

USDOT/FTA Terms and Conditions

Federal Financial Assistance and Federal Changes: Up to 80% of the total cost of the deliverables described in the Contract will be financed with Federal monies from the Federal Transit Act of 1964, as amended.

1. No Government Obligation to Third Parties: The Contractor agrees that it will comply the U.S. Department of Transportation regulations relating to contractual liability of the Federal Government to third parties as follows:

The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express 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 City, Contractor, or any other party (whether or not party to the Contract) pertaining to any matter resulting from the underlying Contract.

2. Incorporation of FTA Terms. The provisions in this section includes, in part, certain standard terms and conditions required by USDOT/FTA, whether or not expressly set forth in these provisions. All contractual provisions required by USDOT/FTA, as set forth in FTA Circular 4220.1D are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all USDOT/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 City of Madison requests, which would cause the City of Madison to be in violation of the USDOT/FTA terms and conditions.

The Contractor agrees that it will comply at all times with 49 CFR Part 18; U. S. Department of Transportation regulations relating to applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement Form FTA MA (9) dated October 2002, between the City and U. S. Department of Transportation/Federal Transit Administration (USDOT/FTA), as they may be amended or promulgated from time to time during the term of this Proposal and proposed contract. The Contractor's failure to so comply shall constitute a material breach of this proposal and proposed contract.

These grant agreements and FTA Circular 4220.1D, "Third Party Contracting," are available for examination at the Office of the Transit Finance Manager, 1101 East Washington Avenue, Madison, WI 53703-3052, 608/267-8766 (voice), 608/267-8778 (fax) or rwohlers@ci.madison.wi.us.

3. Procurement Protest Procedure: In accordance with USDOT/FTA Circular 4220.1D, the City of Madison has a written procurement protest procedure, which is available upon request from the Office of the Transit Finance Manager. Protests against the City's responses to requests for approved equals and/or exceptions, unclear or restrictive specifications, the procurement process, alleged improprieties, etc. must be submitted in writing, in accordance with said procedure.

4. Compliance with Local, State and Federal Laws: The services and/or equipment provided shall be in compliance with all requirements of the laws and regulations of the City of Madison, the State of Wisconsin and the United States of America.

5. Ethics:

a. Prohibited Interest: The Contractor guarantees that no employee, officer, or agent of the City during his or her tenure or one (1) year thereafter has any interest, direct or indirect, in this contract or the proceeds thereof. Such a conflict would also arise when any employee, officer or agent's family member or partner or organization that employs, or is about to employ any of the above, has a financial or other interest in the Contractor selected for award.

b. Interest of Members of or Delegates to Congress: The Contractor guarantees that he or she has not offered or given to any member of, or delegate to the Congress of the United States, any share or part of this contract or to any benefit arising therefrom.

c. Covenant Against Gratuities: The Contractor guarantees that he or she has not offered or given gratuities (in the form of entertainment, gifts, or otherwise) to any employee, officer or agent of the City with a view toward securing favorable treatment in the awarding, amending, or evaluating performance of the proposal or proposed contract.

d. Collusive Agreements: The Contractor guarantees that the Contract submitted is not a product of collusion with any other Contractor and no effort has been made to fix any overhead, profit or cost element of any Contract price.

e. Program Fraud and False or Fraudulent Statements and Related Acts:

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

(2) The Contractor also understands and 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.

6. Civil Rights - The Contractor shall comply with the following requirements:

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, or sex. 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.

4. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:**

In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Contract and the Regulations relative to non-discrimination on the grounds of race, color, sex or national origin.

5. **Information and Reports:** The Contractor shall provide all information and reports required by the Federal Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City or the USDOT/FTA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the City or to the USDOT/FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

6. **Incorporation of Provisions:** The Contractor shall include the provisions of the "Civil Rights" in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the City or the USDOT/FTA may direct as a means of enforcing non-compliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the City to enter into such litigation to protect the interest of the United States.

7. **Penalties:** Failure by the Contractor to carry out these requirements is a material breach of the Contract, which may result in the withholding of payments to the Contractor under the contract until the Contractor complies; cancellation, termination or suspension of this Contract; ineligibility for future Contracts; or such other remedy as the City or USDOT/FTA deems appropriate in order to assure compliance with applicable civil rights standards as required by law.

7. **Disadvantaged Business Enterprise:**

The requirements of 49 C.F.R. Part 26 and the City's USDOT/FTA approved Disadvantaged Business Enterprise (D.B.E.) Program are incorporated in this Contract by reference.

1. Policy. It is the policy of the U.S. Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the opportunity to participate in the performance of Contracts financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this Agreement.

2. Obligation. The Contractor or its Contractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the opportunity to participate in the performance of Contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard, all Contractors or their Contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure nondiscrimination in the award and administration of all contacts and sub agreements supported with Federal assistance from the U.S. DOT.

3. Penalty: Failure by the Contractor or its 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 City deems appropriate.

8. **Reservation of the Right to Inspect Work:** At any time during normal business hours and as often as the City may deem necessary, the Contractor shall permit the authorized representatives of the City to review and inspect all materials and workmanship at anytime during the duration of this proposed contract, provided, however, the City is under no duty to make such inspections, and any inspection so made shall not relieve the Contractor from any obligation to furnish materials, workmanship or professional services strictly in accordance with the instructions, Contract requirements and specifications.

9. Audit and Inspection of Records:

- a. The Contractor shall maintain intact and readily accessible all data, documents, reports, records, Contracts, and supporting materials relating to this proposed contract during the course of this proposed contract and for three (3) years thereafter. The Contract shall permit the authorized representations of the City, the USDOT/FTA, and the Comptroller General of the United States to inspect all project work, materials, payrolls, and other data, and to audit the books, records, and accounts pertaining to this Contract.
- b. The Contractor further agrees to include in all his or her subcontracts hereunder a provision to the effect that the subcontractor agrees to the requirements of the above paragraph. The term "subcontractor" as used in this clause exclude subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.
- c. The periods of access and examination described above, for records which relate to (1) appeals under the disputes clause of this Contract, (2) litigation or the settlement of claims arising out of the performance of this Contract, and (3) costs and expenses of this Contract as to which exception has been taken by the Comptroller General or any of his/her duly authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

10. Labor: The Contractor agrees to comply with and assures compliance with applicable employee protection requirements for non-construction employees of section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 327 through 332, and implementing USDOL regulations, Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act), 29 C.F.R. Part 5.

11. Government-wide Debarment & Suspension Non-procurement: Executive Order 12549, as implemented by 49 CRF Part 29, prohibits FTA Contractors and sub-Contractors from contracting for goods and services from organizations that have been suspended or debarred from receiving Federally-assisted Contracts. Contractor agrees to submit a certification to the effect that it will not enter into contacts over \$100,000 with suspended or debarred Contractors and that it will require their Contractors (and their subcontractors) to make the same certification. Contractors are required to pass this requirement on to subcontractors seeking subcontracts over \$100,000. Thus, the term "lower tier covered participant" and "Lower tier covered transaction", include both Contractors and subcontractors and Contracts and subcontracts over \$100,000. The certification and instruction language is contained at 29 CFR Part 29, Appendix B, and must be included in IFB's and RFP's [for inclusion by Contractors in their offers or Contracts] for all Contracts over \$100,000, regardless of the type of contract to be awarded.

Furthermore, the Contractor agrees to provide the City with immediate written notice if it learns that its submitted certification, which was not erroneous when submitted, has become erroneous by reasons of changed circumstances. Written notice shall be sent to Ruth Ann Wohlers, Transit Finance Manager, 1101 East Washington Avenue, Madison, WI 53703-3052.

Any name appearing in the U. S. Comptroller General's List of Ineligible Contractors, will be considered an ineligible Contractor.

12. Environmental Requirements:

- a. Environmental Protection: The Contractor agrees to comply with any applicable standards, orders, and/or requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq. in accordance with Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629, February 16, 1994; FTA statutory requirements on environmental matters at 49 U.S.C. 5324(b); Council on Environmental Quality Regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 et. seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.
- b. Air Quality: The Contractor agrees to comply with any applicable requirements of EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed. The Contractor agrees it will comply with 42 USC ..7401 et seq., 40 CFR Part 15.61, and 49 CFR Part 18; U. S. Department of Transportation regulations relating to clean air. This requirement applies to all

Contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

Furthermore, all equipment provided through this Contract shall be designed and equipped to limit air pollution as provided in the accordance with the following EPA regulations: "Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines," 40 CFR Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New Motor and In-Use Vehicle Engines; Certification and Test Procedures," 40 CFR Part 86; and "Fuel Economy of Motor Vehicles," 40 CFR Part 600; and in accordance with applicable Federally-approved State Implementation Plan(s) (in particular, the Transportation Control Measures); and in accordance with applicable Federal regulations, directives and other standards.

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

d. Energy Conservation: The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the State of Wisconsin Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.) and 49 CFR Part 18; U. S. Department of Transportation regulations relating to energy conservation.

e. Recycled Products: The Contractor agrees that it will comply with 42 USC .6962 et seq., and 40 CFR Part 247, and Executive Order 12873; U. S. Department of Transportation regulations relating to recycled products. This requirement applies to all Contracts designated by the EPA, when the City or Contractor procures \$10,000 or more of such items in the fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000, using federal funds.

Violations shall be reported to USDOT/FTA and to the United States Environmental Protection Agency Assistant Administrator for Enforcement.

13. Prohibition Against the Use of Federal Funds for Lobbying: The Contractor, in compliance with 49 CFR Parts 19 and 20, hereby assures and certifies that for any Contracts over \$100,000: (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person, to influence or attempt to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with awarding any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, an 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 making lobbying contacts to 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 or grant, the Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. (3.) The Contractor shall require that the language of this certification will 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 subcontractors shall certify and disclose accordingly.

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

14. Assignment of Contract by City: At any time during the continuance of the agreement, the City shall have the right to sell, assign and transfer the contract or all or part of the specified deliverables under the contract both the base and/or the option quantities with all its right, title, and interest therein, to any person, firm, or corporation, and the assignee thereof shall acquire all the rights granted to the City and shall be subject to any obligations that the City may have under the contract.

USDOT/FTA TERMS AND CONDITIONS-REQUIREMENTS FOR CONTRACTORS AND CERTAIN SUBCONTRACTORS

Contractor shall comply with the subsections of this Section and include these requirements, except "Contract Work Hours and Safety Standards Act", in all subcontracts exceeding \$100,000 in value of every tier. Contractor will include "Contract Work Hours and Safety Standards Act" in all subcontracts exceeding \$2,500 in value not including subcontracts for the purchase of supplies or materials or articles ordinarily available on the open market.

15. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The Contractor agrees to comply and shall assure with applicable employee protection requirements for non-construction employees of section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 327 through 332, and implementing USDOL regulations, Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act), 29 C.F.R. Part 5.

- I. 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.
- II. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (I) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (I) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (I) of this section.
- III. Withholding for unpaid wages and liquidated damages. The Procuring Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (II) of this section.
- IV. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.
- V. Payrolls and basic records. (i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain

written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

16. CARGO PREFERENCE

The Contractor agrees:

To utilize privately owned United States-flag commercial vessels to ship at least 50 (fifty) 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 this Contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

To furnish within 20 (twenty) working days following the date of loading for shipments originating within the United States, or within 30 (thirty) working days following the date of loading for shipments 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 the Procuring Agency (through the Contractor in the case of a subcontractor's bill-of-lading.)

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.

17. FLY AMERICA

The Contractor shall comply with 49 U.S.C. 40118, which provide that Federal funds may not be used in the costs of international air transportation of any persons involved in or property acquired for this contract unless that air transportation is provided by U.S.-flag air carriers to the extent service by these carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. 40118, and with U.S. General Services Administration (U.S. GSA) regulations pertaining to the use of United States flag air carriers, 41 C.F.R. 301-3.61(b), and any later regulations at 41 C.F.R. 301-10.131 et seq.

The Contractor shall include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of property or persons by air between the United States and foreign destinations or between foreign destinations.

PRE-AWARD AND POST-DELIVERY REQUIREMENTS

18. PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS

1. CERTIFICATIONS REQUIRED

All required pre-award certifications are listed in the "Request for Proposals & Offer" 1.1.3.6. In addition, the Offeror and selected Contractor agrees to comply with 49 U.S.C. § 5323(j) & (m) and FTA's implementing regulation at 49 C.F.R. Part 663 and Part 661 and shall submit all necessary certifications and documentation, **as required, with its Offer and prior to vehicle acceptance**, including but not limited to the following:

- **BUY AMERICA DOCUMENTATION**

The Offeror and selected Contractor shall 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 Offeror and selected Contractor shall submit to the Procuring Agency the appropriate Buy America certification with its response as described more fully below, except those subject to a general waiver. A proposal that is not accompanied by a completed Buy America certification will be rejected as non-responsive. This requirement does not apply to lower tier subcontractors.

The Offeror and selected Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Contractor certifies compliance with Buy America, it shall submit documentation which lists: 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

- **FEDERAL MOTOR VEHICLE SAFETY STANDARDS (FMVSS)**

The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS **at the time of award and at the time of the post award audit**, or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

- **PURCHASERS REQUIREMENTS CERTIFICATION**

The Offeror and selected Contractor shall submit all documentation requested by the Procuring Agency in order to satisfy the following Federal requirements in 49 CFR 663.

(1.) Pre-Award Purchasers Requirements Certification

The Pre-Award purchaser's requirements certification is a certification that the procuring agency keeps on file that:

- A. The rolling stock the Procuring Agency is contracting for is the same product described in the Procuring Agencies solicitation specifications.
- B. The Offeror and (if selected) Contractor is the responsible manufacturer with the capability to produce a vehicle that meets the Procuring Agency specifications set forth in the Procuring Agency solicitation.

(2.) Post-Award Purchasers Requirements Certification

The Post-Award purchaser's requirements certification is a certification a procuring agency keeps on file that:

- A. Except for procurements covered under paragraph (C), in this section, a resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture of the rolling stock to be purchased and monitored and completed a report on the manufacture of such rolling stock. Such a report, at a minimum, shall (1) provide accurate records of all vehicle construction activities; and (2) Address how the construction and operation of the vehicles fulfills the contract specifications.
- B. After reviewing the report required under paragraph (A), of this section, and visually inspecting and road testing the delivered vehicles, the vehicles meet the contract specifications.
- C. For procurements of ten or fewer buses, or any number of primary manufacturer standard production and unmodified vans, after visually inspecting and road testing the vehicles, the vehicles meet the contract specifications.

The Contractor shall submit all **Post Award Audit Documents**, as listed herein, to the Procuring Agency prior to the vehicle acceptance of each annual shipment. Failure to provide these documents, within this timeframe, may result in a reasonable retention amount being withheld by the Procuring Agency in subsequent shipments, to insure satisfactory performance with this requirement.

19. BUS TESTING

The Contractor agrees to and shall comply with 49 U.S.C. § 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

- I. A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the Procuring Agency prior to the Procuring Agency's final acceptance of the first bus.

- II. A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- III. If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the Procuring Agency prior to Procuring Agency's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- IV. If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

USDOT/FTA Terms and Conditions - Requirements for Contractor and Certain Subcontractors

20. Davis-Bacon Act and Related Act Requirements

20.1 Minimum Wages: During the performance of all construction contracts in excess of \$2,000, the Contractor agrees to comply with all applicable provisions of the Davis-Bacon Act (29 C.F.R. Part 5) as quoted here in Section 19.01.

"(a) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 C.F.R. Part 5.5 (a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. Part 5.5 (a)(4), laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 C.F.R. Part 5.5 (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

"(b)(1) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

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

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

"(3) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the

contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

"(4) The wage rate (including fringe benefits where appropriate) determined pursuant to 29 C.F.R. Part 5.5 (a)(i)(1)(B) or 29 C.F.R. Part 5.5 (a)(i)(1)(C), shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

20.2 Withholding: The City of Madison shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the City of Madison may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

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

(b)(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the City of Madison for the transmission to USDOT/FTA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 C.F.R. Part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

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

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

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by 29 C.F.R. Part 5.5(a)(3)(ii)(B).

(4) The falsification of any above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. Part 1001 and 31 U.S.C. Part 231.

(c) The Contractor or subcontractor shall make the records required under 29 C.F.R. Part 5.5(a)(3)(i) available for inspection, copying, or transcription by authorized representatives of the City, USDOT/FTA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, USDOT/FTA may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payments, advance or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. Part 5.12.

20.4 Apprentices and Trainees: (a) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be

permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees. Except as provided in 29 C.F.R. Part 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. The trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination, that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) Equal Employment Opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. Part 30.

- 20.5 Compliance with Copeland Act Requirements: The Contractor shall comply with the requirements of 29 C.F.R. Part 3, which are incorporated herein by reference.
- 20.6 Contract Termination: Debarment: A breach of the contract clauses in 29 C.F.R. Part 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 C.F.R. Part 5.12.
- 20.7 Compliance with Davis-Bacon and Related Act Requirements: All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. Parts 1, 3, and 5 are incorporated herein by reference.
- 20.8 Disputes Concerning Labor Standards: Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the City of Madison, the U.S. Department of Labor, or the employees or their representatives.
- 20.9 Certification of Eligibility: (a) By entering into this contract or a third-party contract financed under this contract, the Contractor certifies that neither it (nor he nor she) nor any person or firm that has an interest in the Contractor's firm is a person or firm ineligible to be awarded government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 C.F.R. Part 5.12(a)(1).
- (b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 C.F.R. Part 5.12(a)(1).
- (c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. Part 1001.
- 20.10 Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses

in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

21. Copeland Anti-Kickback Act

3.1 of the Copeland Act makes it clear that the purpose of the Act is to assist in "the enforcement of the minimum wage provisions of the Davis- Bacon Act." In keeping with this intent DOL has included a section on the Copeland Act in the mandatory language of the Davis-Bacon provisions. The language can be found at § 5.5(a)(5) of the Davis-Bacon model clauses.

USDOT/FTA Terms and Conditions - Requirements for Certain Operating Contracts/Bids

22. Charter Bus and School Bus Requirements

a. Charter Service Operations - The City agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that Recipients of FTA funding and subcontractors of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

b. School Bus Operations - The City agrees to comply with 49 U.S.C. 5323(f) and 49 CFR Part 605, which provides that Recipients of FTA funding and subcontractors of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, Recipients and subcontractors may not use federally funded equipment, vehicles, or facilities.

23. Privacy Act:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

24. Drug Use and Testing and Alcohol Misuse and Testing:

The Contractor hereby assures and certifies that it will comply with all requirements of 49 CFR Part 655; FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations", to the extent applicable.

USDOT/FTA Terms and Conditions - Requirements for Construction of new buildings or additions to existing buildings - Contracts/Bids

25. Seismic Safety:

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

FTA & LOCAL CERTIFICATIONS

The following Certifications and forms must be submitted in a separate sealed envelope marked "Envelope No. 2--Certifications."

1. AFFIDAVIT AND INFORMATION REQUIRED OF PROPOSERS -(Include in all bids)

I hereby declare and affirm under the penalty for perjury:

- A. That I am the Proposer (if the Proposer is an individual), a partner in the Proposal (if the Proposer is a partnership), or an officer or employee of the proposing corporation (if the Proposer is a corporation);
- B. That the attached Proposal(s) have been arrived at by the Proposer independently and have been submitted without collusion or sham [fraud] and without any agreement, understanding, or planned common course of action with any other vendor of materials, supplies, equipment, or services described in the request for proposals, designed to limit independent proposing or competition;
- C. That the contents of the Proposal(s) have not been communicated, directly or indirectly, by the Proposer or its employees or agents to any person not an employee or agent of the Proposer or its surety or any bond furnished with the Proposal(s), and will not be communicated to any such person prior to the official opening of the proposal(s); and
- D. That I have fully informed myself regarding the accuracy of the statements made in the affidavit.

SIGNATURE _____

NAME _____

TITLE _____

FIRM NAME _____

DATE _____

2. OVERALL FEDERAL REGULATION COMPLIANCE

All contractual provisions required by USDOT/FTA, as set forth in USDOT/FTA Circular 4220.1D, as amended, and outlined in SECTION E: USDOT/FTA Terms and Conditions, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all USDOT/FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the Proposal with the successful Proposer. The successful Proposer shall not perform any act, fail to perform any act, or refuse to comply with any City of Madison requests which would cause the City of Madison to be in violation of USDOT/FTA or Wisconsin Department of Transportation grant terms and conditions.

SIGNATURE _____

NAME _____

TITLE _____

FIRM NAME _____

DATE _____

3. COMPLIANCE WITH SPECIFICATIONS/SCOPE OF WORK -(Include in all bids)

The Proposer hereby certifies that it will comply with the specifications/scope of work issued by the City of Madison, WI. **The Proposer warrants and certifies that of the following three paragraphs, paragraph A or B or C is true (check one ONLY):**

- A. ____ The Proposer hereby states that it will comply with the specifications/scope of work in all areas. (This means that there are no exceptions to the City's specifications/scope of work, no matter how minor. If you have any doubts, check paragraph C or call the Project Administrator, at 608/267-1148, for assistance.)

- B. ____ The Proposer hereby states that it will comply with the specifications/scope of work in all areas except those where requests for clarification were approved by the City prior to Proposal submission.

- C. ____ The Proposer hereby states that it will comply with the specifications/scope of work in all areas except those noted in its response as not being granted by the City in the requests for clarification process. The Proposer understands that those exceptions to the specifications/scope of work may be considered not responsive and may be rejected by the City.

SIGNATURE _____
NAME _____
TITLE _____
FIRM NAME _____
DATE _____

**4. DEBARMENT AND SUSPENSION CERTIFICATION (LOWER TIER COVERED TRANSACTION)
(Only Proposals Exceeding \$100,000)**

Instructions for Certification:

1. By signing and submitting this Offer or proposal, the prospective lower tier participant is providing the signed certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by in writing by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies including suspension and/or debarment.

The prospective lower tier participant certifies, by submission of this Proposal, that neither it nor its "principals" as defined at 49 C.F.R. § 29.105 is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective lower tier participant shall attach an explanation to this proposal, and indicate that it has done so, by placing an X in the following space:

Furthermore, the prospective lower tier participant certifies that it will provide immediate written notice to the Procuring Agency if, at any time during the course of the proposed Offer, it learns that this certification was erroneous when submitted or has been erroneous by reason of changed circumstances.

THE PROPOSER OR OFFEROR, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND EXPLANATION, IF ANY. IN ADDITION, THE PROPOSER OR OFFEROR UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 U.S.C. §§ 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND EXPLANATION, IF ANY.

SIGNATURE _____

NAME _____

TITLE _____

FIRM NAME _____

DATE _____

**5. DEBARMENT AND SUSPENSION CERTIFICATION - PRIMARY
(Only Proposals Exceeding \$100,000)**

Instructions for Certification:

1. By signing and submitting this Offer or proposal, the prospective primary participant is providing the signed certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by in writing by the department or agency entering into this transactions.

7. The prospective primary participant further agrees by submitting this proposal that it will include this clause titled "Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under Paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

5. DEBARMENT AND SUSPENSION CERTIFICATION - PRIMARY- (continued)

The prospective primary participant certifies, by submission of this Proposal, to the best of its knowledge and belief, that neither it nor its "principals," as defined at 49 C.F.R. Part 29.105:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this certification.
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, local) terminated for cause or default.

If the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal, and indicate that it has done so, by placing an "X" in the following space: ____.

Furthermore, the potential Proposer certifies that it will provide immediate written notice to the Procuring Agency if, at any time during the course of the proposed contract, it learns that this certification was erroneous when submitted or has been erroneous by reason of changed circumstances.

THE PROPOSER OR OFFEROR, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND EXPLANATION, IF ANY. IN ADDITION, THE PROPOSER OR OFFEROR UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 U.S.C. §§ 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND EXPLANATION, IF ANY.

SIGNATURE _____
NAME _____
TITLE _____
FIRM NAME _____
DATE _____

6. LOBBYING CERTIFICATION (Only Proposals Exceeding \$100,000)

The undersigned [Proposer] 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 an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to 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 [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]

(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 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Proposer, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

SIGNATURE _____
NAME _____
TITLE _____
FIRM NAME _____
DATE _____

7. DBE APPROVAL CERTIFICATION

The Proposer hereby certifies that it will not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in awarding a subcontract, and that it will take reasonable and necessary steps to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in DOT Financial Assistance Programs, including 49 CFR 26.13, will have the opportunity to participate in the performance of this Proposal. Furthermore, the Proposer certifies that its goals have not been disapproved by the Federal Transit Administration.

SIGNATURE _____

NAME _____

TITLE _____

FIRM NAME _____

DATE _____

8. COMPLIANCE WITH LOCAL AFFIRMATIVE ACTION ORDINANCE

The Proposer hereby certifies that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison including contract compliance requirements. **The Proposer warrants and certifies that, of the following three paragraphs, paragraph A or B or C, is true (check one ONLY):**

- A. ____ It has prepared and has on file with the City of Madison's Affirmative Action Department an Affirmative Action Plan that meets the formal requirements of Federal Revised Order No. 4, 41 C.F.R. Part 60.2, as established by 43 FR 51400, November 3, 1978, including appendices required by the City of Madison ordinances or it has prepared and has on file a model Affirmative Action Plan approved by the Madison Common Council. (Please note that Affirmative Action plans must be updated annually with the Affirmative Action Department.)

- B. ____ Within thirty (30) days after the effective date of this Proposal, it will complete an Affirmative Action Plan that meets the format requirements of Federal Revised Order No. 4, 41 C.F.R. Part 60.2, as established by 43 FR 51400, November 3, 1978, including appendices required by the City of Madison ordinance or within thirty (30) days after the effective date of this Proposal, it will complete a model Affirmative Action Plan approved by the Madison Common Council.

- C. ____ The Proposer is exempt from filing an Affirmative Action Plan as he or she has fewer than fifteen (15) employees. Within thirty (30) days after Proposal award, the Proposer will file with the Affirmative Action Department an Employer Information Report form to document his or her exempt status.

SIGNATURE _____
NAME _____
TITLE _____
FIRM NAME _____
DATE _____

9. PROGRESS PAYMENTS CERTIFICATION

I hereby declare and affirm under the penalty for perjury that one or more of the following statements are true (check all applicable):

- A. ___ Said firm is an independently-owned small business that grosses less than \$750,000 per year when averaged over the last three years.
- B. ___ said firm will not be able to bill the City of Madison for the first delivery of services, or other performance milestones as established by the City, for an unknown or substantial time after work must begin (four months or more for small businesses or six months or more for others),
- C. ___ said firm will make expenditures for contract performance during the period prior to delivery that will have a significant impact on the firm's working capital,
- D. ___ said firm is able to demonstrate actual financial need or the inability to obtain private financing,
- E. ___ said firm has a demonstrated financial need to receive monthly progress payments during the course of its contract with the City of Madison, or
- F. ___ said firm is not eligible or does not request progress payments.

When progress payments are used, the City shall obtain title to property (materials, work in progress, and finished goods) for which progress payments are made. Such title must be free of all encumbrances. The City shall not grant progress payments if the contract items are quick turnover types for which progress payments are not customary commercial practice.

Furthermore, said firm acknowledges that when progress payments are made, fifteen percent of the invoice shall be retained by the City until final payment is made, that said invoices shall be based upon actual costs and accompanied by a progress report and that the total amount of progress payments may not exceed 80% of the total contract price.

SIGNATURE _____
NAME _____
TITLE _____
FIRM NAME _____
DATE _____

10. DESIGNATION OF CONFIDENTIAL AND PROPRIETARY INFORMATION

The material submitted in response to this solicitation documentation includes proprietary and confidential information which qualifies as a trade secret, as provided in Section 19.36(5), Wis. Stats., or is otherwise material that can be kept confidential under the Wisconsin Open Records Law. As such, we ask that certain pages, as indicated below, of this proposal response be treated as confidential material and not be released without our written approval. We request that the following pages not be released:

Section _____ Page # _____ Topic _____

Section _____ Page # _____ Topic _____

Section _____ Page # _____ Topic _____

This does not apply to price proposals. Prices are always open. Other information usually cannot be kept confidential unless it is a trade secret. Trade secret is defined in s.134.90(1)(c), Wis. Stats. as follows: "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process to which all the following apply: 1. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. 2. The information is the subject of efforts to maintain its secrecy that are reasonable under the circumstances.

Failure to include this form in the proposal response may mean that all information provided as part of the proposal response will be open to examination and copying. Other markings of confidential in the proposal document will be considered to be insufficient.

The undersigned agrees to hold the City harmless for any damages arising out of the release of any material unless they are specifically identified above. In the event the designation of confidentiality of this information is challenged, the undersigned also agrees to provide legal counsel or other necessary assistance to defend the designation of confidentiality and, further, agrees to hold the City harmless from any penalties, costs, damages and fees, including attorneys fees, awarded to the requestor and ordered to paid by the City, in any such legal action.

SIGNATURE _____

NAME _____

TITLE _____

FIRM NAME _____

DATE _____

11. DBE VENDOR SURVEY

The United States Department of Transportation (USDOT) has issued new rules to restructure the Disadvantaged Business Enterprise Program so it complies with Court orders. These new rules at 49 C.F.R. Part 26.11 require transit properties to obtain the following information from all current, past and potential Proposers. Here "potential Proposer" is defined as one seeking or has sought to do business with us.

A. PROPOSING COMPANY NAME _____

Address _____

City _____ State _____ Zip + 4 _____

B. How long has your firm been in business? _____

C. What is the annual gross receipts of your firm? _____

D. Are you a D.B.E.? Yes _____ No _____

E. If yes, is your personal net worth greater than \$750,000? Yes _____
No _____

F. If you want USDOT and the City of Madison to treat this information as proprietary you must place an "X" in the following space: _____. If done, then USDOT and the City will view this information as proprietary. It will therefore be protected under the Federal Freedom of Information Act, which pre-empts state and local laws, if any, which may allow this information to be otherwise released.

SIGNATURE _____

NAME _____

TITLE _____

FIRM NAME _____

DATE _____

12. VENDOR DATA SHEET

A. LIST THE PERSON THE CITY CAN CONTACT IF THERE ARE QUESTIONS ABOUT YOUR PROPOSAL.

Name _____
Address _____
City _____ State _____ Zip + 4 _____
Phone _____ FAX _____ E-mail _____

B. LIST THE PERSON RESPONSIBLE FOR REQUIRED AFFIRMATIVE ACTION INFORMATION.

Name _____
Address _____
City _____ State _____ Zip + 4 _____
Phone _____ FAX _____ E-mail _____

C. LIST THE PERSON RESPONSIBLE FOR INVOICES & PREVAILING WAGE DOCUMENTATION.

Name _____
Address _____
City _____ State _____ Zip + 4 _____
Phone _____ FAX _____ E-mail _____

D. LIST THE PERSON RESPONSIBLE FOR THE MONTHLY PROGRESS REPORTS, if required.

Name _____
Address _____
City _____ State _____ Zip + 4 _____
Phone _____ FAX _____ E-mail _____

13. BUY AMERICA CERTIFICATION

NOTE: Only fill in one (1) of the following Buy America Certification forms.

Certificate of Compliance

The Offeror hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 C.F.R. 661.11:

Signature: _____

Name & Title: _____

Company Name: _____

Date: _____

Certificate of Non-Compliance

The Offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.

Signature: _____

Name & Title: _____

Company Name: _____

Date: _____

If Applicable, list the “exemption” qualifications accepted by FTA:

14. CERTIFICATE OF COMPLIANCE WITH BUS TESTING REQUIREMENT

The undersigned certifies that the vehicle offered in this procurement complies and will, when delivered, comply with 49 U.S.C. § 5323(c) and FTA's implementing regulation at 49 CFR Part 665 according to the indicated one of the following three alternatives.

(Checkmark one and only one of the three blank spaces with an "x")

1. The buses offered herewith have been tested in accordance with 49 CFR Part 665 on _____ (date). The vehicles being sold should have the identical configuration and major components as the vehicle in the test report, which must be submitted with this Offer. If the configuration or components are not identical, the manufacturer shall provide with its Offer a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

2. The manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), and submits with this Offer the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

3. The vehicle is a new model and will be tested and the results will be submitted to Procuring Agency prior to acceptance of the first bus.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Signature: _____

Name & Title: _____

Company Name: _____

Date: _____