



**Midland Odessa Urban Transit District
Request for Proposal: MOUTD_2019_01
EZ-Rider Bus Transit Advertising Program
10300 Younger Road
Midland, Texas 79706**

The enclosed Request for Proposal for sales services for the **EZ-Rider Bus Transit Advertising Program** includes the following:

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If any of the above items are not included, you should immediately contact Kayleen Hamilton at EZ-Rider at the address above or call (432) 561-9990 and request the missing information.

NOTICE TO PROPOSERS

Sealed Request for Proposals addressed to the Midland Odessa Urban Transit District (MOUTD) will be received in the EZ-Rider Office, 10300 Younger Road, Midland, Texas 79706, until 3:00PM CST, **Friday, November 15, 2019**, at the EZ-Rider Office, 10300 Younger Road, Midland, Texas 79706, for furnishing MOUTD with the following items:

| <u>Item</u> | <u>Specification No.</u> |
|---|--------------------------|
| Outside Sales Services for the EZ-Rider Bus Transit Advertising Program | MOUTD_2019_01 |

Proposals will be accepted in person, by United States Mail, or by private courier service. Proposals will **not** be accepted via oral communication, telephone, electronic mail, telegraphic transmission, or facsimile transmission. Proposals may be withdrawn prior to the above scheduled time set for closing, but not after said closing.

Once submitted, proposals become the property of MOUTD, and as such, MOUTD reserves the right to use any ideas contained in the any response regardless of whether that company is selected. Submission of a proposal in response to this request, by any Proposer, shall indicate that the Proposer has accepted the conditions stated in the request, unless clearly and specifically noted in the Proposal submitted and confirmed in the agreement between MOUTD and the successful Proposer.

All potential Proposers should register for their proposal packet with Kayleen Hamilton at khamilton@ez-rider.org or by mail at 10300 Younger Road, Midland, Texas 79706. Registration shall require the name of the Proposer's company or individual, mailing address, email address, telephone number, and name and title of contact person. On receipt of registration, specifications and proposal forms will be provided by MOUTD via email.

Date: October 31, 2019
Project: EZ-Rider Bus Transit Advertising Program
Proposal Submission: Proposals will be received until 3:00 pm CST on November 15, 2019.
 All proposals must be clearly labeled "EZ-Rider Bus Transit Advertising Program"
Project Manager: Name: Kayleen Hamilton
 Email: khamilton@ez-rider.org phone: (432) 561-9990

REQUEST FOR PROPOSALS

I. Proposed Solicitation and Award Schedule

MOUTD proposes the following solicitation and award schedule:

| EVENT | DATE |
|---|-------------------|
| Issuance of RFP | October 31, 2019 |
| Deadline for RFP Questions and Requests for Clarification | October 11, 2019 |
| MOUTD Responses to Questions and Requests for Clarification Due | November 13, 2019 |
| Proposals Due | November 15, 2019 |
| Selection and Award | December 3, 2019 |

II. General Conditions

1. Proposals received after the date and time specified for submission shall be returned unopened and will be considered void and unacceptable. MOUTD or EZ-Rider is not responsible for lateness of mail carrier etc.
2. Proposals may only be altered or amended as prescribed by state law. Alterations made before closing must be initiated by the proposer guaranteeing authenticity. Proposals may not be withdrawn after proposal closing date and proposers so agrees upon submittal of their proposal.
3. Proposals will be received and publicly acknowledged at the location, date, and time identified below. Proposers, their representatives, and interested parties may be present. The proposals received will be publicly opened but not read aloud. Proposals shall remain valid for a period of ninety (90) days from the date and time identified below.
4. By submitting a proposal, the proposer certifies that he/she/they have fully read and understand the "Request for Proposal" and has full knowledge of the scope, quantity, and quality of the services to be furnished.

5. The proposer shall furnish any additional information as MOUTD may require. MOUTD reserves the right to make investigation of the qualifications of the proposer as it deems appropriate.
6. MOUTD is not be liable for any direct or indirect costs incurred by any person or firm responding to this RFP.
7. No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract.
8. Proposers are advised that all MOUTD contracts are subject to any necessary legal requirements.
9. Any proposal which does not contain all of the information requested in this RFP will be considered as incomplete and may be rejected by MOUTD.
10. This RFP does not commit MOUTD to enter into, procure, or award an agreement for the scope of work described herein.

III. **Required Proposal Contents and Format**

All proposers are expected to examine the specifications and all instructions in this RFP. Failure to meet the requirements of the RFP will result in disqualification of the proposal. Each Proposer must furnish the information required. Proposal must include evidence that the agent signing the proposal has authority to act on the Proposer's behalf. All erasures and/or other changes of entries made by the Proposer must be initialed by the authorized signatory.

Proposal packets should be single-sided and no more than 20 pages in length. Cover pages do not count toward the page limitation. Proposer should submit a total of three (3) complete and identical copies of its entire proposal. An *original* signature by an authorized officer of Proposer must appear on the certification forms attached. **The copy of the Proposer's proposal bearing an original signature should contain the mark "original" on the front cover of the proposal.**

Required contents of the proposal are as follows:

1. Cover letter on company letterhead
 - a. Brief introduction of firm
 - b. Contents of proposal
 - c. Contact person – including name, e-mail address, and telephone – with whom MOUTD will exclusively correspond during the RFP process
 - d. Signature of the authorized agent
2. Company profile
 - a. The firm's name, business address, and telephone number as well as a brief description of the firm's presence nationally and locally
 - b. Date of establishment, type of organization and local organizational structure
 - c. A discussion of the firm's advertising capabilities and resources
 - d. Computer systems and software used, in-house or outsourced printing, staff size, local and national expertise

- e. A brief history of the firm, describing experience, size, headquarters location, key principals/officers and length of time in business
- 3. Payment
 - a. Payment proposal/revenue share for MOUTD
 - b. Minimum guaranteed payment to MOUTD for each year of the proposed contract
 - c. Rate (percentage or fixed) of sales revenue to be paid to MOUTD specifying the basis on which the percentage rate will be applied (gross or net revenue and what expenses are deducted to determine net revenue)
 - d. Method of payment to be used (i.e., monthly, quarterly, semiannually or annually)
 - e. Compensation structures must be outlined for MOUTD with corresponding rationale. Proposers must submit a table showing gross revenue, expenses, and their calculation of the net revenue broken down by advertising type anticipated to be paid to MOUTD during the first three years, plus two optional one-year timeframes of the agreement
- 4. Client References
 - a. Provide a list of at least (3) past or current clients as references, including the name, telephone number, and e-mail address of a contact person who familiar with the work of the firm
 - b. Indicate the dates and length of time the firm served each client, the size of the project(s) executed, and the methods used by the firm to increase revenues for the client
 - c. Examples of artwork, campaign materials, etc, for each client should be submitted
- 5. Litigation
 - a. List and briefly describe the circumstances and status of any litigation involving the firm that was initiated from January 1, 2014 to the present.
- 6. Statement of Qualification
 - a. Provide a statement regarding why the firm would be most qualified to handle this account, including past experience in serving transit companies and other public agencies.
- 7. Statement of Financial Stability and Solvency
 - a. Provide a statement of financial condition of the company including at least one bank reference and two supplier references.
- 8. Signed Certifications
 - a. Consolidated Certification Form (TxDOT Form PTN-130)
 - b. FTA Certifications and Assurances

IV. Confidential or Proprietary Information

MOUTD shall provide the release of all public information concerning the project, including selection announcements and contract awards. Those desiring to release information to the public must receive prior written approval from an authorized representative of MOUTD.

** If you consider any portion of your proposal to be confidential and/or proprietary and that disclosure of its contents to competitors would cause you substantial competitive harm, you must clearly identify those portions of your proposal by putting the term "CONFIDENTIAL OR PROPRIETARY" in bold letters on the applicable page(s).

MOUTD will attempt to protect the identified information from disclosure to the extent possible under the law. You will be given notice of any request for disclosure of the identified information and given the opportunity to support your claim of confidentiality before the Texas Attorney General.

V. Evaluation Criteria

Following the RFP closing date, all proposals will be reviewed in order to determine whether the proposals are responsive to the RFP. Proposals determined not to be responsive based on required proposal contents and format will be disqualified.

Proposals determined to be responsive will be evaluated by MOUTD based on the criteria set forth herein:

1. Qualifications of Proposer, including Experience and Past Performance
2. Key Personnel
3. Client References
4. Value (cost, rates, services)

No other evaluation criteria will be used. Proposals will not be evaluated against other offers.

VI. No Geographic Preference

MOUTD shall conduct its evaluation of proposals in such a way as to foster full and open competition. No geographical preference will be applied in the evaluation of proposals.

VII. Contract Award

- a. Basis of Contract Award
 - a. MOUTD reserves the right, at its sole discretion, to accept the proposal most advantageous to MOUTD, taking into consideration all substantive evaluation criteria outlined in this RFP. No other criteria will be used in the evaluation.
 - b. MOUTD reserves the right to require oral presentations by senior management of the proposing company who have the ability to fully answer all questions regarding this proposal.
 - c. MOUTD reserves the right to negotiate with any or all Proposers regarding their proposal. This shall be at no cost to MOUTD.
 - d. The final determination shall be in writing and shall be determined at the sole discretion of the MOUTD staff. The contract file will contain the basis on which the award is made.
 - e. However, to the extent permitted by law, MOUTD reserves the right to accept or reject any and all proposals and may waive any informality or technicality in any proposal received, if MOUTD staff determines it would serve the best interests of the agency. The successful Proposer to whom an award is made will be required to enter into an agreement with MOUTD. The final agreement will incorporate changes or revisions necessitated by the RFP process and negotiations, and will be subject to review and approval of MOUTD's legal counsel. The selected proposer will be responsible for meeting all requirements as specified in the final agreement, including, but not limited to, advertising policy compliance, installation and maintenance of advertising, recordkeeping, insurance coverage, and compliance with local, state, and federal laws and other legal requirements.

b. Term of Contract

In the interest of maintaining continued services, reducing administrative burdens in procuring, negotiating, or administering contracts, and potentially obtaining a volume or term discount, MOUTD intends to award a contract for advertising program marketing and contract management services for three (3) years with the option of one-year extensions up to two (2) years. The total term of the contract plus extensions will not exceed five (5) years.

VIII. Protest Procedures

In the event an offeror believes certain actions or inactions on the part of MOUTD have been prejudicial to its position relative to the proposal, a protest may be filed. According to FTA Circular 4220.1E § 7(pars. k and l), "Grantees alone will be responsible in accordance with good administrative practice and sound business judgment for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the grantee of any contractual responsibility under its contracts. FTA will not substitute its judgment for that of the grantee or subgrantee, unless the matter is primarily a Federal concern. Violations of the law will be referred to the local, State, or Federal authority having proper jurisdiction." In all instances, MOUTD shall disclose information regarding protests to FTA via memorandum.

Offerors can lodge written protests as a remedy to correct a perceived wrong that may have occurred during the procurement process. MOUTD will accept and review the protest with the understanding that the integrity of the procurement process may be at stake.

a. Submitting a Protest

MOUTD will use the following procedures to resolve disputes in the attempt to avoid FTA (Federal Transit Administration) involvement or litigation. All protests lodged by potential or actual bidders must be made in writing and contain the following information:

- ◆ Name, address, and telephone number of the protester.
- ◆ Identification of the solicitation or contract number and title.
- ◆ A detailed statement of the protest's legal and factual grounds, including copies of relevant documents.
- ◆ Identification of the issue(s) to be resolved and statement of what relief is requested.
- ◆ Argument and authorities in support of the protest.
- ◆ A statement that copies of the protest have been mailed or delivered to all interested parties in the Request for Proposal process. In the case of Requests for Proposals, the MOUTD Procurement Officer shall direct the protester to mail or deliver the protest to relevant parties.

Mail or hand deliver the protest to:
Procurement Officer
Midland Odessa Urban Transit District
PO Box 60808
Midland, TX 79711

Faxed or e-mailed protests will not be accepted.

The MOUTD Procurement Officer will respond, in written detail, with counterclaims to each substantive issue raised in the protest. The Procurement Officer will also perform the following analysis:

- ◆ Price Analysis or Cost Analysis for each claim.
- ◆ Technical Analysis to determine the validity of the claim(s) and determine the appropriate response(s).
- ◆ Legal Analysis to consider all the factors available after the price, cost and technical analyses have been conducted to determine the legal positions of the contractor, MOUTD, and FTA.

b. Final Authority

The MOUTD General Manager has the authority to render the final determination regarding the protest. Any determination rendered by MOUTD will be final. The Federal Transit Administration will entertain appeals only in cases stated below in paragraph 18.9.

c. Pre-Solicitation Phase Protest

A Pre-Solicitation Phase Protest must be received in writing by the MOUTD Procurement Department a minimum of five (5) full work days prior to the proposal due date. If the written protest is not received in the time specified, the award may be made following normal procedures, unless the Procurement Officer, upon investigation, determines that remedial action is required on the grounds of fraud, gross abuse of the procurement process, or otherwise indicates substantial prejudice to the integrity of the procurement system, and said action should be taken. Within three (3) work days from the time the protest is received, the MOUTD Procurement Officer will notify all that a protest has been lodged and the nature of the protest. The Procurement Officer will respond to the protest in writing within five (5) working days from the time the protest was received. If the Procurement Officer decides to withhold the award pending the resolution of the protest, the Procurement Officer may request a time extension for award acceptance from those whose proposal might become eligible for award. This extension for award acceptance must be with the consent of sureties, if any, in order to avoid to the need to re-advertise.

MOUTD will not make an award prior to five (5) working days after the protest is resolved, or if the protest has been filed with FTA during the protest negotiation period, unless MOUTD determines that:

- ◆ The items or services to be procured are urgently required;
- ◆ Delivery or performance will be unduly delayed by failure to make the award promptly; or
- ◆ Failure to make the award will otherwise cause undue harm to MOUTD or the Federal Government.

The Procurement Officer will document this action and give written notice of the decision to proceed with the award to the Protester, and to other parties where deemed necessary.

d. Pre-Award Protest

Protests may be lodged after the Close of Request for Proposal deadline and prior to Notice of Award. Within three (3) work days from the time the protest is received, the MOUTD Procurement Officer will notify all offerors that a protest has been lodged and the nature of the protest. The Procurement Officer will respond to the protest in writing within five (5) working days from the time the protest was received. If the Procurement Officer decides to withhold the award pending the resolution of the protest, the Procurement Officer may request a time extension for award acceptance from those offerors whose proposals might become eligible for award. This extension for award acceptance must be with the consent of sureties, if any, in order to avoid the need to re-advertise.

MOUTD will not make an award prior to five (5) working days after the protest is resolved, or if the protest has been filed with FTA during the protest negotiation process, unless MOUTD determines that:

- ◆ The items or services to be procured are urgently required;
- ◆ Delivery or performance will be unduly delayed by failure to make the award promptly; or
- ◆ Failure to make the award will otherwise cause undue harm to MOUTD or the Federal Government.

The Procurement Officer will document this action and give written notice of the decision to proceed with the award to the Protester, and to other parties where deemed necessary.

e. Post-Award Protest

The MOUTD Procurement Officer will receive protests in writing within three (3) working days after the Notice of Award and letters of notification should have been received by offerors. Upon receipt of a protest, the Procurement Officer shall notify the offeror awarded the contract. The Procurement Officer will render a determination to proceed with the contract or suspend the project until the protest is resolved. The Procurement Officer will respond to the protest in writing within five (5) working days after receipt of the protest.

f. Appeals

The MOUTD Procurement Officer has the authority to settle any dispute and resolve the protest. The Procurement Officer may solicit written responses regarding the protest from other parties. If this course of action does not result in a satisfactory resolution, the Protester may appeal in writing to the MOUTD General Manager within three (3) working days after the Procurement Officer issues a final decision. The General Manager will issue a decision within five (5) working days after receipt of the appeal. MOUTD may elect to involve legal counsel or arbitration and mediation consultants to resolve the issue(s). The Protester has the right to appeal in writing to the Federal Transit Administration (FTA) if:

- ◆ The Protester has exhausted all administrative remedies with MOUTD, and
- ◆ MOUTD has failed to follow its protest procedures or failed to review a complaint or protest.

The Protester's appeal must be received by the FTA Region VI Office within five (5) working days of the date the Protester knew or should have known of the violation.

Office of Operations and Program Management
U.S. Department of Transportation
Federal Transit Administration Region VI
819 Taylor Street, Suite 8A36
FT. Worth, Texas 76102
Phone: (817) 978-0550

When the Protester sends an appeal to FTA, the Protester must also send copy of the appeal to the MOUTD Procurement Officer within the same timeframe. In the event of a protest, the Procurement Officer will contact FTA to check whether or not an appeal has been made.

Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of state or local authorities.

In the event that data becomes available that was not previously known, or there has been an error of law or regulation, MOUTD will grant an allowance for request for reconsideration.

IX. Contact

Any questions or request for clarifications concerning the technical aspects of this request for proposal and/or questions concerning the preparation of submittals prior to the proposal acknowledgment date should be directed to: Kayleen Hamilton, (432) 561-9990, or khamilton@ez-rider.org.

NOTE: In order to ensure a fair and objective evaluation, all questions related to this request for proposal shall be addressed to the individuals identified above. Contact with any MOUTD Board Member, EZ-Rider employee or official is prohibited without prior written consent. Proposers contacting any other individuals without prior written consent risk elimination of their proposal from further consideration.

EXHIBIT A

SPECIFICATIONS AND CONDITIONS

I. General Information and Purpose

The Midland Odessa Urban Transit District (MOUSD) was established in 2013 to administer public transit services for the Midland-Odessa area. MOUSD operates the EZ-Rider transit system in the urbanized areas of the cities of Odessa and Midland, Texas. The EZ-Rider transit system services approximately 330,000 passengers annually and is operated out of offices and maintenance facilities located at 10300 Younger Rd, Midland, Texas 79706. This facility provides (administrative offices, a maintenance area, equipment storage, and a vehicle fueling area, as well as a connecting terminal where passengers may purchase tickets.) The system is comprised of six (6) fixed routes in each city, complimentary paratransit service, and an intercity commuter route between the two cities of Odessa and Midland, Texas, of which are detailed on the EZ-Rider website at <http://www.ez-rider.org/home.html>. EZ-Rider maintains a fleet of transit coaches and cutaway buses to facilitate all of its services. In addition, EZ-Rider also maintains benches and shelters at numerous bus stops in each city.

Displayed advertisements on EZ-Rider buses, benches, and shelters provide an opportunity for businesses and organizations to reach audiences in the transit system service areas and generate revenue for the system. MOUSD currently manages and administers EZ-Rider's Bus Transit Advertising Program ("Advertising Program") in-house. The program includes the sale of advertisements on the interior and exterior of its transit coaches, the exterior of its cutaway buses, and on shelters. New bus stop benches were recently ordered that will accommodate additional advertising venues. The Advertising Program and rates were last updated in January 2017.

The purpose of this Request for Proposal ("RFP") is to solicit outside sales services for the EZ-Rider Advertising Program. Proposals should include services to periodically update the EZ-Rider Advertising Program marketing materials and rates, market the advertising program, and contract management. (There is also a desire to preserve EZ-Rider's system identity. MOUSD requires that proposals consider ways to preserve existing logos, particularly on the exterior of the vehicles.)

II. Scope of Services

Proposals will be evaluated based on the Proposer's distinctive plan for performing work related to this project. Therefore, it is extremely important that the Proposer present a detailed written narrative which demonstrates the method of or manner in which the Proposer proposes to satisfy the requirements herein. The proposal should clearly describe the scope of services to be provided and should describe the approach to completing the scope of services, including a schedule which includes a breakdown of each task, the time and resources required to complete such task throughout each stage of the contract, and a proposed contract term/duration.

Proposers will be responsible for duties that include, but are not limited to the following:

1. Solicit and procure advertisers for available advertising space on MOUSD transit assets.
2. Produce all sales pieces (rate cards, etc.).
3. Be responsible for sales and marketing for available transit assets, except as directed by MOUSD, which reserves the right to use a set amount of advertising space for its exclusive use for any purpose as deemed to be in the best interest of the agency.
4. Provide account management, including billings and collections.

5. Production, supply, installation and maintenance of advertisements. All advertising materials displayed on MOUTD's available assets shall be of a quality so as to maintain an attractive appearance and to withstand the elements and general asset maintenance (e.g. cleaning).
6. The installation and future removal of bus interior and exterior ads shall be performed on-site at an indoor facility area at the MOUTD Maintenance Facility, 10300 Younger Road, Midland, Texas 79706. For bus wraps, MOUTD will run the vehicle through the bus wash and remove all lights and fixtures. The selected vendor is responsible for any additional prep required for installation or removal. Vendor to schedule installation and removal of ads in advance with MOUTD.
7. Specific to exterior bus wraps: Windows to use 50/50 perforated vinyl suitable for vehicle windows. On the curbside the first window after the entrance door to be left clear of any vinyl.
8. Advertisements shall comply with MOUTD advertising policy.
9. Restoration of artwork, production and painting of vehicles and other assets used in the advertising program at the end of each ad campaign contract, including placement of reflective vinyl of fleet numbers and yield signs over any vinyl wrap should they cover this information.
10. Preparation of reports pertaining to the provision of the service on a monthly basis, including copies of all contracts with advertisers.
11. Other work as may be necessary to comply with the requirements contained in the agreement.
12. Proposer must furnish all equipment, labor, supervision, and all required materials and services. MOUTD shall not incur any costs relating to the services identified above.
13. Geographic advertising sales will not be permitted. The fleet is assigned based on a variety of considerations and assigning vehicles to keep certain signs in certain parts of the service area will not be permitted.

III. Compliance Requirements

The successful proposer will be required to abide by all applicable local, state, and federal laws related to projects that utilize public funds. Each proposal submittal shall include a signed Consolidated Certification Form (TxDOT Form PTN-130) and FTA Certifications and Assurances form. The successful proposer shall make available to MOUTD staff such records as are necessary for appropriate contract oversight.

IV. Disadvantaged Business Enterprise

The contract for outside advertising services shall be subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. MOUTD's overall goal for DBE participation is 5.48% for the calendar years 2019, 2020, and 2021. The goal on this contract has been set at 5%.

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

The successful proposer will be required to abide by the provisions set forth in Exhibit F: Disadvantaged Business Enterprise Provisions.

V. Insurance

Proposer agrees to procure and maintain professional liability insurance with an insurance company in good standing, naming MOUTD as an additional insured, insuring payment of damages arising out of the performance of professional services for MOUTD, in proposer's capacity as a service provider if such damages are caused by error, omission, or negligent act of the insured of any person of the organization whom the insured is legally liable and responsible. Such insurance cannot be canceled until thirty (30) days after MOUTD has received notice of the insured's intention to cancel.

The minimum amount of liability insurance to be maintained by the Proposer during the life of the contract shall be as follows:

- I. Comprehensive General Liability – for bodily injury and property damage – including any liability normally covered by a general liability policy with limits of not less than \$1,000,000 per occurrence and \$1,000,000 in the annual aggregate.
- II. Professional Liability – in minimum amounts of \$1,000,000 per occurrence and \$1,000,000 aggregate.

EXHIBIT B QUALIFICATIONS OF PROPOSER

The qualifications of the Proposer, as well as the expertise of proposed personnel, will be considered in the evaluation process. Therefore, the Proposer is advised to submit any information which documents successful and reliable experience in past performances, which are considered identical or similar to the Scope of Services listed herein.

The Proposer should:

- I.** Provide a brief narrative describing the history of the Proposer's Company. Identify the number of employees in the Company, the ownership, the number of years in business, and if the company has ever filed bankruptcy, been in default, or if there are any pending liens, claims or lawsuits against the Proposer's Company.
 - a. The proposal should include all responsible partners, managers, and staff members who will work on the project, the organizational structure of those team members and the anticipated percentage (%) of their time that will be allocated to this project;
 - b. The project's primary contact person;
 - c. The relationship, roles and responsibilities of each team member;
 - d. The Proposer's client management philosophy, process and quality assurance practices; and
 - e. The sub-tier vendors, if any, that will be providing services and their staff profiles.
 - f. If the proposer is a joint venture—the persons or businesses of the joint venture; and the sub tiered vendors, if any that will be providing services and their staff profiles.

- II.** Describe if the Proposer has had a contract terminated for default in the last five (5) years. Indicate if no such termination for default has been experienced by the Proposer in the past five (5) years.
 - a. Termination for default is defined as notice to stop performance due to the Proposer's nonperformance or poor performance or if the issue or performance was either: (a) not litigated due to inaction on the part of the Proposer; or (b) litigated and such litigation determined that the Proposer was in fault.
 - b. Submit full details of their terms for default including the other parties' name, address, and telephone number. Present the Proposer's position on the matter. MOUTD will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of past experience.

- III.** The proposal should describe the Proposer's previous experience on recent projects of a similar type of work, scope, and magnitude. Sufficient detail for five (5) projects, (at least two [2] of which were undertaken in the past 36 months is desirable) including:
 - a. Project name;
 - b. Client's name;
 - c. Special features, accomplishments, or problems;
 - d. Specific services provided;
 - e. Dates of services;
 - f. Description of compensation structure and amount of compensation received by the consultant for services provided;

- IV.** The proposal should describe the team's previous experience in providing assistance to other entities, private and public, in developing programs.

- V.** In addition, list all contracts that the Proposer may have had during the last three years not included above; list contract period of performance, contact persons, telephone numbers, e-mail address and services provided. The Proposer must grant permission to MOUTD to contact the references.

EXHIBIT C FEDERAL REQUIREMENTS

(a) NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

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

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

(b) PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENT

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

The Contractor acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a Contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. 5307, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5307 (n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

(c) ACCESS TO THIRD PARTY CONTRACT RECORDS

The following access to records requirements apply to this Contract:

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

5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

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

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

(d) FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (*Form FTA MA(5) dated October 1, 1999*) between the AGENCY and the FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

(e) TERMINATION

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

If this contract is terminated while the CONTRACTOR has possession of RPTA goods, the CONTRACTOR shall, upon direction of the RPTA, protect and preserve the goods until surrendered to RPTA or its agent. The CONTRACTOR and RPTA shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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

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

Opportunity to Cure (General Provision) The RPTA in its sole discretion may, in the case of a termination for breach or default, allow the CONTRACTOR [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

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

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

(f) CIVIL RIGHTS

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying Contract:

1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of 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, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

(g) DISADVANTAGED BUSINESS ENTERPRISE

A. Policy. The AGENCY has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The AGENCY has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the AGENCY has signed an assurance that it will comply with 49 CFR Part 26. It is the policy of the AGENCY to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted Contracts.

B. Contractor and Subcontractor Obligation. Contractor and/or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted Contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the AGENCY deems appropriate.

(h) INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS

The preceding provisions include, in part, certain standard terms and conditions required by DOT, whether or not expressly set forth in the preceding Contract provisions. All Contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any AGENCY requests which would cause the AGENCY to be in violation of the FTA terms and conditions.

(i) SUSPENSION AND DEBARMENT

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

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

The certification in this clause is a material representation of fact relied upon by Valley Metro. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Valley Metro, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

(j) BUY AMERICA

If this Contract is for Construction and/or the Acquisition of Goods or Rolling Stock (valued at more than \$100,000), the Contractor agrees to comply with 49 U.S.C. 5323 (j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers

are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323 (j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

A Bidder or offeror must submit to the FTA recipient the appropriate Buy America certification with all bids on FTA-funded Contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier subcontractors.

(k) RESOLUTION OF DISPUTES, BREACHES AND OTHER LITIGATION

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures. Specific language for dispute resolution will be provided in any resultant contract of the successful proposer.

(l) LOBBYING

A. Definitions. As used in this clause 7 only,

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal action" means any of the following Federal actions:

1. The awarding of any Federal Contract;
2. The making of any Federal grant;
3. The making of any Federal loan;
4. The entering into of any cooperative agreement; and,
5. The extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. "Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian self-determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any Agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an Agency" includes the following individuals who are employed by an Agency:

1. An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;
2. A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;
3. A special Government employee as defined in section 202, title 18, U.S. Code; and,
4. An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.

"Person" means an individual, corporation, company association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government. "Reasonable payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector. "Recipient" includes all Contractors and subcontractors at any tier in connection with a Federal Contract. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed" means, with respect to an officer or employee of a person requesting or receiving a Federal Contract, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates Agency consideration of such person for receipt of such Contract. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates Agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

B. Prohibition

1. Section 1352 of title 31, U.S. Code provides in part that no appropriated funds may be expended by the recipient of a Federal Contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any Agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any

cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.

2. The prohibition does not apply as follows:

(i) Agency and legislative liaison by Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph B (1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal Contract if the payment is for Agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph B (2) (i) (a) of this section, providing any information specifically requested by an Agency or Congress is allowable at any time.

(c) For purposes of paragraph B (2) (i) (a) of this section the following Agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an Agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an Agency's use.

(d) For purposes of paragraph B (2) (i) (a) of this section, the following Agency and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an Agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

(3) Capability presentations by persons seeking awards from an Agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by paragraph B (2) (i) of this section are allowable under paragraph B (2) (i).

(ii) Professional and technical services by Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph B (1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal Contract or an extension, continuation, renewal, amendment, or modification of a Federal Contract if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal Contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal Contract.

(b) For purposes of paragraph B (2) (ii) (a) of this section, "professional and technical services" shall be limited advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal

document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a Contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by paragraph B (2) (ii) of this section are allowable under paragraph B (2) (ii).

(iii) Reporting for Own Employees.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(iv) Professional and technical services by Other than Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph B (1) of this section, does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal Contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal Contract.

(b) For purposes of paragraph B (2) (iv) (a) of this section, "professional and technical services" shall be limited advice and analysis directly applying to any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a Contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(e) Only those services expressly authorized by paragraph B (2) (iv) of this section are allowable under paragraph B (2) (iv).

C. Disclosure

1. Each person who requests or receives from an Agency a Federal Contract shall file with that Agency a certification, set forth in this document, that the person has not made, and will not make, any payment prohibited by paragraph (b) of this clause.

2. Each person who requests or receives from an Agency a Federal Contract shall file with that agency a disclosure form, Standard Form-LLL, "Disclosure of Lobbying Activities," if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (b) of this clause if paid for with appropriated funds.

3. Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph C (2) of this section. An event that materially affects the accuracy of the information reported includes:

a. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

b. A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,

c. A change in the officer(s), employee(s), or member(s) contacted to influence or attempt to influence a covered Federal action.

4. Any person who requests or receives from a person referred to in paragraph (C) (1) of this section a subcontract exceeding \$100,000 at any tier under a Federal Contract shall file a certification, and a disclosure form, if required, to the next tier above.

5. All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraph C (1) of this section. That person shall forward all disclosure forms to the Agency.

D. Penalties

1. Any person who makes an expenditure prohibited under paragraph B of this clause shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

2. Any person who fails to file or amend the disclosure form to be filed or amended if required by this clause, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. Contractors may rely without liability on the representations made by their subcontractors in the certification and disclosure form.

E. Cost Allowability

Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of Part 31 of the Federal Acquisition Regulation.

(m) CLEAN AIR

If the total value of this Contract exceeds \$100,000:

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 422 U.S.C. 7401 et seq. The Contractor agrees to report each violation to AGENCY and understands and agrees that AGENCY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

(n) CLEAN WATER REQUIREMENTS

If the total value of this Contract exceeds \$100,000:

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to AGENCY and understands and agrees that AGENCY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by the FTA.

(o) ENERGY CONSERVATION

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321, et seq.).

(p) RECYCLED PRODUCTS

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.

(q) CARGO PREFERENCE

Contractor agrees:

- A. To use privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this section, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- B. To furnish within 20 working days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590, and to AGENCY (through the Contractor in the case of a subcontractor's bill-of-lading) marked with appropriate identification of the Project.
- C. To include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

(r) FLY AMERICA

If this Contract involves the international transportation of goods, equipment, or personnel by air, Contractor agrees 1) to use U.S. flag carriers, to the extent service by these carriers is available and 2) to include this requirement in subcontracts at every tier. 49 U.S.C. 40118 and 4 CFR Part 52.

(s) PRIVACY ACT

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:

- A. 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.
- B. 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.

EXHIBIT D
MIDLAND ODESSA URBAN TRANSIT DISTRICT ADVERTISING POLICY



Midland Odessa Transit Management, Inc.
Advertising Policy

BACKGROUND

Sale of display advertisements on MOUTD/EZ-Rider buses and bus benches provides an opportunity for businesses and organizations to reach audiences in the transit systems service area and generates revenue for the system. MOUTD/EZ-Rider currently manages and administers the display ad program in-house.

The advertising guidelines regulate appropriate subject matter for the advertisements. It is now appropriate to adopt a formal policy that reflects MOUTD/EZ-Rider's display advertising program goals and objectives.

POLICY

Advertisements on/in buses, bus benches, transfer facilities, and other properties shall be of reputable character and conform to community standards of decency and acceptability, as determined by MOUTD/EZ-Rider. Display advertisements shall not be sold for the following:

The following types of advertising will not be accepted:

1. Advertising for alcohol or tobacco products.
2. Advertising for sexually-explicit subject matter.
3. Advertising of a political nature.
4. Advertising of a religious nature.
5. Advertising that advocates violence, crime and anti-social behavior, or presents violence or crime as entertaining, amusing, or appropriate.
6. Advertising which violates any federal, state, or local law.
7. Defamatory messages, hate speech and/or language whose message targets individuals or specific groups.

Advertising shall conform to all current ordinances and codes adopted by the City of Midland and Odessa.

All designs of proposed advertising shall be submitted to MOUTD/EZ-Rider for review and approval prior to entering into an agreement. Such review will take into consideration compliance with the advertising policy as well as any affect the design may have on operations, maintenance, safety, and passenger comfort.

**EXHIBIT E
LIST OF ASSETS**

GENERAL INFORMATION

Midland Odessa Urban Transit District owns and maintains a varied inventory of transit assets. For the purposes for paid advertising, MOUSD will make available to the successful proposer transit coaches, cutaway buses, bus stop shelters, trash cans, and benches as described in this exhibit.

SPECIAL CONSIDERATIONS

- The successful proposer will reserve (3) king ad spaces on transit coaches for MOUSD use at its sole discretion.
- Due to the nature of the assets offered, unforeseen events (including but not limited to accident, mechanical failure, or vandalism) may result in a change to an asset’s condition or availability. MOUSD will work to notify the successful proposer in a timely fashion of any such changes.

VEHICLE ASSETS

| TRANSIT COACHES | | | | |
|------------------------|--------------------------------------|----------------------------|-----------------------------|---------------------------------|
| UNIT # | STREET SIDE ONLY WRAP | CURB SIDE ONLY WRAP | REAR PANEL ONLY WRAP | FULL BUS WRAP |
| 601 | Red Drum - Weichert 05/19 - 11/19 | AVAILABLE | AVAILABLE | AVAILABLE <i>After 11/19</i> |
| 603 | AVAILABLE | AVAILABLE | AVAILABLE | AVAILABLE |
| 604 | AVAILABLE | AVAILABLE | AVAILABLE | AVAILABLE |
| 903 | AVAILABLE | AVAILABLE | AVAILABLE | AVAILABLE |
| 904 | AVAILABLE | AVAILABLE | AVAILABLE | AVAILABLE |
| 905 | Red Drum - Weichert 05/19 - 11/19 | AVAILABLE | AVAILABLE | AVAILABLE <i>After 11/19</i> |
| 906 | AVAILABLE | AVAILABLE | AVAILABLE | AVAILABLE |
| | | | | |

| | | | | |
|------------|---------------------|-----------|----------------|-------------|
| 907 | West TX ADRC | AVAILABLE | AVAILABLE | AVAILABLE |
| | 07/19 - 06/20 | | | After 6/20 |
| 908 | Red Drum - Weichert | AVAILABLE | AVAILABLE | AVAILABLE |
| | 05/19 - 11/19 | | | After 11/19 |
| 909 | AVAILABLE | AVAILABLE | AVAILABLE | AVAILABLE |
| | | | | |
| 910 | AVAILABLE | AVAILABLE | AVAILABLE | AVAILABLE |
| | | | | |
| 911 | PBRPC/811 | AVAILABLE | AVAILABLE | AVAILABLE |
| | 04/19 - 03/20 | | | After 3/20 |
| 912 | West TX ADRC | AVAILABLE | AVAILABLE | AVAILABLE |
| | 07/19 - 06/20 | | | After 6/20 |
| 913 | Red Drum - Weichert | AVAILABLE | MTCU | AVAILABLE |
| | 05/19 - 11/19 | | Month-to-Month | After 11/19 |
| 914 | AVAILABLE | AVAILABLE | AVAILABLE | AVAILABLE |
| | | | | |

| CUTAWAY BUSES | | |
|----------------------|------------------|--------------------|
| UNIT # | BACK ONLY | WINDOW ONLY |
| 1501 | AVAILABLE | AVAILABLE |
| 1502 | AVAILABLE | AVAILABLE |
| 1503 | AVAILABLE | AVAILABLE |
| 1504 | AVAILABLE | AVAILABLE |
| 1505 | AVAILABLE | AVAILABLE |
| 1506 | AVAILABLE | AVAILABLE |

| | | |
|-------------|-----------|-----------|
| 1601 | AVAILABLE | AVAILABLE |
| 1602 | AVAILABLE | AVAILABLE |
| 1603 | AVAILABLE | AVAILABLE |
| 1604 | AVAILABLE | AVAILABLE |
| 1605 | AVAILABLE | AVAILABLE |
| 1701 | AVAILABLE | AVAILABLE |
| 1702 | AVAILABLE | AVAILABLE |
| 1703 | AVAILABLE | AVAILABLE |
| 1704 | AVAILABLE | AVAILABLE |
| 1901 | AVAILABLE | AVAILABLE |

BUS STOP SHELTERS ASSETS

| ROUTE | CITY | CLOSEST LANDMARK | PHYSICAL LOCATION |
|--------------|-------------|--|--------------------------|
| ALL | Odessa | Transfer Plaza | 500 N. Lincoln |
| O4 | Odessa | HEB Shopping Center | 4200 N. Grandview |
| O6 | Odessa | American State Bank, Citibank, Commercial State Bank, Security State Bank, | 3016 Kermit Hwy |

| | | | |
|---------|--------|---|--------------------------|
| O2 - O3 | Odessa | Across street from Odessa College, near Family Dollar and CVS | 2506 Andrews Hwy |
| O3 | Odessa | East Walmart | 4210 Parkway |
| O6 | Odessa | West Walmart | 2450 Loop 338 |
| O1 | Odessa | Section 8 housing | 800 Bankhead |
| O1 | Odessa | Chapparell Village Apartments | 100 E. Monahans |
| O1 | Odessa | Ector County Cemetery / Armor Barber shop | 800 E. Murphy |
| O2 O3 | Odessa | Lowes Market Place Grocery Store | 1613 N. Grant |
| O2 | Odessa | Furrs Buffet | 3124 Andrews Hwy |
| O2 | Odessa | Target Shopping Center | 3900 E. 42nd Street |
| O3 | Odessa | Peppertree Apartments | 4600 Oakwood |
| O4 | Odessa | Progressive Park / Odessa Regional Hospital | 7th & Muskingum |
| O4 | Odessa | Lowes Market Place /7-Eleven / Dollar General | 2021 E. 8th |
| O4 | Odessa | El Rancho Grocery Store | 1300 E. 8th |
| O5 | Odessa | The Palms Apartment Complex | 222 N.Dixie Blvd. |
| O6 | Odessa | O'Reilly Auto Parts, San Jacinto Park | 2011 N. County Road West |
| O6 | Odessa | Burger King | 1625 County Road West |
| O6 | Odessa | Albertsons | 2751 County Road West |
| O1 | Odessa | Salinas Park / Hollywood Gardens | 402 W. May St. |
| O1 | Odessa | Arbor Terrace Town Homes section 8 housing | 1101 Fitch St. |
| O3 | Odessa | Old Town Shopping Center | 1551 J.B.S. Parkway |
| O2 | Odessa | La Promosa Del Nortia | 4504 Andrews Hwy. |

| | | | |
|-----|---------|--|---------------------------|
| O2 | Odessa | Sherwood Village Center Shopping Center | 4345 N. Dixie Blvd. |
| O2 | Odessa | Ector County Colosseum | 4201 Andrews Hwy. |
| O2 | Odessa | Church/Residential Area | 1601E. 42nd St. |
| O3 | Odessa | UTPB on UTPB Circle, near J Conrad Dunagan Library | UTPB Cir/Campus View Blvd |
| O2 | Odessa | St. Lukes Methodist Church | 1603 E. 42nd St. |
| O4 | Odessa | Grandview Plaza Shopping Center | 2740 N. Grandview |
| O4 | Odessa | Cimmaron Apartments | 4136 52nd St. |
| O5 | Odessa | Post Office downtown Odessa | 200 E. 2nd St. |
| ALL | Midland | MIDLAND DOWNTOWN TRANSFER PLAZA | 400 East Texas |
| M3 | Midland | H.E.B. Store | 3205 Midkiff |
| M2 | Midland | Albertson's Grocery and West Lake Hardware | 1002 Andrews Hwy |
| M1 | Midland | Chick-Fil-A / North Wamart | 4508 N. Loop 250 |
| M6 | Midland | South Walmart | 400 E. Longview |
| M5 | Midland | Midland County Annex | 2100 N. Ave A |
| M2 | Midland | Rosa's café | 4301 N. Midland Dr |
| M2 | Midland | Albertson's Grocery Store | 3317 N. Midland Dr |
| M4 | Midland | Cotton Patch Café | 2320 W. Loop 250 |
| M3 | Midland | Kingsway Shopping Center | 3401 W. Illinois Ave |
| M6 | Midland | | 1100 N. Lamesa |
| M5 | Midland | | 2200 N. Big Spring |
| M5 | Midland | | 2300 N. Pecos St |
| M5 | Midland | | 800 N. Big Spring |

| | | | |
|----|---------|-----------------------------------|-------------------------|
| M6 | Midland | | 800 E. Florida |
| M6 | Midland | | 1803 E. Indiana |
| M1 | Midland | | 2300 Wall Street |
| M6 | Midland | | 400 E. Indiana |
| M1 | Midland | | 4300 W. Wall St. |
| M6 | Midland | | 1900 E. Golf Course Rd |
| M6 | Midland | | 3200 Sage St. |
| M2 | Midland | | 1902 N Midland Dr |
| M2 | Midland | | 2202 N. Midland Dr |
| M2 | Midland | | 3001 N. Midland Dr |
| M2 | Midland | | 703 Andrews Hwy |
| M3 | Midland | West Wood Village Shopping Center | 4243 W. Illinois Ave. |
| M3 | Midland | Town & Country Shopping Center | 1008 N. Midkiff Rd. |
| M4 | Midland | | 400 N. "A" St. |
| M4 | Midland | Park Square Apartments | 2680 N. "A" St. |
| M1 | Midland | | 5200 Service Rd. 250 N. |
| M4 | Midland | Best Buy | 2617 W. Loop 250 |

EXHIBIT F
DISADVANTAGED BUSINESS ENTERPRISE PROVISIONS
(FEDERALLY ASSISTED CONTRACT WITH A DBE GOAL)

MOUTD's FY19, FY20, FY21 DBE Goal is 5.48%. MOUTD HAS ESTABLISHED A 5% DBE GOAL ON THIS CONTRACT.
For assistance or with questions concerning the provisions in this Exhibit, contact Kayleen Hamilton, DBE Liaison at (432) 561-9990.

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Definitions and Interpretations

MOUTD will utilize the following definitions to identify Disadvantaged Business Enterprise (DBE) Program eligibility standards. The definitions defined in 49 CFR Part 26 are hereby incorporated by reference.

2. Banks and Financial Institutions

The Contractor is encouraged to utilize the services of disadvantaged, minority and woman-owned banks and financial institutions.

a. Certification and Directory of DBEs

(a) All prospective DBEs must be certified through the Texas Unified Certification Program (UCP). The UCP provides "one-stop shopping" to applicants for DBE certification, such that an applicant need apply only once for a DBE certification that will be honored by all UCP members in Texas. MOUTD is a member of the Texas UCP.

(b) The DBE firm will be verified as a certified DBE through the Texas UCP Directory. The UCP maintains an electronic DBE directory of all firms certified in Texas. The directory is located at <https://txdot.txdotcms.com/>. The local certifying UCP agency is the Texas Department of Transportation. Appropriate forms to apply for DBE certification are available at <http://ftp.dot.state.tx.us/pub/txdot-info/civ/certification/uniform-certification-application.pdf>.

(c) The eligibility of a DBE certified joint venture will be determined on a project-by-project basis by MOUTD.

(d) Offerors are reminded that only certified DBEs may participate in MOUTD contracts in such capacities. If Offerors propose using a DBE not currently certified, it is strongly urged that TxDOT be contacted well in advance of the date set for receipt of offers in order to enable review of the proposed DBE's eligibility.

Credit Toward Goals

MOUTD will count DBE participation toward the overall and contract goals as provided in 49 CFR 26.55. In addition, if the materials or supplies are purchased from a **DBE** regular dealer, count 60 percent of the cost of the materials or supplies toward **DBE** goals; do not count 100 percent of the cost.

DBE Modifications or Substitutions

This Provision applies to all modifications and substitutions under this Contract. The Contractor will be required to comply with this Provision to the extent needed to achieve the DBE goals agreed to at the time of contract award.

(a) If a prime contractor wishes to terminate or substitute a DBE subcontractor listed as fulfilling its contract goal, and then performs the work of the terminated DBE subcontractor with its own forces, an affiliate, a non-DBE subcontractor or with another DBE subcontractor, it must submit written documentation prior to the termination or substitution of the DBE subcontractor to the Contracting Officer. This will include any changes to items of work, material, services, or DBE firms that differ from those identified on the Intent to Perform as a DBE Subcontractor form(s) on file with the Contracting Officer. The Offeror/Contractor must provide any and all documentation and information as may be requested with respect to the requested change.

(b) The Offeror's/Contractor's documentation shall include the specific reasons for the proposed change. Specific reasons that are acceptable include, but are not limited to: the DBE was not able to perform; the DBE was unable to produce acceptable work; and/or the DBE has submitted an unreasonable escalation in price. In the case of a DBE subcontractor being substituted by another DBE subcontractor, the Contractor should include the name, address, certification number and principal office of the proposed DBE firm. After providing an opportunity to the DBE Liaison to make a recommendation, the Contracting Officer will approve or disapprove the change.

(c) If the change involves a subcontractor substitution, the Offeror/Contractor must make good faith effort to replace one DBE with another DBE. The substitute DBE firm must be certified by the Texas UCP in order for the Offeror/Contractor to receive credit toward fulfilling its DBE participation goal for the contract. In the event that the Offeror/Contractor is unable to contract with another DBE firm, good faith effort documentation must be provided to the Contracting Officer describing the unsuccessful attempts to locate a substitute DBE. In all situations, the Contractor may not terminate or substitute a DBE subcontractor without the prior written consent of the Contracting Officer.

(d) The Offeror/Contractor must submit a new Intent to Perform as a DBE Subcontractor form for the substitute DBE firm(s) with the request for change, to verify that the new DBE firm(s) is certified by the Texas UCP. The Contracting Officer shall notify the Offeror/Contractor in writing of his decision as expeditiously as possible. If the contract has been awarded and the Contracting Officer approves the proposed substitution in writing, the Contractor shall provide a copy of the executed subcontract agreement with the proposed DBE firm to the Contracting Officer within ten (10) business days of its receipt of the substitution approval.

(e) If the change involves a modification, the Contractor must submit, if applicable, the Intent to Perform as a DBE Subcontractor form specified for contract modifications for any DBE subcontractor affected by this change. This form may be obtained from the Contracting Officer.

(f) If the Contractor does not comply with this Provision, MOUTD may elect to apply contract remedies as defined in 49 CFR Part 26, or other contract remedies, as appropriate. Additionally, the Contracting Officer may order that the profits from the terminated portion of the DBE subcontract be forfeited by the Contractor.

Demonstration of Good Faith Effort

(a) If an Offeror does not meet the DBE goal, it shall nevertheless be eligible for award of the contract if it can demonstrate to the Contracting Officer that it has made a good faith effort to meet the DBE goal. This good faith efforts documentation should be submitted when the initial response to MOUTD's solicitation is due. All contractors, including DBE prime contractors, are required to submit good faith efforts documentation, if necessary. In evaluating an Offeror's good faith effort submission, MOUTD will only consider those documented efforts that occurred prior to the good faith efforts determination.

(b) In the event that a firm submitted by an Offeror in accordance with the requirements of the Submission of Subcontractor Utilization Forms and Related Documentation provision cannot be certified, the Offeror will be notified and given an opportunity to substitute that firm with a certified DBE firm. The Offeror will have ten (10) calendar days from the date of notification to accomplish the substitution. In the event the Offeror is unable to contract with another substitute DBE firm, the good faith efforts that the Offeror made in attempting to contract with a substitute DBE firm must be documented to the Contracting Officer at the end of the same ten (10) calendar day period.

(c) In making a determination that the Offeror has made a good faith effort to meet the DBE goal, the Offeror shall furnish to MOUSD, as part of its DBE utilization information provided under the Submission of DBE Utilization Forms and Related Documentation provision, such specific documentation concerning the steps it has taken to obtain DBE participation. By way of illustration and not limitation, MOUSD will consider the following information:

- (1) Whether the Offeror attended any pre-bid or pre-proposal meetings scheduled by MOUSD to discuss, among other matters, DBE participation opportunities and acknowledged receipt of DBE certified vendor lists;
- (2) Whether the Offeror advertised in general circulation, trade association, and/or minority/women-focus media concerning subcontracting opportunities;
- (3) Whether the Offeror provided written notice to a reasonable number of DBEs that their interest in the contract was being solicited in sufficient time to allow DBEs to participate effectively;
- (4) Whether the Offeror followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested;
- (5) Whether the Offeror selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goals (including, where appropriate, breaking down the contract into economically feasible subcontracts to facilitate DBE participation);
- (6) Whether the Offeror provided interested DBEs with adequate information about the plans, specifications, scope of work and requirements of the contract;
- (7) Whether the Offeror negotiated in good faith with interested DBEs regarding their capabilities, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation;
- (8) Whether the Offeror negotiated in good faith with interested DBEs regarding price, using good business judgment and not rejecting reasonable quotes from interested DBE firms;
- (9) Whether the Offeror made efforts to assist interested DBEs in obtaining bonding, lines of credit, insurance, etc., as required by MOUSD or the Offeror;
- (10) Whether the Offeror made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services;
- (11) Whether the Offeror effectively used the services of available minority and women community organizations; contractor groups; local, State, and Federal business assistance offices; and other organizations that provide assistance in the identification of DBEs;
- (12) Whether the Offeror obtained written documentation from a bona fide surety company indicating that bonding was denied and for what reason(s), prior to the DBE being rejected as a potential subcontractor for failing to obtain Offeror-required bonding. Documentation furnished by a surety company will be subject to verification by MOUSD; and
- (13) Whether other Offerors have attained a sufficient level of DBE participation to meet the contract goals.

(d) MOUSD will look not only at the different kinds of efforts that the Offeror has made, but also the quantity and intensity of those efforts. Efforts that are merely pro forma are not good faith efforts to meet the goal (even if they are

sincerely motivated) if, given all relevant circumstances, the Offeror's efforts could not reasonably be expected to produce a level of DBE participation sufficient to meet the goal.

(e) Offerors are reminded that the issue of whether or not the Offeror has met or exceeded the established goal and/or demonstrated good faith efforts is considered a matter of the Offeror's responsibility. MOUTD will only award contracts to Offerors determined to be responsible. The Contracting Officer, after affording MOUTD's DBE personnel an opportunity to make a recommendation, shall be responsible for determining the sufficiency of an Offeror's good faith effort to meet contract goals.

(f) An Offeror that the Contracting Officer determines is not responsible may request administrative review and reconsideration under MOUTD's Procurement Regulations. As part of any reconsideration, if requested, the Offeror may elect to meet in person with the Reconsideration Official (Chief of Administration) to discuss credit toward meeting the DBE goal or whether the Offeror made adequate good faith efforts.

Offeror's DBE Obligation

The Offeror's DBE Obligation is outlined in the Specifications and Conditions of this request for proposals, Section IV. Disadvantaged Business Enterprise.

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of MOUTD to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract

The bidder will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts.

Prompt Payment Documentation and Reporting

The Contractor agrees to pay each subcontractor under the prime contract for satisfactory performance of its contract no later than 10 calendar days from receipt of each payment the prime contractor receives from MOUTD. The prime contractor must agree further to return retainage payments to each subcontractor within 10 calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced period may occur only for good cause following written approval of MOUTD. This language applies to both DBE and non-DBE subcontracts. Failure to satisfy prompt payment to subcontractors no later than 10 calendar days from the receipt of payment from MOUTD may constitute a breach of contract and may result in termination of the Contractor for default or such remedy as MOUTD may deem appropriate.

The Contractor and any subcontractors shall verify prompt payment through monthly reports to MOUTD. The Contractor and all subcontractors are responsible for responding by any noted response date or due date to any instructions or request for information.

As provided elsewhere in this Contract, MOUTD may withhold all or part of any payment otherwise due the Contractor if the Contractor fails to respond to MOUTD by noted response dates and/or make prompt payments to its subcontractors, suppliers, materialmen or laborers.

Sanctions for Noncompliance with MOUTD's DBE Program Provisions

Failure of the Contractor to carry out MOUTD's DBE program provisions shall constitute a breach of contract and may result in termination of the Contractor for default or such remedy as MOUTD may deem appropriate. MOUTD reserves the right to apply legal and contract remedies available under Federal, state and local law, including but not limited to, responsibility determinations in future contracts, suspension and debarment procedures as outlined in 49 CFR Part 29, and forfeiture of profits as provided for elsewhere. MOUTD will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take steps provided in 49 CFR Section 26.107.

Submission of Subcontractor Utilization Forms and Related Documentation

I. Each Offeror should submit to MOUTD an executed Intent to Perform As a DBE Subcontractor form (Attachment 1) for each proposed subcontractor when the initial response to MOUTD's solicitation is due. Good faith documentation (if necessary) should also be submitted at this time. The submission of this information is considered an issue of responsibility, and MOUTD will not award a contract to any Offeror who has not supplied this documentation.

(b) The Intent to Perform As A DBE Subcontractor form for each proposed subcontractor shall constitute a representation by the Offeror to MOUTD that it believes such firm is ready, willing, and able to perform the work indicated. It shall also represent a commitment by the Offeror that if it is awarded the contract, it will enter into a subcontract with such subcontractor for the work described at the approximate price set forth in the Intent to Perform As A DBE Subcontractor form.

(c) If the DBE Subcontractor participation changes after the forms have been submitted, but prior to award of the contract, the Offeror will be required to immediately notify the Contracting Officer of the changed amount and the reason(s) for the change. The modification and substitutions of DBE firms that occur shall be governed by DBE Modification or Substitutions provision of this Exhibit.

(d) Except as authorized by the Contracting Officer, the successful Offeror shall enter into formal agreements with the subcontracting firms shown in the submitted Intent to Perform As A DBE Subcontractor form(s) within ten(10) business days after receipt of a contract executed by MOUTD. The successful offeror (Contractor) shall provide the Contracting Officer two copies of each agreement within three (3) business days of execution.

(e) If an Offeror is a DBE and lists itself on the Intent to Perform As A DBE Subcontractor form, it is required to perform the work indicated with its own work force.

ATTACHMENT 1 TO EXHIBIT F
(INTENT TO PERFORM AS A DBE SUBCONTRACTOR FOR A CONTRACT AWARD)

All DBE subcontracting firms to be used on this solicitation must fill out this form.

DBE firms participating in MOUTD's contracting opportunities must have "current" certification status with Texas's Unified Certification Program (UCP) prior to award of this contract. If MOUTD determines that the firm is not an eligible DBE firm for MOUTD contracts and subcontracts, the prime contractor will be notified of the ineligibility of the listed firm. The submission of this form is considered an issue of responsibility and MOUTD will not award a contract to any Offeror who has not supplied this documentation.

- MOUTD Solicitation #: _____
- Name of DBE Subcontracting Firm _____.
- Has the DBE subcontractor been certified as a DBE by a Texas UCP agency? _____
- The DBE subcontractor is prepared to perform the following described work and/or supply the material listed in connection with the above project (where applicable specify "supply" or "install" or both):

_____ and at the following price \$ _____. (If the materials or supplies are purchased from a **DBE** regular dealer, count 60 percent of the cost of the materials or supplies toward **DBE** goals).

BY: _____ DATE: ____/____/____
(Signature of **DBE** subcontracting Owner, President or Authorized Agent)

PHONE: (____) _____

(Print or Type - Name of Signature of Owner, President or Authorized Agent of **DBE** subcontracting firm)

DECLARATION OF PRIME CONTRACTOR

I HEREBY DECLARE AND AFFIRM that I am the _____
(Title of Declarant)

and a duly authorized representative of _____
(Name of Prime Contractor)

to make this declaration and that I have personally reviewed the material and facts set forth in this Intent to Perform As A DBE subcontractor form. To the best of my knowledge, information and belief, the facts and representations contained in this form are true, the owner or authorized agent of the subcontracting firm signed this form in the place indicated, and no material facts have been omitted.

Except as authorized by the Contracting Officer, the undersigned will enter into a formal agreement with the listed DBE subcontracting firm for work as indicated by this form within ten (10) business days after receipt of the contract executed by the Midland Odessa Urban Transit District. The undersigned will provide the Contracting Officer a copy of that agreement within three (3) business days of execution.

The Prime contractor designated the following person as their DBE Liaison Officer:

(Name-Please Print)

(Phone)

Pursuant to 49 CFR Section 26.107, any person [entity] who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes and may be referred to the Department of Transportation, and possibly the Department of Justice, for prosecution.

Name of Declarant

Signature

(Date)

ATTACHMENT 2 TO EXHIBIT F

(SUBCONTRACTOR UTILIZATION - SUMMARY OF SUBCONTRACTOR(S)/SUBCONSULTANT(S)/SUPPLIER(S))

Offerors should provide information on **all** of their prospective subcontractor(s)/subconsultant(s)/ supplier(s) who will participate on this solicitation. Use additional sheets as necessary.

Project Name: _____ MOUTD Solicitation # _____

| NAMES AND ADDRESSES OF SUBCONTRACTOR(S)/ SUBCONSULTANT(S) | TYPE OF WORK TO BE PERFORMED | ETHNICITY & GENDER OF OWNER | PREVIOUS YEAR'S ANNUAL GROSS RECEIPTS | \$ AMOUNT ON CONTRACT |
|---|--|--|--|-----------------------|
| NAME: ADDRESS: PHONE: FAX: E-MAIL: CONTACT PERSON: | TYPE OF WORK: AGE OF FIRM: IS THE FIRM A CERTIFIED DBE IN THE STATE OF TEXAS BY THE UCP? YES <input type="checkbox"/> NO <input type="checkbox"/> | Ethnicity Black Hispanic Native American Subcont. Asian American Asian Pacific American Non-Minority Woman Other | <input type="checkbox"/> less than \$500K <input type="checkbox"/> \$500K - \$2 mil. <input type="checkbox"/> \$2 mil. - \$5 mil. <input type="checkbox"/> more than \$5 mil. | |
| NAME: ADDRESS: PHONE: FAX: E-MAIL: CONTACT PERSON: | TYPE OF WORK: AGE OF FIRM: IS THE FIRM A CERTIFIED DBE IN THE STATE OF TEXAS BY THE UCP? YES <input type="checkbox"/> NO <input type="checkbox"/> | Ethnicity Black Hispanic Native American Subcont. Asian American Asian Pacific American Non-Minority Woman Other | <input type="checkbox"/> less than \$500K <input type="checkbox"/> \$500K - \$2 mil. <input type="checkbox"/> \$2 mil. - \$5 mil. <input type="checkbox"/> more than \$5 mil. | |
| NAME: ADDRESS: PHONE: FAX: E-MAIL: CONTACT PERSON: | TYPE OF WORK: AGE OF FIRM: IS THE FIRM A CERTIFIED DBE IN THE STATE OF TEXAS BY THE UCP? YES <input type="checkbox"/> NO <input type="checkbox"/> | Ethnicity Black Hispanic Native American Subcont. Asian American Asian Pacific American Non-Minority Woman Other | <input type="checkbox"/> less than \$500K <input type="checkbox"/> \$500K - \$2 mil. <input type="checkbox"/> \$2 mil. - \$5 mil. <input type="checkbox"/> more than \$5 mil. | |

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

___ The bidder/offeror is committed to a minimum of ___% DBE utilization on this contract.

___ The bidder/offeror (if unable to meet the DBE goal) is committed to a minimum of ___% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

Print Name/Title of Person completing this form: _____

Signature _____ Date _____

Email _____ Phone _____

**ATTACHEMENT G
CERTIFICATION OF PROPOSAL**

**PROPOSAL
OUTSIDE SALES SERVICES FOR EZ-RIDER BUS TRANSIT ADVERTISING PROGRAM
MOUTD_2019_01**

Date _____

To: The Board Members of the Midland Odessa Urban Transit District

I certify that the proposal offered meets all of the requirements of the proposal specifications and I hereby accept the provisions as described herein. I certify the attached Residency Certification as a part of this proposal.

Respectfully submitted,

Company

Authorized Signature

Print or Type Signer's Name and Title

Address

City State Zip

Telephone Number

**ATTACHEMENT H
ACKNOWLEDGEMENT OF AUTHORIZED AGENT**

ACKNOWLEDGMENT

**OUTSIDE SALES SERVICES FOR EZ-RIDER BUS TRANSIT ADVERTISING PROGRAM
MOUTD_2019_01**

THE STATE OF _____ §

COUNTY OF _____ §

BEFORE ME, the undersigned, on this day personally appeared _____, known to me to be the person and officer whose is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said _____, a corporation, and that he/she has executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of _____, A.D., 2019.

Notary Public in and for the State of Texas

MOUTD and EZ-RIDER do not discriminate on the basis of race, color, national origin, sex, religion, age and disability in employment or the provision of service.

ATTACHMENT I CONSOLIDATED CERTIFICATION FORM

I. GENERAL:

The undersigned vendor certifies to abide by these clauses and include the following clauses in each subcontract financed in whole or in part with Federal Transit Administration (FTA) funds. Vendors are certifying by reference the entire list of FTA's current fiscal year Certifications and Assurances for Fiscal Year _____, and shall download the same at: <https://www.transit.dot.gov/funding/grantee-resources/certifications-and-assurances/certifications-assurances>

A. Access to Third Party Contract Records (ALL)

As required by 49 U.S.C. § 5325(g). The VENDOR agrees provide sufficient access to records as needed to assure proper project management and compliance with Federal laws and regulations.

B. Interest of Members of or Delegates to Congress (ALL)

The vendor certifies that no member of or delegate to the Congress of the United States (US) shall be admitted to any share or part of this contract or to any benefit arising therefrom.

C. Prohibited Interest (ALL)

The vendor certifies that no member, officer or employee of the Public Body or of a local public body during his or her tenure or one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

D. Cargo Preference - Use of United States-Flag Vessels (property transported on ocean vessels)

The vendor agrees: a. to use privately owned US -Flag commercial vessels to ship at least 50 percent 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. to furnish within 20 working days following the date of loading for shipments originating within the US or within 30 working days following the date of loading for shipments originating outside the US, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading).

E. Energy Conservation (ALL)

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

F. No Obligation by the Federal Government. (ALL)

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

G. Program Fraud and False or Fraudulent Statements or Related Acts (ALL)

The vendor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. The vendor certifies truthfulness and accuracy of any statement it makes pertaining to the FTA-assisted project. The vendor acknowledges that if it makes, or causes to be made, a false, fictitious or fraudulent claim, statement, submission or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 as deemed appropriate. The vendor acknowledges that if it makes, or causes to be made, a false, fictitious or fraudulent claim, statement submission, or certification to the Federal Government relating to the FTA-assisted project, per 49 U.S.C. §5307, the

Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n)(1) on the Contractor, as deemed appropriate.

H. Contract Work Hours (all over 100K)

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

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section, the contractor & any subcontractor responsible therefore shall be liable for unpaid wages and shall be liable to the United States for liquidated damages which shall be computed for each individual laborer, mechanic, watchman or guard employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day that an individual was required / permitted to work over 40 hours in a workweek without payment of overtime wages required by the clause in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** - The purchaser shall upon its own action or upon written request of the Department of Labor (DOL) withhold or cause to be withheld, from any money payable for work performed by the contractor or subcontractor under any contract or other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as set-forth in paragraph (2) of this section.

(4) **Subcontracts** - The contractor or subcontractor shall include the clauses set forth in this section and require the same from subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these clauses.

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

I. Civil Rights (over 10K)

(1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act (CRA), as amended, 42 U.S.C. §2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. §12132, and Federal transit law at 49 U.S.C. §5332, the vendor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the vendor agrees to comply with applicable Federal

implementing regulations and other implementing requirements FTA may issue.

(2) **Equal Employment Opportunity** - The following equal employment opportunity requirements apply:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VI of the CRA, as amended, 42 U.S.C. §2000e, and Federal transit laws at 49 U.S.C. §5332, the vendor agrees to comply with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, DOL," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. §2000e note), and with any applicable Federal statutes, executive orders, regulations and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The vendor agrees to take affirmative action to ensure that applicants are employed & treated during employment without regard to their race, color, creed, national origin, sex or age. Action shall include but not be limited to employment, upgrading, demotion, transfer, recruitment, layoff, termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The vendor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. §§623 and 49 U.S.C. §5332), the vendor agrees to refrain from discrimination against present and prospective employees for reason of age. and comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act (42 U.S.C. §12112), the contractor agrees to comply with the requirements of 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, pertaining to employment of persons with disabilities. and to comply with any implementing requirements FTA may issue.

J. Incorporation of Federal Transit Administration (FTA) Terms (ALL)

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any transit agency requests which would cause the transit agency to violate FTA terms and conditions.

K. Application of Federal, State, & Local Laws, Regulations, & Directives (Federal Changes) (ALL)

The VENDOR agrees that Federal laws and regulations control project award and implementation. The VENDOR understands and agrees that unless the recipient requests FTA approval in writing, the VENDOR may incur a violation of Federal laws or regulations or this agreement if it implements an alternative procedure or course of action not approved by FTA. The VENDOR understands and agrees that Federal laws, regulations, and directives applicable on the date on which Federal assistance is awarded may be modified from time to time. In particular, new Federal laws, regulations, and directives may become effective after the date the project agreement is effective, and might apply to that project agreement. The VENDOR agrees that the most recent versions of such Federal laws, regulations, and directives will apply to the administration of the project at any particular time.

L. Right of the State Government to Terminate (ALL)

Upon written notice, the VENDOR agrees that the State Government may suspend or terminate all or any part of State assistance if terms of the project agreement are violated, if the State Government determines that the purposes of the laws authorizing the Project would not be adequately served by the continuation of State assistance for the Project., if reasonable progress on the Project is not made, if there is a violation of the project agreement that endangers substantial performance of the Project, or if the State Government determines that State assistance has been willfully misused by failing to make appropriate use of Project property. Termination of State assistance for the Project will not typically invalidate obligations properly incurred before the

termination date to the extent those obligations cannot be canceled. The State Government reserves the right to require the refund of the entire amount of State assistance provided for the Project or a lesser amount.

M. Disputes, Breaches, Defaults, or Other Litigation (over 150K)

The VENDOR agrees that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly:

a. **Notification to FTA.** The VENDOR is aware that recipients of Federal assistance must notify FTA in writing of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project or the administration or enforcement of Federal laws or regulations. If the Federal Government is to be named as a party to litigation for any reason, in any forum, the appropriate FTA Regional Counsel is to be notified in writing before doing so.

b. **Federal Interest in Recovery.** The VENDOR is aware that the Federal Government retains the right to a proportionate share, based on the percentage of the Federal share awarded for the Project, of proceeds derived from any third party recovery.

c. **Enforcement.** The VENDOR agrees to pursue its legal rights and remedies available under any third party contract or available under law or regulations.

d. **FTA Concurrence.** The VENDOR is aware that FTA reserves the right to concur in any compromise or settlement of any claim involving the Project.

e. **Alternative Dispute Resolution.** The VENDOR is aware that FTA encourages the use of alternative dispute resolution procedures, as may be appropriate.

f. **Agency Process.**

Transit agency enters dispute resolution process here.

N. Fly America (foreign air transport or travel)

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of 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. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. 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. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

O. Recycled Products (all products)

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 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR 247.

P. Access for Individuals with Disabilities (ALL)

The VENDOR agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The VENDOR also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with 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; and with 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; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the VENDOR agrees to comply with applicable implementing Federal regulations any later amendments thereto, and agrees to follow applicable Federal directives except to the extent FTA approves otherwise in writing. Among those regulations and directives are: (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37; (2) 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; (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/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; (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35; (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36; (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19; (7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630; (8) 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; (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and (11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

Q. Debarment and Suspension (over 25K)

The vendor hereby certifies that it and its principals have not presently or within a three year period been debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal agency; and the vendor hereby certifies that it and its principals have not presently or within a three-year period been convicted of or had a civil judgment rendered against them for the commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, state or local) transaction; violation of Federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

R. Clean Water & Air (over 150K)

The vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§7401 et seq. The vendor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to the FTA and the EPA.

S. Non-Lobbying (over 150K)

The undersigned certifies to the best of his or her knowledge and belief that:

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

2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit standard form LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements and that all subrecipients shall certify and disclose accordingly.

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

T. Lobbying and Disclosure Certification

| | |
|-----------------|--|
| Name of Company | Printed Name of Person Completing Form |
| Date | Signature |

U. CERTIFICATION TO PURCHASER:

- A. The undersigned vendor certifies that the manufactured good(s) furnished will meet or exceed the specifications, and/or that services rendered will comply with the terms of the solicitation or contract.
- B. The undersigned vendor certifies that it has read all of the bid, proposal, or contract documents and agrees to abide by the terms, certifications, and conditions thereof.

| | | |
|--|---|---|
| Name of Company | Address | |
| | Printed Name of Person Completing Form | |
| Telephone | Signature | |
| Date | SS# or Tax ID # | |
| Description of Commodity or Service | | |
| Disadvantaged Business Enterprise Information | Type of Organization (circle) | |
| | <input type="checkbox"/> Sole Proprietorship | <input type="checkbox"/> General Proprietorship |
| Is your firm a DBE? <input type="checkbox"/> (yes) <input type="checkbox"/> (no) | <input type="checkbox"/> Corporation | <input type="checkbox"/> Limited Partnership |
| If yes, what type? | <input type="checkbox"/> Limited Proprietorship | |

V. Disadvantaged Business Enterprises (DBE) Certification (Transit Vehicle Manufacturer or TVM)

The vendor will provide products compliant with 49 CFR 26.49 regarding the vehicle manufacturer's overall DBE goal. Name of manufacturer of vehicle(s) to be delivered: _____

W. Disadvantage Business Enterprise (DBE) Race-Neutral Required Clauses (Non-TVM):

The DBE rules set forth in 49 CFR Part 26 apply to all contracts funded in whole or in part with Federal DOT funds. Contracts and subcontracts must contain the clauses listed in 49 CFR 26.13 and 49 CFR 26.29. Sub-recipients with contracts that contain a DBE goal must coordinate with their PTC in order to ensure solicitations and contracts comply with DBE requirements.

49 CFR 26.13 -- What assurances must recipients and contractors make?

Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. 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 recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible."

49 CFR 26.29 -- What Prompt Payment Mechanisms Must Recipients Have?

Grantees must establish a contract clause requiring prime contractors to pay subcontractors for satisfactory performance no later than 30 days from receipt of each payment the grantee makes to the prime contractor. This

clause must require the prompt return of retainage payments from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. For more information on these please review *49 CFR 26.29* and the *FTA Best Practice Procurement Manual*.

X. Altoona Test Certification (for rolling stock purchases) (Check one of the following):

- The vehicle has been Altoona tested, report number: _____
- The vehicle is exempt from testing IAW 49 CFR 665.
- The vehicle is currently being tested at Altoona.

Funds will not be released until the purchasing agency gets a copy of the Altoona test report, as appropriate, per 49 CFR 665.

Y. Federal Motor Vehicle Safety Standards (FMVSS) Certification (for rolling stock purchases)

Any vehicles provided by the vendor will comply with all applicable FMVSS. The vendor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

FMVSS Certification

| | |
|-----------------|--|
| Name of Company | Printed Name of Person Completing Form |
| Date | Signature |

Z. Buy America (Check where applicable): (over \$150K rolling stock, construction, materials)

- The vendor or offeror hereby certifies it will comply with the requirements of 49 USC 5323(j) and the applicable regulations in 49 CFR 661, providing Buy America compliant manufactured goods or rolling stock.
- The vendor or offeror cannot comply with the requirements 49 USC 5323(j), but may qualify for an exception to the requirement pursuant to the regulations in 49 CFR 661.

Buy America Certification

| | |
|-----------------|--|
| Name of Company | Printed Name of Person Completing Form |
| Date | Signature |

II. SPECIAL PROJECT TYPE PROVISIONS - the following addenda are attached and endorsed as appropriate:

- A. Construction or Architectural & Engineering Projects
- B. Transit Operations or Management Projects
- C. Intelligent Transportation System or Research & Development