

TOMPKINS CONSOLIDATED AREA TRANSIT, INC.

Issue date: November 13, 2018

Invitation for Bid #851-2018

Subject: Fluids for Transit Bus Maintenance

Bid Opening: TIME: 3:00 PM.

DATE: December 6, 2018

**Submit to: TCAT, Inc.
737 Willow Ave
Ithaca, NY 14850**

Fluid requirements for maintaining a fleet of transit bus, support vehicles, and shop equipment for the Tompkins Consolidated Area Transit, Inc.

TCAT, Inc. reserves the right to accept any bid or any part or parts thereof, or to reject any and all bids.

Each bidder will be required to submit with their bid:

- Bid Form**
- Certificate of compliance with the TCAT Equal Employment Opportunity and DBE Program**
- Anti-Discrimination Form**
- Non-Collusion Certificate**
- Proposal sign off sheet**
- Lobbying Certification**
- Buy America Certification**
- Government Wide Debarment and Suspension**

Bids and all written inquiries relating to this bid shall be directed to TCAT's Purchasing Manager or designee, who will be the sole point of contact for this procurement. The Contracting Officer for this project is Raymond Lalley, (607) 277-9388 x. 540. Bidders are asked **not** to contact other Tompkins Consolidated Area Transit or Tompkins Consolidated Area Transit Staffs or Board Members in connection with this bid. There will be no oral changes to this bid. Any changes will be made by written documentation/addendum signed by TCAT's Purchasing Manager or designee.

TCAT Inc. hereby referred to as TCAT.

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GENERAL PROVISIONS

READ CAREFULLY

THESE PROVISIONS ARE A PART OF YOUR BID

Pursuant to the Invitation for Bids advertised in newspapers, specifications, bidding instructions and requirements on file with Tompkins Consolidated Area Transit (TCAT), the undersigned hereby proposes to TCAT, complete at the prices stated herein, the items or services hereinafter mentioned. The undersigned further warrants that this bid is genuine and not sham or collusive, or made in the interest or on behalf of any person, firm or corporation not therein solicited and that the bidder has not in any manner sought by collusion to secure any advantage over other bidders.

The product described in these specifications is to be procured with the assistance of a grant from the Federal Transit Administration (FTA). The successful bidder will be required to comply with all forms and conditions prescribed for third party Contracts in a grant Contract between the United States of America and Tompkins Consolidated Area Transit Incorporated. These grant Contract guidelines are available online at <https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance> .

EXAMINATION OF SPECIFICATIONS

In submitting this bid, the bidder agrees that:

- A. The bidder has carefully examined the specifications, and all provisions relating to the items to be furnished or the work to be done and understands the meaning, intent and requirements of, and agrees to the same;
- B. The bidder will enter into a written Contract and furnish the item(s) or complete the work in the time specified and in strict conformity with Tompkins Consolidated Area Transit, Inc. specifications shown herein, for the prices quoted.

CHANGES

PRE-AWARD

Prior to award of a contract, the general provisions, technical specifications, addenda, and all certification documents of this IFB constitute the potential contract. Any requests to change these must be submitted according to the Request for Approved Equal instructions of the IFB. All changes to this Invitation for Bid will be made by written addendum. There will be no oral changes. Oral communications are not binding.

TCAT reserves the right to change or cancel the bid opening date for its own convenience.

POST-AWARD

Upon contract award, the IFB, and all addenda constitute the contract. Changes to the contract shall be conducted as follows:

1. Changes by Contractor: Proposed changes by the Contractor must be submitted in writing to the TCAT Contract Administrator for prior approval. The request must state the reason, any possible change to the project schedule, and any impacts to the cost of the project.

TCAT shall respond in writing to the proposed change. All changes approved by TCAT shall be confirmed by written addendum or change order. Oral changes are not permitted or binding. The Contractor shall be liable for all costs resulting from, and/or for satisfactorily correcting any specification, change not properly ordered or approved by written modification to the Contract. Disagreements that cannot be resolved within negotiations shall be resolved in accordance with the contract dispute clause herein.

2. Changes by TCAT: In the event work, materials or equipment shall be required which are not specified, indicated or otherwise provided for herein, the Contractor shall, if ordered in writing by the General Manager, perform such work and furnish such materials or equipment at the Contractor's normal prices, less discounts ordinarily allowed to users of such materials or equipment or at regular labor charges less customary discount, or both.

If, any work, materials or equipment which is specified, indicated or otherwise provided for in the contract or in the specifications forming a part of the contract, is required to be omitted from, in or about the work; the Contractor shall, if ordered by the General Manager, omit the performance of such work and the furnishing of such materials or equipment. There shall be deducted from the amount to be paid to the Contractor an amount which the General Manager and the Contractor shall determine and mutually agree to be the reasonable value of such work, materials or equipment, and such determination and agreement shall be final and conclusive upon the Contractor.

It is understood, however, that the amount of work, materials or equipment required by the contract shall not, in accordance with above provisions referring to additions or omissions, be so increased or diminished as to substantially to alter the general character or extent of the contract.

DISPUTES

Except as otherwise provided in this contract, any dispute concerning a question of fact arising from contract which is not disposed by agreement shall be decided by the TCAT General Manager, who shall reduce its decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the TCAT General Manager shall be final and conclusive unless within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to FTA a written appeal. The decision of FTA's duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence in connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the TCAT General Manager's decision.

This clause does not preclude consideration of law questions in connection with decisions provided for in this clause, 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.

COMPLIANCE TO INDUSTRIAL SAFETY CODES

All equipment shall be in complete compliance with all requirements of the laws of the State of New York, City of Ithaca and Tompkins County, as well as all applicable Federal laws and regulations at date of delivery and/or installation at TCAT.

WORKMANSHIP

All bidders must conform to the final approved specifications. Workmanship throughout shall conform to the highest standard of commercially accepted practice for the class of work, and shall result in a neat and finished appearance.

CONSISTENCY OF PRODUCT

On procurements requiring multiple units or periodic delivery of a product, all units or product shall be identical unless otherwise stated in the technical specifications. Contractor will be required to correct or replace (at TCAT discretion) said units or product found inconsistent and compensates TCAT for any damages incurred.

OMISSIONS

No advantage shall be taken by the bidder and/or manufacturer in the omission of any parts or details, which make the equipment complete and ready for service, even though such parts or details are not mentioned in these specifications. All units or parts not herein specified shall be manufacturer's standard units.

BRAND NAMES

Whenever reference to a specific "Brand Name" is made in these specifications, it is to be considered illustrative but not restrictive, and is used to describe a component, which has been selected by TCAT as best meeting the specific minimal operational, design, performance, capacity, maintenance, quality and reliability criteria. Wherever a "Brand Name" appears, the words "or approved equal" are automatically inferred.

EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS

Apart from inconsistent requirements imposed by Federal statute or regulations, TCAT shall comply with the requirements of 49 U.S.C. § 5323 (h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

GEOGRAPHIC RESTRICTIONS

TCAT shall refrain from using state or local geographic preferences, except those expressly mandated or encouraged by Federal statute, and as permitted by FTA.

COMPONENT MATERIAL

The bidder shall assume responsibility for materials and accessories used in the manufacture thereof, whether the same are made by the manufacturer or purchased under Sub-Contract.

WARRANTY

Bidders shall outline in detail their warranty on the equipment offered, including the method of adjustment in cases of equipment, component or parts failure. Warranty shall also be stated for installation labor, materials and method of adjustment.

REPLACEMENT PARTS

Replacement parts and technical support for the specified equipment must be guaranteed by the manufacturer to be available for a ten-year period from the date of purchase. Manufacturer shall keep parts books and maintenance manuals up-to-date for that period.

DELIVERY AND ACCEPTANCE

Materials provided under this Contract, shall be delivered F.O.B. to Tompkins Consolidated Area Transit, 737 Willow Avenue, Ithaca, NY, 14850, unless otherwise specified, in first class condition, complete and ready for operation, and the Contractor shall assume all responsibility and risk of loss incident to said delivery.

Bidder shall state delivery on the Bid Form unless already specified, in which case shall be made within the time set forth. Delivery is part of the consideration and must be adhered to as specified.

Bidder will not be held liable for failure to make delivery because of strikes, construction of property, governmental regulations, acts of God or any other causes beyond his control provided a written extension of time be obtained from Tompkins Consolidated Area Transit.

Upon delivery TCAT will acknowledge receipt of said items or products. Delivery shall not constitute acceptance. Upon inspection and testing (if necessary) by TCAT, a determination will be made whether said items or products are in conformance with contract requirements. If found in conformance, TCAT shall immediately approve the Contractor's invoice for payment thereby constituting acceptance. Payment terms begin from this point. If the delivered items or products are found not in compliance, TCAT will immediately notify the Contractor and furnish all details of deficiencies. Contractor shall correct the deficiencies or supply new items or products (at the discretion of TCAT) and resubmit for inspection and testing (if necessary).

TAXES

Tompkins Consolidated Area Transit is exempt from the payment of Federal Excise Tax, so such tax must not be included in bid prices. Necessary exemption certificates will be furnished to the successful bidder. Bidder shall show applicable New York Sales Tax separately as part of the Contract price.

PRE-CONTRACTUAL EXPENSES

Pre-contractual expenses are defined as expenses incurred by bidder in: 1) Preparing the bid in response to this invitation; 2) Submission of said bid to TCAT; 3) Negotiating with TCAT any matter related to this bid; 4) Any other expenses incurred by bidder prior to date of award.

TCAT shall not, in any event, be liable for any pre-contractual expenses incurred by the bidder. Bidder shall not include any such expenses as part of the price as bid in response to this invitation.

AWARD TIME

Tompkins Consolidated Area Transit reserves the right to make awards within one hundred twenty (120) calendar days from the date bids are opened. Should award in whole or part be delayed beyond the period of one hundred twenty (120) days, such award shall be conditioned upon bidder's acceptance.

BID EVALUATION

THE BASIS OF AWARD WILL BE THE LOWEST RESPONSIVE, RESPONSIBLE BIDDER.

- A. Bids will be evaluated as to:
1. Compliance to the General Provisions.
 2. Compliance with the Technical Specifications.
 3. Compliance with both Federal and State requirements.
- B. The lowest responsive, responsible bidder will be determined by (A) above and a comparison of **the total base bid amount on the bid forms.**

The right is reserved to reject any bids, or parts thereof, or to reject any item or items therein, and to waive technicalities, and to award one or more Contracts on the bids submitted, either by award of all items to one bidder or by award of separate items or group of items to various bidders as the interests of TCAT may require.

Bidder's performance on previous contracts may be considered in evaluation of bids.

Conditional bids, or those that take material exception to the specifications, will be considered non-responsive and will be rejected.

If this solicitation results in a single responsive bid, TCAT reserves the right to request cost data from the bidder and proceed with the procurement as a negotiated procurement. If negotiations are successful, an award shall be made based upon the terms of the negotiations. If negotiations fail, TCAT reserves the right to terminate the procurement and resolicit.

Tompkins Consolidated Area Transit reserves the right to reject any or all bids, or to make exceptions to any of the specifications. Bidders may also be dropped from consideration for failure to fully comply with the specifications and requirements of this request. Conditional bids or those that take material exception to the specifications will be considered non-responsive and will be rejected.

- C. Award to Other Than the Lowest Bidder. In accordance with 49 U.S.C. § 5326(c), TCAT may award a third party contract to other than the lowest bidder in connection with a procurement, when such award furthers objectives consistent with the purposes of 49 U.S.C. chapter 53 and any implementing regulations, circulars, manuals, or other guidance FTA may issue.

PURCHASE ORDER

The issuance of any Purchase Order(s), by Tompkins Consolidated Area Transit, Inc. in response to submission of this bid and announcement of acceptance and award, shall in fact constitute a formal Contract incorporating all the terms, conditions and specifications contained herein.

SUBMISSION OF BIDS FORMS

Purchasing Department will furnish blanks and specifications for all bids and no bids will receive consideration unless made upon blanks so furnished. **BIDS MUST BE SUBMITTED AS FURNISHED AND DELIVERED TO TOMPKINS CONSOLIDATED AREA TRANSIT, PURCHASING DEPARTMENT PRIOR TO THE TIME SET FOR OPENING.**

PRICES

Mistakes may be crossed out and corrections typed or written with ink adjacent thereto, and must be initialed in ink by person signing the bid.

ALTERNATE BIDS

When the specifications do not include alternate bids, Tompkins Consolidated Area Transit reserves the right to reject statements or communications accompanying bids which serve to qualify bids.

VERIFY QUOTATIONS

Verify your bids before submission, as they cannot be withdrawn or corrected after being opened.

FIRM PRICES

Prices on Bids shall be firm prices not subject to escalation. In the event the specifications provide for escalation, the maximum limit shall be shown. If no limit is set to this escalation, the bid shall not be considered. In the event of a decline in market price(s), Tompkins Consolidated Area Transit shall receive the benefit of such decline.

PAYMENT TERMS

Unless otherwise stated in the specifications or bid forms, one hundred percent (100%) of the contract price for each unit or units of material or equipment furnished and delivered under these specifications will be paid to the Contractor within forty five (45) days after delivery to and acceptance by TCAT of the said unit or units ordered as herein provided and after the statements covering the said unit or units have been presented to TCAT by the Contractor.

The terms will be Net 45 from acceptance. Payment terms less than ten (10) days from acceptance will not be considered. **ADVANCED PAYMENT IS NOT ALLOWABLE**

INVOICES

All invoices for payment must be sent to the TCAT Accounting Department. The invoice must have the Purchase Order number clearly displayed in order to ensure timely payment. TCAT will not pay on packing slips, receiving documents, delivery documents, etc. Invoices must be submitted for payment.

SIGNATURE

The "Bid Forms," Certifications, Letters, and Documents must be signed with the firm name as indicated. A bid by a Corporation must be signed by a duly authorized officer, employee or agent.

ADDENDA

The effect of all addenda to the Contract documents shall be considered in the bid, and said addenda shall be made a part of the Contract documents and shall be returned with them. Failure to recognize in this bid any such addenda issued may render the bid non-responsive and result in its rejection. Acknowledgment of all addenda must be noted on the bid form in the space provided. All changes will be made by written addendum. Oral statements are not binding.

SPECIFICATIONS TO PREVAIL

The detailed requirements of the technical specifications shall supersede any requirements of these General Provisions which are in conflict therewith.

ADVERTISEMENTS, PRODUCT ENDORSEMENTS

Tompkins Consolidated Area Transit employees and agencies or organizations funded by Tompkins Consolidated Area Transit are prohibited from making endorsements, either implied or direct, of commercial products or services, unless permission to do so has been authorized in writing, by Tompkins Consolidated Area Transit.

REQUEST FOR APPROVED EQUALS

If the bidder's product conflicts with the specifications or if clarification or relief from any terms and conditions is desired, a request for approved equal must be submitted in accordance with the stated time frame below. TCAT shall respond to all requests as stated below. All requests and TCAT responses shall be provided to all bidders and "interested parties." All requests that contain proprietary or confidential information must be clearly designated. TCAT will not divulge such

information to other bidders or "interested parties." All requests must provide sufficient information in order for TCAT to make a decision based upon the initial submittals. TCAT shall make its determination based upon this information. Inadequate information will cause your request to be denied.

Requests for approved equal to these specifications must be received by Tompkins Consolidated Area Transit, in writing, not less than **twelve (12)** full days before date of scheduled bid opening. **Any request for an approved equal must be fully supported with technical data, test results, or other pertinent information as evidence that the substitute offered is equal to or better than specification requirement.** In addition, documentation for approved equals must be submitted in the same format (item for item) as the specifications.

Tompkins Consolidated Area Transit will reply to such request under the above in writing at least **seven (7)** full days before the date scheduled for the bid opening.

PROTEST PROCEDURES

Parties have the right to appeal a proposed solicitation or award of contract issued by TCAT pursuant to the following procedural steps:

Who May Protest or Appeal

Any parties showing a substantial economic interest in the award of a contract under a procurement who claims to be aggrieved in connection with the solicitation or proposed award of a contract under this procurement may protest to TCAT in accordance with the procedures set forth herein.

Timing of Protest

Protests based on the contents of a procurement shall be submitted no later than seven (7) business days prior to the date and time designated for submittal of bids or proposals. A protest of a proposed award or of an award shall be filed within five (5) business days after the award of a contract or notice of apparent successful proposer/bidder, whichever is sooner.

Contents of Protest

A protest shall be in writing and shall include: (1) the procurement title and/or number under which the protest is made; (2) the name, address, fax number and/or e-mail of the allegedly aggrieved party; (3) a detailed description of the specific grounds for the protest and all supporting documentation; and (4) the specific ruling or relief requested. The written protest shall be addressed to: TCAT, Attn: Purchasing Manager, 737 Willow Ave, Ithaca, NY 14850.

Determination of Non-Responsibility (FOR PUBLIC WORKS/CONSTRUCTION ONLY)

If TCAT determines a bidder to be not responsible, TCAT shall provide, in writing, the reasons for the determination. The bidder may appeal the determination within three (3) business days by presenting additional information to TCAT. TCAT shall consider the additional information before issuing its final determination. If the final determination affirms that the bidder is not responsible, TCAT may not execute a contract with any other bidder until two (2) business days after the bidder determined to be not responsible has received the final determination.

Protest Procedure

Upon receipt of a timely written protest, the Purchasing Manager, or his/her designee, will consider the protest in accordance with established procedures and promptly issue a written decision stating the reasons for the action taken and informing the allegedly aggrieved person of his/her right to appeal the decision to the General Manager. A copy of the decision shall be mailed by U.S. mail, faxed and/or emailed to the allegedly aggrieved.

Appeal Procedure

The decision made by the Purchasing Manager, or his/her designee, shall be final and conclusive unless appealed in writing to the General Manager within five (5) business days of receipt by the Purchasing Manager's, or his/her designee's decision. The General Manager, or his/her designee, will consider the appeal and promptly issue a written decision, which shall be final and conclusive. A copy of the decision shall be mailed by U.S. mail, faxed and/or emailed to the allegedly aggrieved.

Failure to Comply with Requirements

Failure to comply with these protests and appeal requirements will render a protest or an appeal untimely or inadequate and may result in rejection thereof by TCAT.

Exhaustion of Administrative Remedies

A Protester may not commence litigation prior to exhausting all administrative remedies. Failure to exhaust all administrative remedies shall constitute an absolute waiver of the Protester's right, if any, to commence litigation.

Protests at the FTA Level

When the award is funded in part by Federal Transit Administration (FTA) funds, the vendor may appeal to the FTA pursuant to FTA Regulations. Protests made to the FTA will be limited to TCAT's failure to have followed its protest procedures, TCAT's failure to review a complaint or protest, or violations of Federal law or regulation. Any protest to the FTA must be made in accordance with the following guidelines:

A. A protest must be filed with the FTA no later than five (5) business days after the protester learns or should have learned of an adverse decision by TCAT or other basis of appeal to FTA.

B. A protest to FTA must be filed in accordance with FTA Circular 4220.1F, as amended.

Notify FTA

Agency staff must notify FTA of protests involving FTA funded contracts in accordance with FTA Circular 4220.1F and must keep FTA informed about the status of the protest.

TCAT INSURANCE AND INDEMNIFICATION REQUIREMENTS (As Applicable)

The Successful Bidder Shall Maintain and Agree to the Following:

(Vendor) hereinafter referred to as Contractor shall indemnify, hold harmless and defend Tompkins Consolidated Area Transit ("TCAT"), City of Ithaca, Tompkins County, and Cornell University and their officers, employees, Board members, agents and elected officials from and against any and all claims and actions brought against TCAT, City of Ithaca, Tompkins County, and/or Cornell University and their officers, employees, Board members, agents and elected officials for injury or death to any person or persons or damage to property arising out of the performance of this contract by the Contractor, its employees, subcontractors or agents except all actions and claims arising solely out of the negligence of TCAT, City of Ithaca, Tompkins County, or Cornell University. The Contractor shall maintain the following minimum limits of insurance or as required by law, whichever is greater.

- A. **Workers' Compensation and New York Disability - Statutory Coverage Employer's Liability - Unlimited.**
- B. **The Contractor/Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability:**
 - 1) Commercial General Liability (CGL) with limits of Insurance of not less than \$1,000,000 each occurrence and \$2,000,000 Annual Aggregate.
 - a) If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project.
 - b) CGL coverage shall be written on ISO Occurrence form CG 00 01 1093 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury.
 - c) General Contractor, Owner and all other parties required of the General Contractor, shall be included as insureds on the CGL, using ISO Additional Insured Endorsement CG2010 (11/85) or CG2010 (04/13) AND CG2037 (04/13) or CG2037 (04/13) AND CG2038 (04/13) or an endorsement providing equivalent coverage to the additional insureds. This insurance for the additional insureds shall be as broad as the coverage provided for the named insured Contractor/Subcontractor. It shall apply as Primary and non-contributing Insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured.
 - d) Contractor/Subcontractor shall maintain CGL coverage for itself and all additional insureds for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for at least 3 years after completion of the Work.
- C. **Automobile Liability**
 - a) Business Auto Liability with limits of at least \$1,000,000 each accident.
 - b) Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.
 - c) General Contractor, Owner and all other parties required of the General Contractor, shall be included as insureds on the auto policy.

All insurance shall be written with insurance carriers licensed by the State of New York Insurance Department and have a Best's rating of A XI or better. Proof of insurance shall be provided on the TCAT Certificate of Insurance (copy attached) including the Contract Number. The accord Certificate of Insurance or insurance company certificate may be used for proof of Workers' Compensation and Disability. All Certificates shall contain a thirty- (30) day notice of cancellation, non-renewal or material changes to TCAT, City of Ithaca, Tompkins County and Cornell University. All Certificates must be signed by a licensed agent or authorized representative of the insurance company. Broker signature is not acceptable. Certificates of Insurance shall be submitted with the IFB/bid

REPORTING, RECORD RETENTION AND ACCESS

- A. Reports. At a minimum, the successful bidder agrees to provide TCAT and FTA those reports required by U.S. DOT's grant management rules and any other reports TCAT or the Federal Government may require.
- B. Record Retention. The successful bidder shall, during the course of the Project and for three years thereafter, maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to the Project as TCAT or the Federal Government may require for the Project.
- C. Access to Records. Upon request, the successful bidder shall permit the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the successful bidder and its contractors pertaining to the Project. In accordance with 49 U.S.C. § 5325(a), the successful bidder shall require each third party contractor whose contract award is not based on competitive bidding procedures as defined by the Secretary of Transportation to permit the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that third party contract and to audit the books, records, and accounts involving that third party contract as it affects the Project.

ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES

The successful bidder shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; 49 U.S.C. § 5301(d); and the following Federal regulations including any amendments thereto:

- 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 Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- C. U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 38;
- D. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- E. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- F. U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- G. U.S. Equal Employment Opportunity Commission, "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 the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- I. FTA Regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609.
- J. Any Implementing requirements FTA may issue.

METRIC SYSTEM

To the extent required by U.S. DOT or FTA, the successful bidder agrees to use the metric system of measurement in its Project activities, as may be required by 49 U.S.C. §§ 205a et seq.; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and other regulations, guidelines, and policies issued by U.S. DOT or FTA. To the extent practicable and feasible, the successful bidder to accept products and services with dimensions expressed in the metric system of measurement.

PRIVACY

To the extent that the successful bidder, any third party contractor at any tier, any subrecipient at any tier, or their employees administers any system of records on behalf of the Federal Government, the successful bidder agrees to comply with, and assures the compliance of each affected third party contractor at any tier, each affected subrecipient at any tier, and their employees with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552, (the Privacy Act). Specifically:

A. Consent of Federal Government.

The successful bidder agrees to obtain the express consent of the Federal Government before it or its third party contractors, subrecipients, or any of their employees operates a system of records on behalf of the Federal Government.

B. Acknowledgment of Civil and Criminal Penalties.

The successful bidder acknowledges that the requirements of the Privacy Act, including the civil and criminal penalties for violations of the Privacy Act apply to those individuals administering a system of records for the Federal Government under the Project, and that failure to comply with the Privacy Act may result in termination of the Contract.

SUBSTANCE ABUSE

Pursuant to the rules and regulations of the Department of Transportation, the successful bidder will be required to comply with all applicable drug and alcohol testing requirements, including the amendments to 49 C.F.R. parts 653-654.

As a condition of this contract, the following are the Contractor's Drug and Alcohol Testing Obligations:

- A. **Contractors Certification:** Contractor certifies that it will comply with all applicable drug and alcohol testing requirements provided by law, including, but not limited to, the drug and alcohol testing requirements set forth in the Department of Transportation's regulations.
- B. **Indemnification of TCAT:** Contractor agrees to indemnify, defend and hold harmless TCAT and TCAT's directors, employees and agents from and against any loss, damage, expense and liability that TCAT may incur as a result of contractor's failure to comply with any applicable drug and alcohol testing obligations.
- C. **Survival of TCAT's Indemnification Rights:** The rights and obligations contained "B" (Indemnification of TCAT) will survive any termination or expiration of this Agreement.
- D. **Failure to comply with Drug and Alcohol Testing Obligations May Result in Termination of Contract:** If, at any time during the period of this Agreement, Contractor fails to comply with any applicable drug and alcohol testing requirements, TCAT will consider such failure a material breach of this Agreement, and TCAT may terminate this Agreement immediately.

INDEPENDENT CONTRACTOR

It is understood and agreed that for this contract, the Successful Bidder will be an independent contractor, and that nothing herein contained is intended to create, or shall be construed as creating, any employment, partnership, joint venture, or principal-agent relationship or agreement between TCAT or TCAT and the Successful Bidder. Employees of the Successful Bidder are not, and shall not act as employees of TCAT or TCAT under this contract.

ASSIGNMENT

Any assignment of this agreement; or any rights of hypothecation thereof in any manner, in whole or in part, without the prior written consent of TCAT, shall be null and void.

NONWAIVER

Failure of TCAT to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights or remedies provided herein or by law or to properly notify Contractor in the event of breach, or the acceptance of payment for any goods hereunder, or review of design shall not release Contractor from any of the

warranties or obligations of this agreement and shall not be deemed a waiver of any right of TCAT to insist regardless when shipped, received, or accepted or as to any prior or subsequent default hereunder, nor shall any revision of this agreement by TCAT operate as a waiver of any of the terms hereof. A requirement that a Contractor's document to be submitted for or subject to "authorization to proceed," "approval," "acceptance," "review," "comment," or combinations of such words or words of like import shall mean, unless the context clearly indicates otherwise, that Contractor shall, before implementing the information in the document, submit the document, obtain resolution of any comments, and obtain written authorization from TCAT to proceed, and shall to mean that a complete check will be performed. Authorization to proceed shall not constitute acceptance or approval of design details, calculations, analyses, test methods, or materials developed or selected by Contractor and shall not relieve Contractor from full compliance with contractual obligations.

MINIMUM TECHNICAL SPECIFICATIONS

Maintenance Fluids

BID # 851-2018

TOMPKINS CONSOLIDATED AREA TRANSIT

***All Federal Express Packages (and other overnight packages) should be addressed to the shipping address.**

**** Email responses cannot be accepted.**

TCAT
Attn: Raymond Lalley
737 Willow Ave
Ithaca, NY 14850
Fax: (607) 277-9551
E-mail: rl1@tcatmail.com

Maintenance Fluids

TCAT has an on-going need for maintenance fluid to service our transit bus fleet, support automotive vehicles, and facility maintenance.

The requirement for the IFB is to provide pricing for fluids as specified within the bid form below. The lowest bidders award will be based on the lowest overall cost for all fluids, as we wish to work with a single provider.

Award will be pending further review, and mutually agreement to market index for pricing adjustments.

The pricing will be adjusted to agreed industry market index, such as Crude Oil index. Oil derived product pricing will be adjusted quarterly on the first day of the month of February, May, August, and November. Non-oil based fluids will be adjusted annually and must be approved by TCAT. The contract is for three years, with two optional one-year extensions.

Motor Oil 15W40

Minimum Specifications:

Must Meet the CES 20086 (API CJ4) Requirements or better

Must be a **Premium Tier 1** Product

Must be Cummins Approved and Endorsed

Must be approved for Extended Drain Intervals without voiding Cummins Warranty

Motor Oil 5W30

Minimum Specifications:

Must Meet DEXOS 2 Requirements

Must be approved for Extended Drain Intervals without voiding GM or Ford Warranty

Transmission Fluid

Minimum Specifications:

Must be TES 295 Registered and Approved for Warranty

Must be approved for Allison Warranty

Must be a synthetic base fluid

Must provide corrosion and foam resistance

Must allow for extended drain intervals and extended filter change intervals without voiding Allison Warranty

Coolant

Minimum Specifications:

Must meet Cummins CES 14439 Specification

Must be pre-diluted 50/50 Mixture

Must be free of amine, nitrite, nitrate, phosphate, heavy metals, and silicate

Must be extended life and be able to meet extended drain requirement without voiding Cummins Warranty

Must not require Extender or SCAs
Must provide corrosion protection on all materials
Must provide some type of cavitation or pitting protection

Delivery Requirement

Delivery shall be adequate to support operations of TCAT maintenance. A minimum of once per week to meet both demand, and not to increase on site inventory.

Federal Requirements

Federal terms and conditions are attached, "Materials and Supplies More than \$150,000" shall be reviewed and following requirement must be completed; Lobbying Certificate; Buy America Certification; and Government Wide Debarment and Suspension.

New York State Contract

We are part of region 3 within NYS, under Group 05700, award 23012 for bulk 15W-40 motor oil was not made for our region. However, we are an approved entity by the state to utilize NYS pricing on other products. OGS number will be provided post award.

SPECIAL NOTICE TO BIDDERS

REQUEST FOR APPROVED EQUALS

Requests for approved equal to these specifications must be received by Tompkins Consolidated Area Transit, in writing, by 3:00 PM by the date of listed within the schedule below. Any request for an approved equal must be fully supported with technical data, test results, or other pertinent information as evidence that the substitute offered is equal to or better than specification requirement. In addition, documentation for approved equals must be submitted in the same format (item for item) as the specifications. TCAT will address all requests and respond to all bidders by the time and date specified. Responses will be provided to all bidders in order to maximize competition. If the submittal of confidential information is necessary, please clearly indicate this with your submission.

CHANGES TO THE SPECIFICATION

All Changes to this specification will be authorized by TCAT by written addendum, **oral statements are not binding.**

SCHEDULE

All dates of current calendar year

Questions / Request for Approved Equals	November 26
Response to Questions / Addendums if required	November 29
Bid Opening	December 6
Notice of Intent to Award	December 7

CALENDAR DETAIL

Bid Opening

At this date and time, bids will be publicly opened and read. Bids arriving after this time or at another location than the specified location will be returned unopened.

Notice of Intent to Award

Approximately this date, a letter or email will be sent advising all bidders who is the apparent low bidder, and they're bid amount.

FACSIMILE TRANSMITTALS

Facsimile (Fax) transmittals will not be acceptable for this procurement. **All bids must be originals signed, sealed, and received by the TCAT Purchasing Department prior to the scheduled time and date.**

TOMPKINS CONSOLIDATED AREA TRANSIT

BID FORM

RETURN THIS FORM WITH YOUR BID
 RETAIN OTHER PAGES FOR YOUR RECORDS

Bid #: 801-2018
 FOR: Fluids for Transit Maintenance Operations

DESCRIPTION	SAE/MIN SPEC – INCLUDING SPECS AS LISTED UNDER MINIMUM TECHNICAL SPECS	STORAGE TYPE	ANNUAL USAGE	UNIT	COST PER UNIT	COST PER UNIT TIME ANNUAL USAGE
EXAMPLE (FLUID 1)	ABC123	EX	1500	GALLONS	\$5	\$7,500
TRANSMISSION FLUID (FOR ALLISON C3,C4)	TES-295 (SYNTHETIC BASE)	BULK	1479	QUARTS	\$	\$
MOTOR OIL	15W-40 / CES 20086 (API CK-4)	BULK	2907	GALLONS	\$	\$
MOTOR OIL	5W-30 / DEXOS GEN 2	CASE	752	QUARTS	\$	\$
ANTIFREEZE (DIESEL)	ASTM D6210	BULK	990	GALLONS	\$	\$
ANTIFREEZE (MULTI-VEHICLE)	ASTM D4985	CASE	200	GALLONS	\$	\$
GEAR OIL	70W90	BULK	786	QUARTS	\$	\$
HYDRAULIC FLUID	AW32	BULK	165	GALLONS	\$	\$
DEF	ISO 22241	TOTE	7920	GALLONS	\$	\$
SUM OF ALL THE LAST COLUMN FOR OVERALL PRICE						\$
PROPOSED OIL BASED INDEX FOR QUARTERLY ADJUSTMENT?						
PROPOSED INDEX FOR ANNUAL ADJUSTMENT OF NON-OIL DERIVED PRODUCTS?						

Description is used to define type of fluid.

SAE / Min Spec indicates the minimum specifications a fluid must meet as defined by these organizations

- ASTM is American Society for Testing and Materials
- CES is Cummins Engineering Standards
- Dexos is specification developed by General Motors
- ISO is International Organization for Standardization
- SAE is Society of Automotive Engineers

Annual Usage is based on last year's usage

Unit is both the measure of usage and measure to be used for quoting.

Storage Type is the current form of storage, pricing should reflect same storage type. (Alternate storage opportunity will be consider after selection.)

Read attached general provisions carefully. They are a part of your bid. The following addenda have been noted and attached here to:

FIRM	
SIGNATURE	
TYPE OR PRINT NAME	
TITLE	
STREET ADDRESS	
CITY,STATE ZIP	
PHONE #	
FAX #	
DATE	

INSTRUCTIONS TO PROPOSERS

1. Proposal packages shall be submitted in a sealed envelope marked with the name of the proposer and the words **"SEALED PROPOSAL – Maintenance Fluids 851-2018,"** marked on the outside of the envelope. Submit original, with all original signatures on required forms, along with 2 copies.
2. Proposer assumes the risk of any delay in the mail. Whether sent by mail or by personal delivery, proposer assumes responsibility for having the proposal deposited on time at the Finance Department. All proposals received after the designated time stated will not be considered and will be returned to the proposer unopened.
3. **Proposer shall execute, Certificate of Compliance with the TCAT Equal Opportunity and DBE Program Certification, Non-Collusive Bidding Certificate, Anti-Discrimination Clause, Insurance Certificate, Insurance Binder, and Proposal sign off sheet, which are enclosed. Any package lacking any of these may be considered incomplete and non-responsive.**
4. The proposal, as presented, shall remain valid for a period of ninety days from proposal due date.
5. No charge will be allowed for federal, state, municipal sales and excise taxes from which the County is exempt. Exemption certificates, if required, will be forwarded.
6. Any deviations from the specifications are to be so noted and fully explained. Deviations will be analyzed, and if deemed to be in the best interests of TCAT, specification requirements may be waived.
7. It shall be the responsibility of each proposer to call to the attention of TCAT any apparent discrepancy in the specifications or any question of interpretation thereof. Failure to do so constitutes acceptance as written.
8. TCAT reserves the right to "revise" or "amend" the proposal specifications prior to the proposal due date by "written addenda."
9. TCAT reserves the right to reject any or all proposals and to negotiate with any proposer.
10. Proposals will be evaluated on the basis of qualifications, experience, and cost. Contract will be awarded to the company who offers a proposal that appears to be in the best interests of TCAT.

The apparent silence of the specification as to any details or the omission of a detailed description concerning any point shall be interpreted as meaning that only the best commercial practices are to prevail and that only first quality materials and work will be accepted.
12. The successful proposer will be required to sign a Tompkins Consolidated Area Transit Contract; TCAT will not sign any company's service agreement, contract, or any other form of agreement. TCAT does reserve the right to extract certain language from a company's agreement and incorporate it into a TCAT contract if mutually agreeable to both parties.
13. The proposer shall submit any and all confidential materials in a separate envelope, sealed with the envelope clearly marked with the CONFIDENTIAL on the outside. All confidential materials submitted shall be so clearly marked on the top of each page as CONFIDENTIAL. All other materials submitted in response to the specifications and requirements contained herein shall be considered non-confidential.
14. The insurance certificate shall be filled out in its entirety and submitted as part of this package. Any proposals lacking the insurance certificate in the required amounts may be considered as incomplete and non-responsive.

CERTIFICATE OF COMPLIANCE WITH THE TCAT EQUAL EMPLOYMENT OPPORTUNITY AND DISADVANTAGED BUSINESS ENTERPRISES PROGRAM

I hereby certify that, in performing under contract(s) or purchase order(s) awarded by the Ithaca Tompkins Consolidated Area Transit (TCAT), I will comply with the provisions of the TCAT Equal Employment Opportunity program, and rules and regulations adopted pursuant thereto, Title VI of the Civil Rights Act of 1964, the New York Fair Employment Practices Act, and any other applicable federal and state laws and regulations relating to equal employment opportunity, including laws and regulations hereinafter enacted.

DBE subcontractor participants are listed below (if applicable):

Company Name and Address	Description of Work	Dollar Amount

I agree to make a good faith effort to meet the goals of this plan as part of my contractual obligations to the TCAT.

Date: _____ Firm: _____

By: _____

Signature: _____

Title: _____

ANTI-DISCRIMINATION CLAUSE

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

- (a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color or national origin, and will take affirmative action to insure that they are afforded equal employment opportunities without discrimination because of race, color, creed or national origin. Such action shall be taken with reference, but not be limited, to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
- (b) The contractor will send to each labor union or representative of workers with which he has or is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by the State Commissioner for Human Rights, advising such labor union or representative of the contractor's agreement under clauses (a) through (f) hereinafter called "non-discrimination clauses". If the contractor was directed to do so by the contracting agency as part of the bid or negotiation of this contract, the contractor shall request such labor union or representative to furnish him with a written statement that such labor union or representative either will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment and the terms and conditions of employment under this contract shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnishes such a statement, the contractor shall promptly notify the State Commission for Human Rights of such failure or refusal.
- (c) The contractor will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commission for Human Rights setting forth the substance of the provisions of clauses (a) and (b) and such provisions of the State's Laws against discrimination as the State Commission for Human Rights shall determine.
- (d) The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color or national origin.
- (e) The contractor will comply with the provisions of Sections 291-299 of the Executive Law and the Civil Rights Law, will furnish all information and reports deemed necessary by the State Commission for Human Rights under these non-discrimination clauses and such sections of the Executive Law, and will permit access to his books, records and accounts by the State Commission for Human Rights, the Attorney General and the Industrial Commissioner for purposes of investigation to ascertain compliance with these non-discrimination clauses and such sections of the Executive Law and Civil Rights Law.

(f) This contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the contracting agency upon the basis of a finding made by the State Commission for Human Rights that the Contractor may be declared ineligible for future contracts made by or on behalf of the State or a public authority or agency of the State, until he satisfies the State Commission for Human Rights that he has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commission for Human Rights after conciliation efforts by the Commission have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the Commission, notice thereof has been given to the Contractor and opportunity has been afforded him to be heard publicly before three members of the Commission. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law. The Contractor will include the provisions of clauses (a) through (f) in every subcontract or purchase order in such a manner that such provisions be performed within the State of New York. The Contractor will take such action in enforcing such provisions of such subcontract or purchase order as the contracting agency may direct, including sanctions or remedies for non-compliance. If the Contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor shall promptly so notify the Attorney General, requesting him to intervene and protect the interests of the State of New York.

GENERAL CONDITIONS ACCEPTED BY:

Firm: _____ By: _____

Date: _____ Title: _____

TOMPKINS CONSOLIDATED AREA TRANSIT
GENERAL CONDITIONS
NON-COLLUSION CERTIFICATE

(a) By submission of this bid/proposal, each bidder/proposer and each person signing on behalf of any bidder/proposer certifies, and in the case of a joint bid/proposal each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his/her/their knowledge and belief:

1. The prices in this bid/proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder/proposer or with any competitor;
2. Unless otherwise required by law, the prices that have been quoted in this package have not been knowingly disclosed by the bidder/proposer prior to opening, directly or indirectly, to any other bidder/proposer or to any competitor; and
3. No attempt has been made or will be made by the bidder/proposer to induce any other person, partnership, or corporation to submit or not to submit a bid/proposal for the purpose of restricting competition.

Name of Bidder/Proposer

Signature and Title of Signer

Date

NOTE:

A bid/proposal shall not be considered for award nor shall any award be made where (a) 1, 2 and 3 above have not been complied with; provided, however, that if in any case the bidder/proposer cannot make the foregoing certification, the bidder/proposer shall so state and shall furnish with the bid/proposal a signed statement that sets forth in detail the reason(s) therefore. Where (a) 1, 2, and 3 above have not been complied with, the bid/proposal shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the political subdivision, public department, agency or official thereof to which the bid/proposal is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder/proposer (a) has published price lists, rates or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid/proposed, does not constitute, without more, a disclosure within the meaning of subparagraph (a) 1.

PROPOSAL SIGN-OFF SHEET

All documents listed on this page must be included in the proposal package, or proposal may be rejected as incomplete and non-responsive. Please check off and sign for items listed and submit this sheet with your proposal:

	<u>INITIALS</u>	<u>DONE</u>
1. One Original of Proposal along with Two Copies	_____	_____
2. Bid From	_____	_____
3. DBE Certificate of Compliance	_____	_____
4. Anti-Discrimination Clause	_____	_____
5. Non-Collusive Bidding Certificate	_____	_____
6. Addenda (if issued) receipt acknowledged	_____	_____
7. Lobbying Certification	_____	_____
8. Buy America Certification	_____	_____
9. Government Wide Debarment and Suspension	_____	_____

COMPANY: _____ DATE: _____

NAME: _____ TITLE: _____

SIGNATURE: _____

STATEMENT OF NO PROPOSAL

TOMPKINS CONSOLIDATED AREA TRANSIT PURCHASING
737 Willow Avenue, Ithaca, NY 14850
(607) 277-9388 (Extension 540), Fax (607) 277-9551

TO OUR BIDDERS LIST SUPPLIERS: Failure to respond to this request for proposal may result in suspension of your firm's participation from the solicited item(s)/service. If your firm does not wish to propose a price for the solicited items/service, the "Statement of No Proposal" must be signed and returned to TCAT Purchasing office by the proposal due date in order to remain on the bidder's list.

STATEMENT OF NO PROPOSAL

NAME OF PROPOSAL: _____ OPENING DATE: _____

1. _____ Specifications too "tight", i.e. geared toward one (1) brand or manufacturer only
2. _____ Specifications are unclear. (Explain below)
3. _____ We are unable to meet specifications.
4. _____ Insufficient time to respond to the Request for Proposal.
5. _____ Our schedule would not permit us to perform within the required time.
6. _____ We do not offer this product or service.
7. _____ Remove us from your bidders list for this particular commodity or service.
8. _____ Please keep our name on your bidder's list for future reference.
9. _____ Other (specify below).

FURTHER REMARKS: (e.g. name change, address, phone or FAX change)

COMPANY: _____ DATE: _____

NAME: _____ TITLE: _____

SIGNATURE: _____

APPENDIX A - Standard Clauses for New York State Contracts

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$10,000, pursuant to Chapter 319 of the Laws of 1992. (\$20,000 for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money, it shall not be valid, effective or binding upon the State until it has been approved by the State. If the State agrees to give something other than money it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office.

NON-DISCRIMINATION REQUIREMENTS. In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of age, race, creed, color, sex, national origin, sex, disability, genetic predisposition or carrier status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors nor any person acting on their behalf shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor further agrees that there may be deducted from the amount payable to the

Contractor by the Authority under this Contract a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against or intimidated in violation of this provision, and that this Contract may be cancelled or terminated by the Authority, and all monies due or to become due hereunder may be forfeited for a second or a Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor ny subsequent violation of the terms or conditions of this provision. If this is a Contract for "building service work" as defined in agrees that neither it nor its sub-contractors nor any person acting on their behalf, shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. Contractor further agrees that there may be deducted from the amount payable to the Contractor by the Authority under this Contract a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against or intimidated in violation of this provision, and that this Contract may be cancelled or terminated by the Authority, and all monies due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this provision.

NON-COLLUSIVE BIDDING REQUIREMENT. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor

submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification of Contractor's behalf.

INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR 105.4)

SET-OFF RIGHTS. The Authority shall have all of its common law and statutory rights of set-off. These rights shall include, but not be limited to, the Authority's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the Authority with regard to this contract, any other contract with the Authority, including any Contract for a term commencing prior to the term of this Contract, plus any amounts due and owing to the Authority with regard to this Contract, any other Contract with the Authority, including any Contract for a term commencing prior to the term of this Contract, plus any amounts due and owing to the Authority for any other reason.

RECORD-KEEPING REQUIREMENT. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination as well as the Authority, and any State agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The Authority shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the contractor shall timely inform an appropriate official of the Authority, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the Authority's right to discovery in any pending or future litigation.

IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION:

(a) Federal Employer Identification Number and/or Federal Social Security Number.

All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal Social Security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers the payee on his invoice or standard New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification.

(1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purposes authorized by law.

(2) The personal is requested by the purchasing unit of the agency contracting to purchase the goods or services of lease the real or personal property covered by this contract or lease. The information maintained in New York State's Central Accounting System by the Director of State Accounts, Office of the State Comptroller, AESOB, Albany, New York 12236.

CONFLICTING TERMS: In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A shall control.

GOVERNING LAW. This contract shall be governed by the laws of the State of New York except, without regard to its conflicts of laws, rules, and by the laws of the United States.

LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article XI-A of the State Finance Law to the extent required by law.

SERVICE OF PROCESS. Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested.

Federal Clauses
Start on the next page

MATERIALS AND SUPPLIES MORE THAN \$150,000

LOBBYING

Applicability – construction/architectural and engineering/acquisition of rolling stock/professional service contract/operational service contract/turnkey contracts over \$150,000. 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 \$150,000 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.

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

CONTRACTOR / COMPANY NAME

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

TYPE OR PRINT NAME	TITLE
SIGNATURE	DATE

BUY AMERICA CERTIFICATION (STEEL AND MANUFACTURED PRODUCTS)

Applicability – construction contracts and acquisition of goods or rolling stock (valued at more than \$150,000) Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, as amended by MAP-21 stating 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 661.7, and include software, microcomputer equipment and small purchases (currently less than \$150,000) made with capital, operating or planning funds. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certificate of Compliance with Buy America Requirements.

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j) (1), and the applicable regulations in 49 CFR part 661.

CONTRACTOR / COMPANY NAME

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

TYPE OR PRINT NAME	TITLE
SIGNATURE	DATE

Only sign either Certificate of **Compliance** or Certificate of **Non-Compliance**.

Certificate of **Non-Compliance** with Buy America Steel or Manufactured Products Requirements The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. 661.7.

CONTRACTOR / COMPANY NAME

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

TYPE OR PRINT NAME	TITLE	
SIGNATURE		DATE

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, "Non-procurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)," 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," <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 <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

BREACHES AND DISPUTE RESOLUTION

Applicability – all contracts more than \$150,000.

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient's authorized representative. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient's CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729. Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved. Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage. Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the recipient and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State. Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the recipient 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.

CLEAN AIR

Applicability – all contracts more than \$150,000.

1. Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.
2. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

CLEAN WATER

Applicability – all contracts and Subcontracts more than \$150,000. Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

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 sub grantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a sub grantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a) (1), which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$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 complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the 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 contract 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 of 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 (2) 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, (3) 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". 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 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.