

The Concho Valley Transit District (CVTD) anticipates the award of a Firm Fixed Price contract to purchase one low floor Trolley to provide transportation in accordance with CVTD policies and procedures in West Texas. The proposal submitted shall identify all charges/fees associated with the cost of the trolley however, the final quoted price shall be inclusive of all charges/fees and destination charges associated with the acquisition as this is FOB Destination.

Offeror/Bidder is informed the CVTD Procurement Office will be closed from 19 Dec-26 Dec 2014.

The environment is described as hot, dry, and arid during the summer months with short cold spells during the winter months.

The Trolley shall be able to perform according to manufacturer recommendations for the aforementioned climate.

The offeror is prohibited from offering an equal item not capable of performing and/or designed/manufactured for performance in the aforementioned climate. Further the offeror is prohibited from offering a chassis scheduled to be discontinued within five years following the establishment of said contract.

The offeror may however, offer an alternate vehicle substantially the same as requested by CVTD

CVTD reserves the right to evaluate offers according to identified evaluation criteria.

Upon award to successful offer, CVTD shall require wiring diagrams for the Trolley delivered along with schematics of added equipment.

CVTD shall further require a copy of schematics for each modification to manufacturer's chassis.

All questions shall be submitted to the individual identified in block 10 of the SF 33.

Offerors are responsible for reviewing questions and answers submitted via the agency website at www.cvtd.org under the solicitation tab. Further, it shall be the responsibility of the offeror to follow any instructions associated with responses to questions, if any.

CVTD or its affiliates shall not reimburse nor be held liable to any vendor/offeror for time and materials associated with this solicitation.

Salient Characteristics of items requested shall be identified in Attachment 1 with the associated color of the trolley being red on bottom halfway up from bottom of trolley, upper half being green in color.

The Offerer shall provide at a minimum the following: All items listed in Part III.

Further, the following requirements shall be adhered to;

DELIVERY

All buses are to be delivered in ideal condition, complete, ready for operation or use, and in compliance with the specifications and terms and conditions of the contract. Contractor's delivery drivers must report any and all vehicle related incidents which occur during route or transportation. Delivery shall be made to the address identified Block 7 of the SF 33. Delivery hours are limited between 8:00am to 4:00pm Monday through Friday except for legal holidays. All deliveries shall be made FOB Destination.

PRE-AWARD AUDIT AND POST-DELIVERY AUDIT

Concho Valley Transit District is required by the Federal Transit Administration and Texas Department of Transportation to perform a pre-award and post-delivery audit of rolling stock purchases. The Contractor shall be notified as to the status and progress of the audit.

INSPECTION AND ACCEPTANCE

All items in the contract are subject to inspection and acceptance inclusive of raw materials, components, immediate assemblies, and/or end products are subject to test by Concho Valley Transit District and/or its representative, to the extent practicable, at all times and places, in any event, prior to acceptance. In the event any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformance with the requirements of this contract, Concho Valley Transit District reserves the right to reject those supplies. Items rejected prior to acceptance shall be required to be

corrected promptly after notice to the Contractor at the Contractor's expense. Should the item fail to be corrected, the item rejected shall be required to be promptly removed by Contractor and such supplies and/or items promptly replaced. Should Concho Valley Transit District perform or test any item projected to be supplied the Contractor shall be required, without any additional charge to Concho Valley Transit District, reasonable facilities and assistance for the safety and convenience of inspectors. Concho Valley Transit District reserves the right to charge the Contractor any additional costs incurred should supplies offered not be ready at the time of inspection or if Concho Valley Transit District re-inspects prior rejections. Failure to inspect prior to delivery does not relieve the Contractor from responsibility of items ordered regarding defects or other failures to meet contract requirements.

FEDERAL, STATE AND LOCAL TAXES

Concho Valley Transit District shall be exempted from any and all Federal sales and/or excise tax. Any such taxes identified on any invoice or voucher shall be deducted for payment purposes.

LICENSES AND PERMITS

The Contractor shall without additional expense to Concho Valley Transit District be responsible for obtaining any necessary licenses, permits, and/or approvals for complying with any Federal, State, County, Municipal, or any other laws, codes, and/or regulations applicable to the performance of work or to the products or services to be provided under this contract including but not limited any laws or regulations requiring the use of licensed subcontractors to perform parts of work.

PART I GENERAL INSTRUCTIONS

1 REQUEST FOR PROPOSAL REQUIREMENTS

- 1.1 The bid requires pricing per unit. Vendor guarantees product offered will meet or exceed specifications identified in the Invitation for Bids.
- 1.2 Each Bid should be placed in a separate envelope completely and properly identified. Bids must be received by the advertising agency by the time and date specified on the bid advertising.
- 1.3 Late bids will be returned to bidder unopened. Late bids will not be considered under any circumstances.
- 1.4 Proposal prices are requested to be firm for 30 days from bid opening date. Rebates payable to the purchaser after the vehicle is purchased should not be deducted from the bid price. Concessions or discounts which reduce the purchase price of the vehicle may be deducted only if they are claimed and identified on the offerors response to the Request for Proposal if they reduce the initial purchase cost of the vehicle.
- 1.5 Failure to manually sign Proposal shall disqualify the offering agency from consideration for award in connection with this transaction. Person signing proposal should show title or authority to bind the firm. Firm name should appear on each page of a Bid.
- 1.6 Proposal cannot be altered or amended after opening time unless negotiated with CVTD. Any alterations made before opening time shall be initialed by Bidder or an authorized agent. No offer can be withdrawn after opening time without approval by the purchaser based on a written acceptable reason.
- 1.7 The purchaser reserves the right to waive minor technicalities or variations to specifications. All variations to the specifications shall be accounted for through the Approved Equals process. **NO OTHER VARIATIONS TO SPECIFICATIONS WILL BE ALLOWED WITHOUT WRITTEN JUSTIFICATION APPROVED BY THE ADVERTISING AGENCY (see Paragraph 4).**
- 1.8 Failure to provide the required information with the proposal may automatically disqualify the offer from consideration for award in connection with this transaction.
- 1.9 All proposals must show: price, make & model offered, technical specifications, warranties and the delivery date. Each proposal must include the documents listed in Part III to be considered for award.
- 1.10 Telegraphic or facsimile Bids are not acceptable and will not be considered for award.
- 1.11 The following guidelines apply to bid procedures:
 - 1.11.1 Request for Proposal opening shall be 9 January 2015 at 2:00 pm local time.
 - 1.11.2 Proposals should be submitted in a sealed envelope which is clearly marked as a proposal, and the bid opening date and time should be noted on the envelope.

2 **APPOINTMENTS**

Bidders may make appointments with the purchaser to discuss the specifications. This privilege, however, does not relieve them of the requirements of paragraphs (4) and (6) below.

3 **REFERENCED EXAMPLES**

Any catalog, brand name, or manufacturer's reference used in the Request for Bids is descriptive only (not restrictive) and is used to indicate type and quality required. Bids on brands of like nature and quality will be considered. If proposing other than referenced example on the specifications, Bid should show manufacturer, brand and trade name, and other description of product offered. If bidder takes no exception to specifications or reference data in the Bid, the Bidder shall be required to furnish brand names, numbers, etc., as specified in the Request for Bids. The final determination as to whether or not equipment offered is equal to the referenced examples will be made by the purchaser.

Samples, when requested, shall be furnished free of expense to the agency. Each sample should be marked with bidder's name, address, and bid due date.

If samples are submitted, and not destroyed in examination, they will be returned to the bidder upon request. In the event products tested fail to meet or exceed all conditions and requirements of the specification, the cost of the sample used and the cost of the testing shall be borne by the bidder.

4 **EQUALS AND CLARIFICATIONS**

Bidders may submit requests for approved equals and clarifications to purchaser provided that such requests for approved equals and clarifications of specifications are supported by evidence such as technical data, test results, or other pertinent information that demonstrates that the substitute offered is equal to or better than the specification requirement. The following guidelines pertain to this process:

4.1 **PRE-BID CONFERENCE**

CVTD does not intend to hold a pre-bid conference unless specifically requested by a vendor not less than Ten (10) days after the issuance of the IFB. All offerors shall be notified of the pre-bid conference however, all offerors shall be required to submit questions electronically and all questions and answers shall be provided to all offerors. Offerors are hereby informed the pre-bid conference if requested shall be informal and is not a requirement for bidders to attend. During this session, prospective bidders can ask questions about certain items in the bid or areas that allow for an approved equal. It also allows the purchaser the opportunity to present examples of items they expect to be included in the vehicles.

4.2 **REQUEST FOR APPROVED EQUALS (RFAs)**

Should the bidder/offeror intend to offer an equal item, it shall be requested no later than seventeen (17) days after the issuance of the RFP, Requests for Approved Equals (RFAs) are due to the purchaser for review. Request for Approved Equal Forms: If request(s) for approved equals is (are) being submitted, illustrations and complete descriptions of alternate product(s) shall be provided.

4.2 **RESPONSE TO RFAs**

Within ten (10) days after the issuance of the RFP, the purchaser should provide a response to all RFAs. (See paragraph (6) below.)

4.5 **APPEALS AND REQUEST FOR RECONSIDERATION**

Until six (6) days after the issuance of the RFP the purchaser can receive appeals and requests for reconsideration of previously submitted RFAs that were disapproved. The purchaser should respond within three days with an answer to all bidders.

5. **RESERVED**

6. **AMENDING MATERIALS**

Any amending material used by purchasers pertaining to the Bid solicitation documents (including without limitation, clarifications, approved equals, and corrections) shall be set forth in an addendum/amendment and added/identified on the solicitation tab on the identified CVTD website. It shall be the bidders responsibility to check the website and follow all instructions associated with the solicitation.

7. **APPEAL**

Should any Bidder choose to appeal a purchaser's decision of approved equals or clarifications of specifications, such an appeal must be in writing and received by the purchaser not less than three (3) business days before the date of the bid opening. Responses to the appeal(s) will be returned not less than one (1) business day before the date of the Bid opening. Purchaser has no obligation to consider appeals received less than three (3) business days before the date of the Bid opening.

8. **TIE BIDS**

In case of tie bids the award will be made to the best bidder in accordance with standard procurement practices.

9. **COMMERCIALITY**

Unless otherwise stated in the Request for Proposal, the equipment furnished under these specifications shall be the latest improved model in current production, as offered to commercial trade, and shall be of quality workmanship and material. The bidder represents that all equipment offered under these specifications shall be new. USED, SHOPWORN, DEMONSTRATOR, PROTOTYPE, OR DISCONTINUED MODELS are not acceptable: Vendor agrees to hold purchaser harmless from any patent or similar proceedings which are based on products sold by the vendor hereunder. Vendor shall defend any such suits at its own expense, and purchaser shall have the right to have such litigation monitored by its own counsel.

11. **INSPECTING VEHICLES FOR SPECIFICATION COMPLIANCE**

The purchaser's designated inspector may be represented at the vendor's manufacturing plant the purpose of inspecting the vehicles under a specific procurement. The inspector, with the cooperation of the vendor, shall have the right to inspect all materials and workmanship at any time during the manufacturing process. The inspector shall also have the right to reject all materials and workmanship that do not conform with the specifications; provided, however, that the purchaser is under no duty to make such an inspection. If such aforementioned inspection(s) by purchaser is (are) made or is (are) not made, the vendor shall not be relieved of requirements/commerciality materials and workmanship and strictly adhered to in accordance with specifications.

12. **DELIVERY OF VEHICLES**

Delivery of the vehicle(s) does not constitute acceptance. Acceptance takes place ONLY after the vehicle(s) has undergone a pre-acceptance inspection for the purpose of determining if EVERY requirement of the bid package and advertised specifications have been met or exceeded. In the event the vehicle(s) does not meet ONE OR MORE of the specification requirements, the vehicle may be rejected.

12.1 If the vehicle is rejected, the vendor will be notified, in writing, that the vehicle has been rejected within five (5) working days. This written notification will list all discrepancies. The vendor shall correct all discrepancies prior to acceptance and payment.

12.2 Should the pre-acceptance inspection determine that the vehicle(s) meets or exceeds the requirements of the bid package and advertised specifications, the vehicle(s) will be accepted and the payment processes initiated.

13. **VENDOR AFFIRMATION**

BY SIGNING THIS BID, A BIDDER AFFIRMS THAT HE OR SHE HAS NOT GIVEN, OFFERED TO GIVE, NOR INTENDS TO GIVE AT ANY TIME HEREAFTER ANY ECONOMIC OPPORTUNITY, FUTURE EMPLOYMENT, GIFT, LOAN, GRATUITY, SPECIAL DISCOUNT, TRIP, FAVOR, OR SERVICE TO AN EMPLOYEE OR FAMILY MEMBER OF AN EMPLOYEE IN CONNECTION WITH THE SUBMITTED BID. SIGNING THE BID WITH A FALSE STATEMENT WILL VOID THE SUBMITTED BID OR ANY RESULTING PURCHASE ORDERS. THE BIDDER MAY BE REMOVED FROM THE VENDOR LISTS FOR ALL TYPE VEHICLES. THIS INCLUDES FAILURE TO NOTIFY AGENCY OF ANY EXCEPTIONS.

14. **NOTE TO BIDDERS**

Any terms and conditions attached to a proposal will not be considered unless the bidder specifically references them on the face of the Request for Proposal. Exceptions shall be specifically referenced on the face of the Request for Proposal and explained in detail on a separate attachment, labeled as such.

WARNING: Such terms and conditions or exception(s) taken by the bidder may result in determining the bid to be non-responsive. Any exceptions taken which are verified as a true exception and not a clarification of a product which meets specifications will result in determining the bid to be non-responsive.

PART II TERMS AND CONDITIONS

1 **GENERAL INFORMATION**

1.1 **Purpose**

Vehicles and equipment purchased to these specifications are for use by a public transportation grant recipient, hereinafter referred to as the agency or purchaser.

1.2 Method of Selection

Purchases will be made by competitive bids in accordance with applicable state law or regulation. The award will be made by determining the best proposal for the agency (bidder offering a product which meets or exceeds all specification requirements at the lowest price according to the following evaluation criteria).

Evaluation Criteria:

Price	70%
Exceeding Technical Specifications	5%
Delivery	20%
Warranties Proposed	5%

1.3 Protest Procedure

Protests resulting from the award of a purchase order through the competitive bid procedure must be made in writing to the purchasing agency's representative within three working days of the award. The protest must outline the specific portion of the specification or bid procedure that had been violated and must be in accordance with agency policies and procedures

1.4 Contents and Terms of the Purchase Order

The vendor shall furnish vehicles and/or equipment as described on the purchase order and the specifications or addenda/amendment referenced thereon. The contract shall begin at the time of acceptance of a purchase order or orders by the vendor(s) and shall terminate upon expiration of the warranty period for the vehicle or equipment.

2 **ADDITIONAL INFORMATION TO BE SUBMITTED WITH BID**

2.1 Description of Equipment

Proposals shall be accompanied by sufficient information to enable the purchaser to ascertain the equipment offered meets the specifications and shall include correct product literature and detailed specifications. In most cases, manufacturer's product literature alone will not fulfill this requirement. The product description shall include at a minimum:

2.1.1 Drawing of the floor plan showing interior body dimensions and placement of seats, accessories, and ancillary equipment.

2.1.2 A complete description of the vehicle and all equipment to be provided.

NOTE: Failure to provide the required information with the bid may automatically disqualify the bid from consideration for award in connection with this transaction.

2.2 Delivery Schedule

Each bidder shall state the estimated date of delivery of the final unit from the date of the purchase order. Unrealistically short or long delivery promises may cause bid to be rejected. Consistent failure to meet delivery promises may cause the bidder to be removed from the vendor list.

3 **DELIVERY AND PAYMENT**

3.1 Delivery

Vehicles and equipment shall be delivered FOB Destination to the address(es) shown on the purchase order between the hours of 8 a.m. and 4 p.m., Monday through Friday, excluding state and/or Federal holidays.

3.1.1 LATE DELIVERY

It is expressly understood and agreed that, as a result of the public interest, and because of the monetary losses which may be sustained by CVTD, as a result or failure to deliver the equipment described in the Price Agreement on time, that time is of the essence in the performance of the proposed contract. It is agreed that damages resulting from the late delivery can neither be accurately anticipated or calculated.

In the event of failure of the bidder to deliver in accordance with the offerors guaranteed delivery date, the bidder shall be liable to CVTD for liquidated damages in the following amounts for each unit ordered and for each day the unit(s) are delivered late: (\$50.00) per day. Documented

strikes, national emergencies, or acts of God are the only justifiable reasons for delay in delivery and must be identified to CVTD immediately.

3.2 Cancellation By Purchaser

Delivery defaults by the vendor or failure to meet specifications authorize the purchaser to cancel the purchase order, purchase the merchandise elsewhere, and charge full increase, if any, in cost and handling to the defaulting vendor.

3.2.1 Should delivery be delayed because of strike, injunction, CVTD controls, or any circumstances beyond the control of the vendor, the vendor shall notify the purchaser in writing of the cause of such delay within 5 days after the beginning thereof and shall state the estimated date delivery will be made.

3.2.2 If delay is foreseen, vendor shall give written notice to the agency. The agency has the right to extend delivery date if reasons appear to be an excusable delay. Vendor must keep the agency advised at all times of the status of the order. Default in promised delivery (without accepted reasons) or failure to meet specifications may cause the vendor to be removed from the bid list.

3.2.3 Should the vendor fail to deliver the equipment on or before the quoted delivery date, and an extension has not been granted by the agency, the purchaser may deduct \$50 for each day between the quoted and the actual delivery date from the purchase order price. A day is defined as a calendar day. This provision is not intended as a penalty but, instead, as liquidated damages.

3.3 Completeness

All equipment shall be delivered complete and ready for use. All parts necessary for operation or which are normally furnished as standard equipment shall be furnished whether specified or not. No substitutions or cancellations are permitted without written approval of the purchaser.

3.4 Pre-Delivery Service

The following service shall be performed upon all motor vehicles prior to/upon delivery:

- (a) pre-delivery inspection certified with an affixed Texas Motor Vehicle Inspection Certificate (annual inspection sticker);
- (b) fluid levels checked and serviced with proper grade fluid; (c) chassis lubrication;
- (d) exterior wash and interior cleaning; and
- (e) fuel system(s) filled to capacity.

3.5 MSO

Due to the provisions of Item 3.9 below, it shall be the vendor's decision whether to provide the Manufacturer's Statement of Origin (MSO) at the time of delivery. The vendor shall provide that document no later than at the time full payment is made by the purchaser.

3.6 Modifications

Any modification to the suspension or other parts of the vehicle shall require the vendor to provide certification that all Federal Motor Vehicle Safety Standards are met.

3.7 Inspection and Testing

The purchaser reserves five business working days following delivery for inspection and testing of the equipment. Should the equipment be found defective or not meeting specifications, the purchaser will notify the vendor of any deficiencies in writing within 10 business working days of delivery. Failure of the vendor to correct such deficiencies or to replace faulty equipment within a reasonable period of time may be grounds for cancellation of the purchase order.

3.8 Invoicing

Invoices should be submitted in quadruplicate to the purchaser at the address shown on the Request for Bids and/or SF33. To expedite payment, it is recommended that properly completed invoices be submitted as soon as possible.

3.9 Payment

Payment will be provided by Concho Valley Council of Government to the agency as a pass thru unit of grant funds from TxDOT upon receipt of an acceptable invoice and receipt of funds from TxDOT.

3.10 Vehicle Title(s)

When registering the vehicle title, the vendor will record a lien on the title, naming the Texas

4 **AMERICANS WITH DISABILITIES ACT**

All vehicles other than standard production must comply with the requirements of the Americans with Disabilities Act.

PART III SUMMARY OF REQUIRED DOCUMENTS

1 **DOCUMENTS THAT SHALL BE FURNISHED WITH THE BID**

- 1.1 *Consolidated Certification Form
- 1.2 *Domestic Content worksheet (required for bids over \$100,000)
- 1.3 Printed product literature of the vehicle and all ancillary equipment (see section 2.1 on page 8).
- 1.4 Drawing of the proposed floor plan
- 1.5 *Warranty Certification. Also, a complete list of companies or individuals and their addresses who stock repair parts in the agency's area and who will perform the services.
- 1.6 *Federal Motor Vehicle Safety Standards (FMVSS) Certification.
- 1.7 A copy of the Texas dealers license manufacturer intends on utilizing to process vehicle and documents into the state of Texas
- 1.9 A copy of the manufacturer or converter license, whichever applies.
- 1.10 * Invitation for Bids Cover Sheet (SF33)
- 1.11 A list of three (3) agencies or people, including phone numbers, of those who have already purchased the proposed vehicle from the vendor and have placed the vehicle into service.
- 1.12 Certification from the conversion vendor that the conversion system (specific to applicable engine families) meets EPA Memo-1A, and that tests have been performed according to procedures prescribed in 40 CFR Section 85.
- 1.14 Certification from the conversion vendor that the specific conversion system will not cause the vehicle to fail to meet applicable emission standards (according to procedures prescribed in 40 CFR Section 85) at any time during the vehicle's useful life.
- 1.15 Certification in writing from the conversion vendor that, should the conversion system fail to meet applicable emission standards according to procedures prescribed in 40 CFR Section 85) at any time during the vehicle's useful life, the conversion vendor will repair or replace the conversion system, at no charge to the purchasing entity, with a comparable conversion system meeting Memo-1A.
- 1.16 PTN140

NOTE: Failure to provide the required information with the bid could automatically disqualify the bid from consideration for award in connection with this transaction.

2 **DOCUMENTS THAT SHALL BE FURNISHED AT TIME OF DELIVERY OF VEHICLE**

- 2.1 Manufacturer's standard warranty and service policies for the chassis.
If separate warranties are available for the following, they shall be furnished:
 - 2.1.1 Body.
 - 2.1.2 Air Conditioner.
 - 2.1.3 Wheelchair lift/ramp.
- 2.2 Parts and operating manual(s) providing complete operating and maintenance instructions for all installed equipment. The manual(s) shall include recommended servicing intervals.

- 2.3 Color-Coded Diagram(s) showing the complete, as-built electrical wiring of the vehicle, including wiring schematics for all alternative fuel conversion equipment and wheelchair accessibility features. The color coding on the alternative fuel system electrical schematic drawing shall match that of the rest of the vehicle wiring.
- 2.4 See Part II, Paragraph 3.5.1, for additional information regarding the Manufacturer's Statement of Origin (MSO).
- 2.5 Certification that the GVW rating is not exceeded by the vehicle as equipped.
- 2.6 Vehicle manufacturer certification that the air conditioner meets or exceeds the air conditioner performance specifications.
- 2.7 Altoona Test Report if required in accordance with 49 CFR 665.
- 2.8 A detailed conversion system bill-of-materials (specific to applicable engine families) identifying primary conversion system components, including but not limited to, manufacturer, part number and function. Documentation to ascertain component functionality shall be provided.
- 2.9 Documentation of Federal Test Procedure 75, (FTP) or comparable test.
- 2.10 Copy of the alternative fuel converter's 503 Form Issued by the Texas Railroad Commission (if applicable).
- 2.11 The LPG alternative fuel system must have been tested for EPA compliance under Option 3 of the Addendum to EPA's Memorandum 1A and must conform with the Railroad Commission of Texas rules and regulations. Each vehicle shall be scheduled for inspection by the Railroad Commission of Texas upon acceptance by the ordering agency.
- 2.12 Registration receipt recording a lien on the vehicle and naming the Texas Department of Transportation, Public Transportation Division, 125 E. 11th St., Austin, Tx. 78701 - 2483 as lien holder.

5 **CLAUSES CONT.**

5.1 Gratuities

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative --

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of CVTD; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) of this clause, CVTD is entitled --

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee.

(d) The rights and remedies of CVTD provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

5.2 Brand Name or Equal

(a) If an item in this solicitation is identified as “brand name or equal,” the purchase description reflects the characteristics and level of quality that will satisfy CVTD’s needs. The salient physical, functional, or performance characteristics that “equal” products must meet are specified in the solicitation.

(b) To be considered for award, offers of “equal” products, including “equal” products of the brand name manufacturer, must—

(1) Meet the salient physical, functional, or performance characteristic specified in this solicitation;

(2) Clearly identify the item by—

(i) Brand name, if any; and

(ii) Make or model number;

(3) Include descriptive literature such as illustrations, drawings, or a clear reference to previously furnished descriptive data or information available to the Procurement Office; and

(4) Clearly describe any modification the offeror plans to make in a product to make it conform to the solicitation requirements. Mark any descriptive material to clearly show the modification.

(c) The Procurement Office will evaluate “equal” products on the basis of information furnished by the offeror or identified in the offer and reasonably available to the Procurement Office. The Procurement Office is not responsible for locating or obtaining any information not identified in the offer.

(d) Unless the offeror clearly indicates in its offer that the product being offered is an “equal” product, the offeror shall provide the brand name product referenced in the solicitation.

5.3 CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. CVTD reserves the right to inspect or test any supplies or services that have been tendered for acceptance. CVTD may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. CVTD must exercise its post-acceptance rights --

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* The Contractor or its assignee's rights to be paid amounts due as a result of performance of this contract, may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the terms of agreement established by the funding agency.

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C.601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause of this contract, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions.* The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of CVTD in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Procurement Office in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Procurement Office of the cessation of such occurrence.

(g) *Invoice.* The Contractor shall submit an original invoice (or electronic invoice, if authorized,) to the address designated in the agreement to receive invoices. An invoice must include --

- (1) Name and address of the Contractor;
 - (2) Invoice date;
 - (3) Agreement number, contract line item number and, if applicable, the order number;
 - (4) Description, quantity, unit of measure, unit price and extended price of the items delivered;
 - (5) Shipping number and date of shipment including the bill of lading number and weight of shipment if shipped on CVTD bill of lading;
 - (6) Terms of any prompt payment discount offered;
 - (7) Name and address of official to whom payment is to be sent; and
 - (8) Name, title, and phone number of person to be notified in event of defective invoice.
- Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C.3903). Contractors are encouraged to assign an identification number to each invoice.

(h) *Patent indemnity.* The Contractor shall indemnify CVTD and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payment.* Payment shall be made for items accepted by CVTD that have been delivered to the delivery destinations set forth in this agreement. CVTD will make payment in accordance with the Prompt Payment Act (31 U.S.C.3903). If CVTD makes payment by Electronic Funds Transfer (EFT). In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(j) *Risk of loss.* Unless the agreement specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to CVTD upon:

- (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
- (2) Delivery of the supplies to CVTD at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties. However, a tax exemption form W-9 shall be provided upon request (CVTD is a tax exempt entity).

(l) *Termination for CVTD's convenience.* CVTD reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of CVTD using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give CVTD any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* CVTD may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide CVTD, upon request, with adequate assurances of future performance. In the event of termination for cause, CVTD shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to CVTD for any and all rights and remedies provided by law. If it is determined that CVTD improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title.* Unless specified elsewhere in this agreement, title to items furnished under this contract shall pass to CVTD upon acceptance, regardless of when or where CVTD takes physical possession.

(o) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability.* Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to CVTD for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this agreement.

(r) *Compliance with laws unique to CVTD contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C.327, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback

Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services.
- (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to CVTD Contracts paragraphs of this clause.
- (3) The clause incorporated.
- (4) Addenda to this solicitation or contract, including any license agreements for computer software.
- (5) Solicitation provisions if this is a solicitation.
- (6) Other paragraphs of this clause.
- (7) The Standard Form 33.
- (8) Other documents, exhibits, and attachments.
- (9) The specification.

5.4 Contract Terms and Conditions Required to Implement Statutes or Executive Orders -- Commercial Items.

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

- (1) Combating Trafficking in Persons (22 U.S.C. 7104(g)).
- (2) Protest After Award (31 U.S.C. 3553).
- (3) Applicable Law for Breach of Contract Claim (Pub. L. 108-77, 108-78).

(b) The Contractor shall comply with the following clauses in this paragraph (b) that the Procurement Office has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

- (1) Restrictions on Subcontractor Sales to CVTD, with Alternate I (Oct 1995) (41 U.S.C. 253g and 10 U.S.C. 2402).
- (2) Contractor Code of Business Ethics and Conduct (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).
- (3) Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub L. 111-5) (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009).
- (4) Reporting Executive compensation and First-Tier Subcontract Awards (Pub. L. 109-282) (31 U.S.C. 6101 note).
- (5) American Recovery and Reinvestment Act—Reporting Requirements (Pub. L. 111-5).
- (6) Protecting CVTD' Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (31 U.S.C. 6101 note).
- (7) Updates of Publicly Available Information Regarding Responsibility Matters (41 U.S.C. 2313).
- (8) Prohibition on Contracting with Inverted Domestic Corporations (section 738 of Division C of Public Law 112-74, section 740 of Division C of Pub. L. 111-117, section 743 of Division D of Pub. L. 111-8, and section 745 of Division D of Pub. L. 110-161).
- (9) Notice of HUBZone Set-Aside or Sole-Source Award (15 U.S.C. 657a).

- (10) Notice of Price Evaluation Preference for HUBZone Small Business Concerns (if the offeror elects to waive the preference, it shall so indicate in its offer)(15 U.S.C. 657a).
- (11) [Reserved]
- (12) Notice of Total Small Business Aside (15 U.S.C. 644).
- (13) Notice of Partial Small Business Set-Aside (15 U.S.C. 644).
- (14) Utilization of Small Business Concerns (15 U.S.C. 637(d)(2) and (3)).
- (15) Small Business Subcontracting Plan (15 U.S.C. 637 (d)(4).)
- (16) Notice of Set-Aside of Orders (15 U.S.C. 644(r)).
- (17) Limitations on Subcontracting (15 U.S.C. 637(a)(14)).
- (18) Liquidated Damages—Subcontracting Plan (15 U.S.C. 637(d)(4)(F)(i)).
- (19) Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).
- (20) Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- (21) Small Disadvantaged Business Participation Program—Incentive Subcontracting (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- (22) Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (15 U.S.C. 657f).
- (23) Post Award Small Business Program Rerepresentation (15 U.S.C. 632(a)(2)).
- (24) Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns (15 U.S.C. 637(m)).
- (25) Notice of Set-Aside for Women-Owned Small Business (WOSB) Concerns Eligible Under the WOSB Program (15 U.S.C. 637(m)).
- (26) Convict Labor (E.O. 11755).
- (27) Child Labor—Cooperation with Authorities and Remedies (E.O. 13126).
- (28) Prohibition of Segregated Facilities.
- (29) Equal Opportunity (E.O. 11246).
- (30) Equal Opportunity for Veterans (38 U.S.C. 4212).
- (31) Affirmative Action for Workers with Disabilities (29 U.S.C. 793).
- (32) Employment Reports on Veterans (38 U.S.C. 4212).
- (33) Notification of Employee Rights Under the National Labor Relations Act (E.O. 13496).
- (34) Employment Eligibility Verification. (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)

- (35) Estimate of Percentage of Recovered Material Content for EPA-Designated Items (42 U.S.C. 6962(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
- (36) Energy Efficiency in Energy-Consuming Products (42 U.S.C. 8259b).
- (37) IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (E.O. 13423).
- (38) Encouraging Contractor Policies to Ban Text Messaging while Driving.
- (39) Buy American Act--Supplies (41 U.S.C. 10a-10d).
- (40) Buy American Act--Free Trade Agreements--Israeli Trade Act (41 U.S.C. chapter 83, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, Pub. L. 103-182, Pub. L. 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43).
- (41) Trade Agreements (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).
- (42) Restrictions on Certain Foreign Purchases (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
- (43) Notice of Disaster or Emergency Area Set-Aside (42 U.S.C. 5150).
- (44) Restrictions on Subcontracting Outside Disaster or Emergency Area (42 U.S.C. 5150).
- (45) Terms for Financing of Purchases of Commercial Items (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).
- (46) Installment Payments for Commercial Items (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).
- (47) Payment by Electronic Funds Transfer—Central Contractor Registration (31 U.S.C. 3332).
- (48) Payment by Electronic Funds Transfer—Other Than Central Contractor Registration (31 U.S.C. 3332).
- (49) Payment by Third Party (31 U.S.C. 3332).
- (50) Privacy or Security Safeguards (5 U.S.C. 552a).
- (51) Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631).

(c) The Contractor shall comply with the following clauses in this paragraph (c), applicable to commercial services, that the Procurement Office has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items:

[Procurement Office check as appropriate.]

- (1) Service Contract Act of 1965 (41 U.S.C. 351, *et seq.*).
- (2) Statement of Equivalent Rates for Federal Hires (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).
- (3) Fair Labor Standards Act and Service Contract Act -- Price Adjustment (Multiple Year and Option Contracts) (29 U.S.C.206 and 41 U.S.C. 351, *et seq.*).
- (4) Fair Labor Standards Act and Service Contract Act -- Price Adjustment (Sep 2009) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).
- (5) Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (41 U.S.C. 351, *et seq.*).

___ (6) Exemption from Application of the Service Contract Act to Contracts for Certain Services-- Requirements (41 U.S.C. 351, *et seq.*).

___ (7) Nondisplacement of Qualified Workers (E.O. 13495).

___ (8) Promoting Excess Food Donation to Nonprofit Organizations (Pub. L. 110-247).

___ (9) Accepting and Dispensing of \$1 Coin (31 U.S.C. 5112(p)(1)).

(d) *Comptroller General Examination of Record* The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold -- Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)

(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) and (d) of this clause, the Contractor is not required to flow down any clause, other than those in this paragraph (e)(1) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) Contractor Code of Business Ethics and Conduct (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).

(ii) Utilization of Small Business Concerns (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(iii) Nondisplacement of Qualified Workers (E.O. 13495). Flow down required in accordance with paragraph (1) of FAR clause 52.222-17.

(iv) Equal Opportunity (E.O. 11246).

(v) Equal Opportunity for Veterans (38 U.S.C. 4212).

(vi) Affirmative Action for Workers with Disabilities (29 U.S.C. 793).

(vii) Notification of Employee Rights Under the National Labor Relations Act (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.

(viii) Service Contract Act of 1965 (41 U.S.C. 351, *et seq.*)

(ix) Combating Trafficking in Persons (22 U.S.C. 7104(g)).

(x) Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (41 U.S.C. 351, *et seq.*)

(xi) Exemption from Application of the Service Contract Act to Contracts for Certain Services--Requirements (41 U.S.C. 351, *et seq.*)

(xii) Employment Eligibility Verification.

(xiii) Promoting Excess Food Donation to Nonprofit Organizations (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(xiv) Preference for Privately-Owned U.S. Flag Commercial Vessels (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631).

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

5.5 Amendments to Invitations for Bids

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Bidders shall acknowledge receipt of any amendment to this solicitation

(1) by signing and returning the amendment,

(2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting a bid,

(3) by letter or telegram, or

(4) by facsimile, if facsimile bids are authorized in the solicitation.

CVTD must receive the acknowledgment by the time and at the place specified for receipt of bids.

5.6 False Statements in Bids

Bidders must provide full, accurate, and complete information as required by this solicitation and its attachments. The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

5.7 Explanation to Prospective Bidders

Any prospective bidder desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective bidders before the submission of their bids. Oral explanations or instructions given before the award of a contract will not be binding. Any information given a prospective bidder concerning a solicitation will be furnished promptly to all other prospective bidders as an amendment to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective bidders.

5.8 Late Submissions, Modifications, and Withdrawals of Bids

(a) Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach CVTD office designated in this solicitation (IFB, RFQ, or any other designated solicitation documents) by the time specified on the solicitation document. If no time is specified, the time for receipt is 4:30 p.m., local time, for the designated CVTD office on the date that bids are due.

(b)

(1) Any bid, modification, or withdrawal received at CVTD office designated in the solicitation after the exact time specified for receipt of bids is "late" and will not be considered unless it is received before award is made, the Procurement Office determines that accepting the late bid would not unduly delay the acquisition; and—

(i) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to CVTD infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids; or

(ii) There is acceptable evidence to establish that it was received at CVTD designated for receipt of bids and was under CVTD's control prior to the time set for receipt of bids.

(2) However, a late modification of an otherwise successful bid that makes its terms more favorable to CVTD, will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at CVTD includes the time/date stamp of that office on the bid wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of CVTD personnel.

(d) If an emergency or unanticipated event interrupts normal CVTD processes so that bids cannot be received at CVTD office designated for receipt of bids by the exact time specified in the solicitation and urgent CVTD requirements preclude amendment of the bid, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal CVTD processes resume.

(e) Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. If the solicitation authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provisions or clauses, Facsimile Bids. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

5.9 Contract Award -- Sealed Bidding

(a) CVTD will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to CVTD considering only price, price-related factors, and other evaluation criteria specified elsewhere in the solicitation.

(b) CVTD may --

(1) Reject any or all bids;

(2) Accept other than the lowest bid; and

(3) Waive informalities or minor irregularities in bids received.

(c) CVTD may accept any item or group of items of a bid, unless the bidder qualifies the bid by specific limitations. Unless otherwise provided in the Schedule, bids may be submitted for quantities less than those specified. CVTD reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the bidder specifies otherwise in the bid.

(d) A written award or acceptance of a bid mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the bid shall result in a binding contract without further action by either party.

(e) CVTD may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to CVTD even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

5.10 Preparation of Bids

(a) Bidders are expected to examine the drawings, specifications, Schedule, and all instructions. Failure to do so will be at the bidder's risk.

(b) Each bidder shall furnish the information required by the solicitation. The bidder shall sign the bid and print or type its name on the Schedule and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(c) For each item offered, bidders shall

(1) show the unit price, including, unless otherwise specified, packaging, packing, and preservation and

(2) enter the extended price for the quantity of each item offered in the “Amount” column of the Schedule.

In case of discrepancy between a unit price and an extended price, the unit price will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.

(d) Bids for supplies or services other than those specified will not be considered unless authorized by the solicitation.

(e) Bidders must state a definite time for delivery of supplies or for performance of services, unless otherwise specified in the solicitation.

(f) Time, if stated as a number of days, will include Saturdays, Sundays, and holidays.

5.11 Period for Acceptance of Bids

In compliance with the solicitation, the bidder agrees, if this bid is accepted within _____ calendar days (60 calendar days unless a different period is inserted by the bidder) from the date specified in the solicitation for receipt of bids, to furnish any or all items upon which prices are bid at the price set opposite each item, delivered at the designated point(s), within the time specified in the Schedule.

5.12 Walsh-Healey Public Contracts Act

If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$15,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C.35-45), the following terms and conditions apply:

(a) All stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

(b) All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

5.13 Combating Trafficking in Persons

(a) *Definitions.* As used in this clause—

“Coercion” means—

- (1) Threats of serious harm to or physical restraint against any person;
- (2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (3) The abuse or threatened abuse of the legal process.

“Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

“Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

“Employee” means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

“Forced labor” means knowingly providing or obtaining the labor or services of a person—

- (1) By threats of serious harm to, or physical restraint against, that person or another person;

(2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) By means of the abuse or threatened abuse of law or the legal process.

“Involuntary servitude” includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

“Severe forms of trafficking in persons” means—

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

“Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

(b) *Policy.* CVTD has adopted a zero tolerance policy regarding trafficking in persons. Contractors and contractor employees shall not—

(1) Engage in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procure commercial sex acts during the period of performance of the contract; or

(3) Use forced labor in the performance of the contract.

(c) *Contractor requirements.* The Contractor shall—

(1) Notify its employees of—

(i) CVTD's zero tolerance policy described in paragraph (b) of this clause; and

(ii) The actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees or subcontractors that violate the policy in paragraph (b) of this clause.

(d) *Notification.* The Contractor shall inform the Procurement Office immediately of—

(1) Any information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, or subcontractor employee has engaged in conduct that violates this policy; and

(2) Any actions taken against Contractor employees, subcontractors, or subcontractor employees pursuant to this clause.

(e) *Remedies.* In addition to other remedies available to CVTD, the Contractor's failure to comply with the requirements of paragraphs (c), (d), or (f) of this clause may result in—

(1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;

(2) Requiring the Contractor to terminate a subcontract;

(3) Suspension of contract payments;

(4) Loss of award fee, consistent with the award fee plan, for the performance period in which CVTD determined Contractor non-compliance;

(5) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or

(6) Suspension or debarment.

(f) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts.

(g) *Mitigating Factor.* The Procurement Office may consider whether the Contractor had a Trafficking in Persons awareness program at the time of the violation as a mitigating factor when determining remedies. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/g/tip> .

5.14 Responsibility for Supplies

(a) Title to supplies furnished under this contract shall pass to CVTD upon formal acceptance, regardless of when or where CVTD takes physical possession, unless the contract specifically provides for earlier passage of title.

(b) Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the Contractor until, and shall pass to CVTD upon --

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Acceptance by CVTD or delivery of the supplies to CVTD at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.

(c) Paragraph (b) of this section shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the Contractor until cure or acceptance. After cure or acceptance, paragraph (b) of this section shall apply.

(d) Under paragraph (b) of this section, the Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of CVTD acting within the scope of their employment.

5.15 Warranty of Supplies of a Noncomplex Nature

(a) *Definitions.* As used in this clause--

“Acceptance” means the act of an authorized representative of CVTD by which CVTD assumes for itself, or as an agent of another, ownership of existing supplies, or approves specific services as partial or complete performance of the contract.

“Supplies” means the end items furnished by the Contractor and related services required under the contract. The word does not include “data.”

(b) *Contractor's obligations.*

(1) Notwithstanding inspection and acceptance by CVTD of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that the warranty period specified in the offer --

(i) All supplies furnished under this contract will be free from defects in material or workmanship and will conform with all requirements of this contract; and

(ii) The preservation, packaging, packing, and marking, and the preparation for, and method of, shipment of such supplies will conform with the requirements of this contract.

(2) When return, correction, or replacement is required, transportation charges and responsibility for the supplies while in transit shall be borne by the Contractor. However, the Contractor's liability for the transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in this contract and the Contractor's plant, and return.

(3) Any supplies or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with respect to supplies or parts thereof, shall be equal in duration to that in paragraph (b)(1) of this clause and shall run from the date of delivery of the corrected or replaced supplies.

(4) All implied warranties of merchantability and “fitness for a particular purpose” are excluded from any obligation contained in this contract.

(c) Remedies available to CVTD.

(1) The Procurement Office shall give written notice to the Contractor of any breach of warranties in paragraph (b)(1) of this clause within _____ “45 days of the last delivery under this contract,” or “45 days after discovery of the defect”.

(2) Within a reasonable time after the notice, the Procurement Office may either --

(i) Require, by written notice, the prompt correction or replacement of any supplies or parts thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements of this contract within the meaning of paragraph (b)(1) of this clause; or

(ii) Retain such supplies and reduce the contract price by an amount equitable under the circumstances.

(3)

(i) If the contract provides for inspection of supplies by sampling procedures, conformance of supplies or components subject to warranty action shall be determined by the applicable sampling procedures in the contract. The Procurement Office --

(A) May, for sampling purposes, group any supplies delivered under this contract;

(B) Shall require the size of the sample to be that required by sampling procedures specified in the contract for the quantity of supplies on which warranty action is proposed;

(C) May project warranty sampling results over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of reinspection; provided, that the supplies remaining are reasonably representative of the quantity on which warranty action is proposed; and

(D) Need not use the same lot size as on original inspection or reconstitute the original inspection lots.

(ii) Within a reasonable time after notice of any breach of the warranties specified in paragraph (b)(1) of this clause, the Procurement Office may exercise one or more of the following options:

(A) Require an equitable adjustment in the contract price for any group of supplies.

(B) Screen the supplies grouped for warranty action under this clause at the Contractor’s expense and return all nonconforming supplies to the Contractor for correction or replacement.

(C) Require the Contractor to screen the supplies at locations designated by CVTD within the contiguous United States and to correct or replace all nonconforming supplies.

(D) Return the supplies grouped for warranty action under this clause to the Contractor (irrespective of the f.o.b. point or the point of acceptance) for screening and correction or replacement.

(4)

(i) The Procurement Office may, by contract or otherwise, correct or replace the nonconforming supplies with similar supplies from another source and charge to the Contractor the cost occasioned to CVTD thereby if the Contractor --

(A) Fails to make redelivery of the corrected or replaced supplies within the time established for their return; or

(B) Fails either to accept return of the nonconforming supplies or fails to make progress after their return to correct or replace them so as to endanger performance of the delivery schedule, and in either of these circumstances does not cure such failure within a period of 10 days (or such longer period as the Procurement Office may authorize in writing) after receipt of notice from the Procurement Office specifying such failure.

(ii) Instead of correction or replacement by CVTD, the Procurement Office may require an equitable adjustment of the contract price. In addition, if the Contractor fails to furnish timely disposition instructions, the Procurement Office may dispose of the nonconforming supplies for the Contractor's account in a reasonable manner. CVTD is entitled to reimbursement from the Contractor, or from the proceeds of such disposal, for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.

(5) The rights and remedies of CVTD provided in this clause are in addition to and do not limit any rights afforded to CVTD by any other clause of this contract.

5.16 Solicitation Provisions Incorporated by Reference

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Procurement Office will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

<http://farsite.hill.af.mil/>

5.17 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Procurement Office will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es): <http://farsite.mil.af.mil/>

5.18 Prohibition On Contracting With Inverted Domestic Corporations--Representation

(a) *Definitions.* "Inverted domestic corporation" and "subsidiary" have the meaning given in the clause of this contract entitled Prohibition on Contracting with Inverted Domestic Corporations

(b) *Relation to Internal Revenue Code.* An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code at 26 U.S.C. 7874.

(c) *Representation.* By submission of its offer, the offeror represents that—

(1) It is not an inverted domestic corporation: and

(2) It is not a subsidiary of an inverted domestic corporation.

5.19 Information Regarding Responsibility Matters

(a) *Definitions.* As used in this provision—

"Administrative proceeding" means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative Proceedings, Civilian Board of Contract Appeals Proceedings, and Armed Services Board of Contract Appeals Proceedings). This includes administrative proceeding at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include agency actions such as contract audits, site visits, corrective plans, or inspection of deliverables.

"Federal contracts and grants with total value greater than \$10,000,000" means—

(1) The total value of all current, active contracts and grants, including all priced options; and

(2) The total value of all current, active orders including all priced options under indefinite-delivery, indefinite-quantity, 8(a), or requirements contracts (including task and delivery and multiple-award Schedules).

“Principal” means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

(b) The offeror [] has [] does not have current active Federal contracts and grants with total value greater than \$10,000,000.

(c) If the offeror checked “has” in paragraph (b) of this provision, the offeror represents, by submission of this offer, that the information it has entered in the Federal Awardee Performance and Integrity Information System (FAPIS) is current, accurate, and complete as of the date of submission of this offer with regard to the following information:

(1) Whether the offeror, and/or any of its principals, has or has not, within the last five years, in connection with the award to or performance by the offeror of a Federal contract or grant, been the subject of a proceeding, at the Federal or State level that resulted in any of the following dispositions:

(i) In a criminal proceeding, a conviction.

(ii) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more.

(iii) In an administrative proceeding, a finding of fault and liability that results in—

(A) The payment of a monetary fine or penalty of \$5,000 or more; or

(B) The payment of a reimbursement, restitution, or damages in excess of \$100,000.

(iv) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this provision.

(2) If the offeror has been involved in the last five years in any of the occurrences listed in (c)(1) of this provision, whether the offeror has provided the requested information with regard to each occurrence.

(d) The offeror shall post the information in paragraphs (c)(1)(i) through (c)(1)(iv) of this provision in FAPIS as required through maintaining an active registration in the Central Contractor Registration database via <https://www.acquisition.gov> (see 52.204-7).

5.20 Prohibition on Contracting With Inverted Domestic Corporations

(a) *Definitions.* As used in this clause--

“Inverted domestic corporation” means a foreign incorporated entity which is treated as an inverted domestic corporation under 6 U.S.C. 395(b), *i.e.*, a corporation that used to be incorporated in the United States, or used to be a partnership in the United States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country, that meets the criteria specified in 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c). An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code at 26 U.S.C. 7874.

“Subsidiary” means an entity in which more than 50 percent of the entity is owned—

(1) Directly by a parent corporation; or

(2) Through another subsidiary of a parent corporation.

(b) If the contractor reorganizes as an inverted domestic corporation or becomes a subsidiary of an inverted domestic corporation at any time during the period of performance of this contract, CVTD may be prohibited from paying for Contractor activities performed after the date when it becomes an inverted domestic corporation or subsidiary. CVTD may seek any available remedies in the event the Contractor fails to perform in accordance with the terms and conditions of the contract as a result of CVTD action under this clause.

(c) Exceptions to this prohibition are located at FAR 9.108-2.

The Contractor shall comply with the following Federal Transit Administration (FTA) clauses, which are incorporated in this contract by text and/or reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

FTA C 4220.1F, Page IV-18 Minimum Service Life. FTA requires each recipient to maintain satisfactory continuing control of FTA assisted property. For buses and certain other vehicles, FTA has established minimum service life policies that may affect the quantity of vehicles that the recipient may acquire. *See*, the most recent versions of FTA Circular 5010.1, "Grants Management Guidelines," FTA Circular 9030.1, "Urbanized Area Formula Program: Grant Application Instructions," and FTA Circular 9300.1, "Capital Program: Grant Application Instructions," that addresses minimum service life for vehicles.

FTA C 4220.1F, Page IV-19 Air Pollution and Fuel Economy. Included by reference is the Federal air pollution control and fuel economy regulations, such as EPA regulations, "Control of Air Pollution from Mobile Sources," 40 CFR Part 85; EPA regulations, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 CFR Part 86; and EPA regulations, "Fuel Economy of Motor Vehicles," 40 CFR Part 600.

Section 2. Project Implementation.

c(3) Compliance.

(d) Changes to Federal Requirements and Guidance:

1 Requirements and Guidance. New Federal requirements and guidance may:

- a Become effective after the FTA Authorized Official signs the Recipient's Underlying Agreement awarding funds for the Project, and
- b Apply to the Recipient or its Project,

2 Modifications. Federal requirements and guidance that apply to the Recipient or its Project when the FTA Authorized Official awards Federal funds for the Recipient's Underlying Agreement may:

a Be modified from time to time, and

b Apply to the Recipient or its Project, and

f. No Federal Government Commitment or Liability to Third Parties. Except as the Federal Government expressly consents in writing, the Recipient agrees that:

(1) The Federal Government does not and shall not have any commitment or liability related to:

(a) The Project,

(b) Any Third Party Participant at any tier, or

(c) Any other person or entity that is not a party (Recipient or FTA) to the Underlying Agreement for the Project, and

(2) Notwithstanding that the Federal Government may have concurred in or approved any solicitation or third party agreement at any tier that has affected the Project, the Federal Government does not and shall not have any commitment or liability to any:

(a) Third Party Participant, or

(b) Other entity or person that is not a party (Recipient or FTA) to the Underlying Agreement,

Section 3. Ethics.

b. Debarment and Suspension. The Recipient agrees to the following:

- (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following:

(a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by:

1 U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200,

2 U.S. OMB, “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180, including any amendments thereto, and

3 Executive Orders Nos. 12549 and 12689, “Debarment and Suspension,”
31 U.S.C. § 6101 note,

(b) It will review the U.S. GSA “System for Award Management,” <https://www.sam.gov>, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and

(c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant:

1 Will comply with Federal debarment and suspension requirements, and

2 Reviews the “System for Award Management” at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and

(2) If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the:

(a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project,

(b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or

(c) FTA Chief Counsel,

d. Lobbying Restrictions. The Recipient understands and agrees that, as provided by 31 U.S.C. § 1352(a):

(1) Prohibition on Use of Federal Funds. It will not use Federal funds:

(a) To influence any:

1 Officer or employee of a Federal agency,

2 Member of Congress,

3 Officer or employee of Congress, or

4 Employee of a Member of Congress, and

(b) On matters that involve the Project or the Underlying Agreement for the Project, including any:

1 Award,

2 Extension, or

3 Modification,

(2) Laws and Regulations. It will comply, and will assure that each Third Party Participant complies with:

(a) 31 U.S.C. § 1352, as amended,

(b) U.S. DOT regulations, “New Restrictions on Lobbying,” 49 C.F.R. part 20, to the extent consistent with 31 U.S.C. § 1352, as amended, and

(c) Other applicable Federal laws and regulations prohibiting the use of Federal funds for any activity concerning legislation or appropriations designed to influence:

1 The U.S. Congress, or

2 A State legislature, but

(3) Exception. The prohibitions of the section 3.d(1) – (2) of this Master Agreement do not apply to an activity that is undertaken through proper official channels, if permitted by applicable Federal law or regulations,

f. False or Fraudulent Statements or Claims.

(1) Civil Fraud. The Recipient acknowledges and agrees that:

(a) Federal laws and regulations apply to itself and its Project, including:

1 The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.*, and

2 U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. part 31,

(b) By executing its Underlying Agreement, the Recipient certifies and affirms to the Federal Government the truthfulness and accuracy of any of the following that the Recipient provides to the Federal Government:

1 Claim,

2 Statement,

3 Submission,

4 Certification,

5 Assurance, or

6 Representation, and

(c) The Recipient acknowledges that the Federal Government may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, and other applicable penalties if the Recipient:

1 Presents, submits, or makes available any information in connection with any:

a Claim,

b Statement,

c Submission,

d Certification,

e Assurance, or

f Representation, and

2 That information is false, fictitious, or fraudulent, and

(2) Criminal Fraud. The Recipient acknowledges that 49 U.S.C. § 5323(l)(1), authorizes the Federal Government to impose the penalties authorized by 18 U.S.C. § 1001 if the Recipient:

(a) Presents, submits, or makes available any information in connection with any: 1 Claim, 2 Statement, 3 Submission, 4 Certification, 5 Assurance, or 6 Representation, and

(b) That information is false, fictitious, or fraudulent, and

Section 10. Access to Records and Sites of Project Performance.

a. Access to Recipient and Third Party Participant Records. The Recipient agrees that:

(1) As required under 49 U.S.C. § 5325(g) and 49 C.F.R. § 18.36(i)(10), it will provide, and require its Third Party Participants at each tier to provide sufficient access to inspect and audit records and information pertaining to the Project to the:

(a) U.S. Secretary of Transportation or the Secretary’s duly authorized representatives,

(b) Comptroller General of the United States, and the Comptroller General’s duly authorized representatives, and

(c) Recipient and its Subrecipients, if any,

(2) The Recipient will permit, and assures that its Third Party Participants will permit those listed in section 10.a(1) of this Master Agreement to do the following:

- (a) Inspect all: Project work,
Project materials,
Project payrolls, and
Other Project data, and

(b) Audit any information related to the Project under the control of the Recipient or Third Party Participant within

- 1 Books,
- 2 Records,
- 3 Accounts, or
- 4 Other locations,

Section 13. Civil Rights. The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to comply with 49 U.S.C. § 5332, FTA’s special nondiscrimination statute, and agrees to, and assures that it and each Third Party Participant will:

(1) Prohibit discrimination based on:

- (a) Race,
- (b) Color,
- (c) Religion,
- (d) National origin,
- (e) Sex,
- (f) Disability, or
- (g) Age, and

(2) Prohibit the:

- (a) Exclusion from participation in employment or business opportunity for reasons identified in 49 U.S.C. § 5332,
- (b) Denial of program benefits in employment or business opportunity identified in 49 U.S.C. § 5332, or
- (c) Discrimination, including discrimination in employment or business opportunity identified in 49 U.S.C. § 5332, and

(3) Except as FTA determines otherwise in writing:

(a) General. Follow:

1 The most recent edition of FTA Circular 4702.1, “[Title VI Requirements and Guidelines for Federal Transit Administration Recipients](#),” to the extent consistent with applicable Federal laws, regulations, and guidance, and

2 Other applicable Federal guidance that may be issued, but

(b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,

b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will:

(1) Prohibit discrimination based on:

- (a) Race,
- (b) Color, or
- (c) National origin,

(2) Comply with:

- (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.*,
- (b) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 C.F.R. part 21, and
- (c) Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 13.a of this Master Agreement, and

(3) Except as FTA determines otherwise in writing, follow:

- (a) The most recent edition of FTA Circular 4702.1, “[Title VI Requirements and Guidelines for Federal Transit Administration Recipients](#),” to the extent consistent with applicable Federal laws, regulations, and guidance,
- (b) U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3, and
- (c) Other applicable Federal guidance that may be issued,

c. Equal Employment Opportunity.

(1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will prohibit discrimination on the basis of race, color, religion, sex, or national origin, and:

- (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*,
- (b) Facilitate compliance with Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246, Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note,
- (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 13.a of this Master Agreement, and
- (d) Follow Federal Guidance pertaining to Equal Employment Opportunity laws and regulations, and prohibitions against discrimination on the basis of disability, except as the Federal Government determines otherwise in writing,

(2) Specifics. The Recipient agrees:

(a) To ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their:

- 1 Race,
- 2 Color,
- 3 Religion,
- 4 Sex,
- 5 Disability,
- 6 Age, or
- 7 National origin, and

(b) Take affirmative action that includes, but is not limited to:

- 1 Recruitment advertising,
- 2 Recruitment,
- 3 Employment,
- 4 Rates of pay,
- 5 Other forms of compensation,
- 6 Selection for training, including apprenticeship,
- 7 Upgrading,
- 8 Transfers,
- 9 Demotions,
- 10 Layoffs, and

11 Terminations, but

(b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of “Employer.”

(3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with:

(a) U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60, and

(b) Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246, Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note,

d. Disadvantaged Business Enterprise. Except as FTA determines otherwise in writing:

(1) General. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as “Disadvantaged Business Enterprises” (DBEs), in the Project as follows:

(a) Statutory and Regulatory Requirements. The Recipient agrees to comply with:

1 Section 1101(b) of MAP-21, 23 U.S.C. § 101 note,

2 U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 C.F.R. part 26, and

3 Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 13.a of this Master Agreement,

(b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third party contracts exceeding \$250,000 in a Federal fiscal year must:

1 Have a DBE program meeting the requirements of 49 C.F.R. part 26,

2 Implement a DBE program approved by FTA, and

3 Establish an annual DBE participation goal,

(c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26,

(d) Assurance. As required under 49 C.F.R. § 26.13(a), the Recipient agrees and assures that:

1 It must not discriminate on the basis of race, color, national origin, or sex in the: a Award and performance of any FTA or U.S. DOT-assisted contract, or b Administration of its DBE program or the requirements of 49 C.F.R. part 26,

2 It must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts,

3 Its DBE program, as required under 49 C.F.R. part 26 and as approved by U.S. DOT, is incorporated by reference in its Underlying Agreement, and

4 Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement, and

(e) Upon notification to the Recipient of its failure to carry out its approved program, FTA or U.S. DOT may:

1 Impose sanctions as provided for under 49 C.F.R. part 26, and 2 In appropriate cases, refer the matter for enforcement under: a 18 U.S.C. § 1001, b The Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 *et seq.*, or c Both, but

(2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under MAP-21 and previous legislation,

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including:

(1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 *et seq.*,

(2) U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25, and

(3) Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 13.a of this Master Agreement,

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including:

(1) The Age Discrimination in Employment Act, 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age,

(2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, which implements the Age Discrimination in Employment Act,

(3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds,

(4) U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and

(5) Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 13.a of this Master Agreement,

g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions against discrimination on the basis of disability:

(1) Federal laws, including:

(a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities,

(b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities, but

1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but

2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of “employer,”

(c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities,

(d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and

(e) Other applicable laws and amendments pertaining to access for seniors or individuals with disabilities,

(2) Federal regulations, including:

(a) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. part 37,

(b) U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27,

- (c) U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39,
- (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. part 1192 and 49 C.F.R. part 38,
- (e) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35,
- (f) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36,
- (g) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630,
- (h) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. part 64, Subpart F,
- (i) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. part 1194, and
- (j) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609, and
- (3) Other applicable Federal civil rights and nondiscrimination guidance,

h. Drug or Alcohol Abuse –Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of:

- (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 *et seq.*,
- (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 *et seq.*, and
- (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2,

i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people with limited understanding of English by following:

- (1) Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” August 11, 2000, 42 U.S.C. § 2000d-1 note, and
- (2) U.S. DOT Notice, “DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Persons,” 70 *Fed. Reg.* 74087, December 14, 2005,

j Other Nondiscrimination Laws and Regulations. Except as the Federal Government determines otherwise in writing, the Recipient agrees to:

- (1) Comply with other applicable Federal nondiscrimination laws and regulations, and
- (2) Follow Federal guidance prohibiting discrimination, and

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

Section 16. Preference for United States Products and Services.

Except as the Federal Government determines otherwise in writing, the Recipient agrees to comply with FTA’s U.S. domestic preference requirements and follow Federal guidance, including the:

a. Buy America. Domestic preference procurement requirements of:

- (1) 49 U.S.C. § 5323(j), as amended by MAP-21, and

(2) FTA regulations, “Buy America Requirements,” 49 C.F.R. part 661, to the extent consistent with MAP-21,

Section 17. Procurement. The Recipient agrees that it will not use FTA funds for third party procurements unless there is satisfactory compliance with Federal requirements. Therefore:

a. Federal Laws, Regulations, and Guidance. The Recipient agrees:

(1) To comply with the requirements of 49 U.S.C. chapter 53 and other applicable Federal laws and regulations now in effect or later that affect its third party procurements,

(2) To comply with U.S. DOT third party procurement regulations, specifically 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 – 19.48, and other applicable Federal regulations that affect its third party procurements in effect now and as may be later amended,

(3) To follow the most recent edition and any revisions of FTA Circular 4220.1, “Third Party Contracting Guidance,” to the extent consistent with applicable Federal laws, regulations, and guidance, except as FTA determines otherwise in writing, and

(4) That although the FTA “Best Practices Procurement Manual” provides additional third party contracting guidance, the Manual may lack the necessary information for compliance with certain Federal requirements that apply to specific third party contracts at this time,

m. Preference for Recycled Products. Except as the Federal Government determines otherwise in writing, the Recipient agrees to provide a competitive preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by:

(1) Complying and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and

(2) Complying with U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. part 247,

n. Clean Air and Clean Water. The Recipient agrees to include adequate provisions in each third party agreement exceeding \$100,000 to ensure that each Third Party Participant will agree to:

(1) Report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities,”

(2) Refrain from using any violating facilities,

(3) Report violations to FTA and the Regional U.S. EPA Office, and

(4) Comply with the inspection and other requirements of:

(a) Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7606, and other requirements of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 – 7671q, and

(b) Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 – 1377,

p. Rolling Stock. The Recipient agrees that:

(3) Pre-award and Post Delivery Requirements. Except for Projects using funds appropriated or made available for any Tribal Transit Program, it will complete the pre-award and post-delivery reviews required under:

(a) Federal transit law, specifically 49 U.S.C. § 5323(m), and

(b) FTA regulations, “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases,” 49 C.F.R. part 663, and

(4) Bus Testing. It will complete the bus testing required under:

(a) Federal transit law, specifically 49 U.S.C. § 5318(e), as amended by MAP-21, and

(b) FTA regulations, “Bus Testing,” 49 C.F.R. part 665, to the extent they are consistent with 49 U.S.C. § 5318(e), as amended by MAP-21,

Section 28. Employee Protections. The Recipient agrees to comply, and assures that each Third Party Participant will comply, with all of the following:

d. Public Transportation Employee Protective Arrangements. The Recipient agrees that 49 U.S.C. § 5333(b) requires employee protective arrangements to be in place as a condition of award of FTA assistance made available or appropriated for FTA programs involving public transportation operations. U.S. DOL recognizes the following categories of arrangements:

(1) U.S. DOL Certification. When its Project involves public transportation operations and is financed with funding made available or appropriated for 49 U.S.C. §§ 5307, 5309, 5312, 5337, or 5339, as amended by MAP-21, or former 49 U.S.C. §§ 5308, 5309, 5312, or other provisions of law as required by the Federal Government, U.S. DOL must provide a Certification of employee protective arrangements before FTA may provide financial assistance for the Project. Therefore, the Recipient understands and agrees, and assures that any Third Party Participant providing public transportation operations will agree, that:

(a) It must carry out the Project as provided in its U.S. DOL Certification, which contains the terms and conditions that U.S. DOL has determined to be fair and equitable to protect the interests of any employees affected by the Project,

(b) It must comply with 49 U.S.C. § 5333(b), and any future amendments thereto,

(c) It will follow the U.S. DOL guidelines, “Guidelines, Section 5333(b), Federal Transit Law,” 29 C.F.R. part 215, except as U.S. DOL determines otherwise in writing,

(d) It must comply with the terms and conditions of the U.S. DOL certification of public transportation employee protective arrangements for the Project, which certification is dated as identified on the Underlying Agreement, including:

1 Alternative comparable arrangements U.S. DOL has specified for the Project,

2 Any revisions U.S. DOL has specified for the Project, or

3 Both, and

Section 30. Energy Conservation. The Recipient agrees to, and assures its Subrecipients will:

State Energy Conservation Plans. Comply with the mandatory energy standards and policies of its State energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321 *et seq.*, except as the Federal Government determines otherwise in writing, and

Energy Assessment. Perform an energy assessment for any building constructed, reconstructed, or modified with FTA funds required under FTA regulations, “Requirements for Energy Assessments,” 49 C.F.R. part 622, subpart C.

Section 12. Right of the Federal Government to Terminate. The Recipient agrees to all of the following:

a. Justification. After providing notice, the Federal Government may suspend, suspend then terminate, or terminate all or any part of the Federal funding awarded for the Project if:

(1) The Recipient has violated the Underlying Agreement or this Master Agreement, especially if that violation would endanger substantial performance of the Project,

(2) The Recipient has failed to make reasonable progress implementing the Project, or

(3) The Federal Government determines that continuing to provide Federal funding for the Project does not adequately serve the purposes of the law authorizing the Project,

b. Financial Implications.

(1) In general, termination of Federal funding for the Project will not invalidate obligations properly incurred before the termination date to the extent the obligations cannot be canceled, but

(2) Notwithstanding Section 12.b(1) above, the Federal Government may:

(a) Recover Federal funds it has provided for the Project if it determines that the Recipient has willfully misused Federal funds by:

1 Failing to make adequate progress,

2 Failing to make appropriate use of the Project property, or

3 Failing to comply with the Underlying Grant Agreement or this Master Agreement, and

(b) Require the Recipient to refund:

1 The entire amount of Federal funds provided for the Project, or

2 Any lesser amount as the Federal Government may determine, and

c. Expiration of Project Time Period. Except for a Full Funding Grant Agreement, expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the Underlying Agreement.

The following clauses are required by CVTD

5.1.2 Solicitation Provision

CVTD shall insert the following provision in all solicitation documents for products and services having an estimated value of \$100,000 or greater:

- a. Pre-Proposal Protests – All protests concerning solicitation specifications, criteria and/or procedures shall be submitted in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the CVTD Executive Director as specified below not later than 10 business days prior to the deadline for submission of bids/proposals.

The CVTD Executive Director may, within his or her discretion, postpone the deadline for submission of bids/proposals, but in any case, shall provide a written response to all protests not later than five (5) business days prior to the deadline for submission of bids/proposals. If the deadline for submission of bids/proposals is postponed by the CVTD Executive Director as the result of a protest the postponement will be announced through an addendum to the solicitation.

The decision by the CVTD Executive Director shall be the final agency decision on the matter but shall be subject to judicial review or review by FTA below.

- b. Pre-Award Protests – With respect to protests made after the deadline for submission of bids/proposals but before contract award by CVTD, protests shall be limited to those protests alleging a violation of Federal or State law, a challenge to the bids/proposals evaluation and award process, CVTD's failure to have or follow its protest procedures or its failure to review a complaint or protest. Such protests shall be submitted in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the CVTD Executive Director as specified below not later than five (5) business days after the Recommendation for Contract Award announcement by CVTD.

The CVTD Executive Director may, within his or her discretion, postpone the award of the contract, but in any case, shall provide a written response to all protests not later than three (3) business days prior to the date that CVTD shall announce the contract award.

The decision by the CVTD Executive Director shall be the final agency decision on the matter but shall be subject to judicial review or review by FTA as specified below.

- c. Requirements for Protests – All protests must be submitted to CVTD in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail), with sufficient documentation, evidence and legal authority to demonstrate that the Protestor is entitled to the relief requested. The protest must be certified as being true and correct to the best knowledge and information of the Protestor, be signed by the Protestor, and be notarized. The protest must also include a mailing address to which a response should be sent.

Protests received after the deadlines for receipt of protests specified above are subject to denial without any requirement for review or action by CVTD.

All protests must be directed in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to:

Executive Director, Concho Valley Transit District

c/o CVTD Procurement

2801 W. Loop 306, Suite A

or

P.O. Box 60050

San Angelo, TX 76906

San Angelo, TX 76906

- d. Protest Response - The CVTD Executive Director shall issue written responses to all protests received by the required protest response dates. All protest responses shall be transmitted by first-class U.S. Postal Service to the address indicated in the protest letter.

For convenience, CVTD will also send a copy of the response to a protest to the Protester by facsimile and/or electronic mail if a facsimile number and/or electronic mail address are indicated in the protest letter. The protest response transmitted by U.S. Postal Service shall be the official CVTD response to the protest and CVTD will not be responsible for the failure of the Protester to receive the protest response by either facsimile or electronic mail.

Review of Protests by FTA – All protests involving contracts financed with federal assistance shall be disclosed to the FTA in accordance with FTA Circular 4220.1F. Protesters shall exhaust all administrative remedies with CVTD prior to pursuing protests with FTA. FTA limits its reviews of protests to: a grantee's failure to have or follow its protest procedures; a grantee's failure to review a complaint or protest when presented an opportunity to do so; or violations of Federal law or regulation. Appeals to FTA must be received by the cognizant FTA regional or headquarters office within five (5) working days of the date the Protester has received actual or constructive notice of CVTD's final decision or within five (5) working days of the date the Protester has identified other grounds for appeal to FTA.

Contractor agrees to furnish and deliver all items or perform all services set forth or otherwise identified in this Fixed Price Contract and its attachments, amendments, and/or modifications.