted, with or without modifications, up to the due date and time.

Bid Protests

All protests relating to this RFP, the selections and/or award, must be submitted in writing to BITA. Protests about specifications must be received ten (10) days before the proposal due date. Post award protests may be received by BITA at any time after proposal opening, but not later than five (5) working days after notification to all proposers of the contract award decision. Failure to timely submit a written protest will result in forfeiture of any protest right. The BITA will respond within ten (10) days of receiving the protest. The BITA is the final arbitrator on any question or dispute pertaining to proposals, proposal forms and awards. This "disputes" clause does not preclude consideration of questions of law in connection with decisions provided for above; provided that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

Proposal protests shall contain:

a) The name and address of the protester
b) Identification of the project
c) A statement of the grounds for the protest and any supporting documentation. The grounds for protest shall be fully supported to the extent feasible. Additional materials in support of an initial protest may be permitted only at the sole discretion of the BITA.
d) The relief desired of the BITA

BITA's decision shall be binding once approved by BITA's Board of Directors, whether the proposal or award was in accordance with the constitution, statutes, regulations and terms and conditions of the RFP.

Indemnification

The selected proposer shall indemnify, defend and hold harmless BITA, its officers, agents, and employees, the State of Michigan, the Michigan State Transportation Commission, MDOT and all officers, agents, employees thereof:

- From any and all claims by persons, firms, or corporations for labor, materials, supplies or services provided in connection with any contract awarded, which the offeror shall perform under the terms of this contract; and
- From any and all claims for injuries to, or death of, any and all persons, for loss of or damage to property, environmental damage, degradation response and cleanup costs, and attorney fees or other related costs arising out of, under, or by reasons of this

Agreement, including the design of the project, except claims resulting from the sole negligence or willful acts or omissions of said indemnities, its agents or employees.

Section XI

Attachments

Attachment 1 – Proposal Signature Page
Attachment 2 - Price Proposal Form
Attachment 3 - Federal Contract Clauses Materials and Supplies Less Than $150,000

Attachment 1

Proposal Signature Page

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DATE ISSUED: January 15, 2018

PROPOSALS DUE: February 28, 2018, 12 noon EST

SUBMIT the original proposal

plus five (5) copies to: Mary Cook, Executive Director
Beaver Island Transportation Authority
PO Box 426
Beaver Island, MI 49782

SUBMITTER READ AND COMPLETE

The undersigned certifies they are the authorized representative of their firm and they offer to furnish the services in strict accordance with the requirements of this solicitation including the scope of services, all submission terms, conditions, and requirements.

Signature:_____Date:_____

Printed Name: and Title:_____

Firm Name:_____

Federal Tax Identification Number:_____

Dunn and Bradstreet Number:_____

Attachment 2 -- Price Proposal Form

BEAVER ISLAND TRANSPORTATION AUTHORITY (BITA)
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Proposers must submit separate prices for:

Project A: Design package for renovations of passenger areas $_____

Project A: Oversee renovation of passenger areas project $_____

Project B: Inspection of bow thruster tunnel $_____

Project B: Design replacement bow thruster tunnel $_____

Project B: Oversee bow thruster project at dry dock $_____

Project C: Specifications for capstan and winch replacement $_____

Project D: Specifications for painting vessel in-phases $_____

Prices must include all services, labor, expenses, travel, overhead, material production and all other costs to complete the project. A separate, detailed, cost breakdown for each project must be attached to Attachment 2 – Price Proposal Form.

The Attachment 2 -- Price Proposal Form, must be submitted with the proposal in a separate, sealed envelope. Failure to submit the Price Proposal Form in a separate, sealed envelope will result in the immediate disqualification of the proposer as non-responsive. This is to prevent the possibility of the proposed prices influencing the scoring of the other evaluation criteria.

Signature: _____ Date: _____

Printed Name: and Title: _____

Firm Name: _____

Federal Tax Identification Number: _____

Dunn and Bradstreet Number: _____

Attachment 3

MATERIALS AND SUPPLIES
LESS THAN $150,000

GOVERNMENT WIDE DEBARMENT AND SUSPENSION (NON PROCUREMENT)

Applicability – all contracts more than $25,000.

The Recipient agrees to the following:

1. It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," http://https.www.sam.gov.proxy1.semalt.design if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at http://https.www.sam.gov,.proxy1.semalt.design if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200.
2. If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel.

CONTRACTOR / COMPANY NAME

NAME, TITLE AND SIGNATURE OF CONTRACTOR'S AUTHORIZED OFFICIAL:

TYPE OR PRINT NAME	TITLE

SIGNATURE	DATE

FLY AMERICA REQUIREMENTS

Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases ($3,500 or less, except for construction contracts over $2,000).

Contractor shall comply with 49 USC 40118 (the "Fly America" Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

CARGO PREFERENCE

Applicability – all contracts involving equipment, materials or commodities which may be transported by ocean vessels. These requirements do not apply to micro-purchases ($3,500 or less, except for construction contracts over $2,000).

Contractor shall:

a. Use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, material or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for US flag commercial vessels;
b. Furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the recipient (through contractor in the case of a subcontractor's bill-of-lading.);
c. Include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material or commodities by ocean vessel.

ENERGY CONSERVATION

Applicability – all contracts except micro-purchases ($3,500 or less, except for construction contracts over $2,000). Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

ACCESS TO RECORDS AND REPORTS

Applicability – as shown below. These requirements do not apply to micro-purchases ($3,500 or less, except for construction contracts over $2,000).

The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a) (1), which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at $150,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a sub grantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where a purchaser which is an FTA recipient or a sub grantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a) (1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract,

except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i) (11). FTA does not require the inclusion of these requirements in subcontracts.

FEDERAL CHANGES

Applicability – all contracts except micro-purchases ($3,500 or less, except for construction contracts over $2,000).

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

RECYCLED PRODUCTS

Applicability - all contracts for items designated by the EPA, when the purchaser or contractor procures $10,000 or more of one of these items during the current or previous fiscal year using Federal funds.

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability – all contracts except micro-purchases ($3,500 or less, except for construction contracts over $2,000).

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

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

Applicability – all contracts except micro-purchases ($3,500 or less, except for construction contracts over $2,000).

1. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.
2. If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the

Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n) (1) on contractor, to the extent the US Government deems appropriate.

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

TERMINATION

Applicability – all contracts more than $10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is $150,000.

a. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.
b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.
c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.
d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the 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 contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.
g. Termination for Default (Transportation Services) if contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any

extension or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the recipient resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work. Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:
    I. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
    II. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses. If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.

i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall
    I. Immediately discontinue all services affected (unless the notice directs otherwise), and
    II. Deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contact or otherwise and 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 contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

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

termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract closeout costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS

Applicability – when a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases ($3,500 or less, except for construction contracts over $2,000) The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

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

CIVIL RIGHTS REQUIREMENTS

Applicability – all contracts except micro-purchases ($3,500 or less, except for construction contracts over $2,000).

The following requirements apply to the underlying contract: The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,
b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d

et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,

c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer". (3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note,

d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of MAP-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third party contracts exceeding $250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 implement a DBE program approved by FTA, and 3 establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department

may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq., (2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under MAP-21 and previous legislation,

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, 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, which implements the Age Discrimination Act of 1975, and Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of "employer," (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37, (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27, (c) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35, (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36, (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194, and (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42

U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2,

i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following: 1) Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005,

j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.

k. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

DISADVANTAGED BUSINESS ENTERPRISE

Applicability – contracts over $3,500 awarded on the basis of a bid or proposal offering to use DBEs:

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, and 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 recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.

b. The contractor shall not discriminate on the basis of race, color, religion, 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 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 municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.

d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.

f. The contractor must promptly notify the recipient 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 recipient.

PROMPT PAYMENT

Applicability – all contracts except micro-purchases ($3,500 or less, except for construction contracts over $2,000).

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.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

Applicability – all contracts except micro-purchases ($3,500 or less, except for construction contracts over $2,000).

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