

REQUEST FOR QUOTE

CINEMATIC PUBLIC SERVICE ANNOUNCEMENT FOR FAST CHARGE BATTERY ELECTRIC TRANSIT BUSES

Dated February 25, 2013

CALENDAR OF EVENTS

CTE ISSUES REQUEST FOR QUOTE:	February 25, 2013
QUESTIONS SUBMISSION:	Due to time constraints, we are not accepting questions for this procurement
DUE DATE FOR QUOTES:	March 8, 2013
CTE ISSUES SERVICE CONTRACT:	April 8, 2013

February 25, 2013

Dear Prospective Bidder:

Subject: CINEMATIC PUBLIC SERVICE ANNOUNCEMENT FOR FAST CHARGE BATTERY
ELECTRIC TRANSIT BUSES

The Center for Transportation & the Environment, hereinafter referred to as CTE, on behalf of the City of Tallahassee and StarMetro, hereinafter collectively referred to as STARMETRO, is requesting quotations from interested parties for production of a cinematic public service announcement that will appeal to the popular public and educate on the benefits of the five (5) new zero emission fast charge battery electric buses being deployed in Tallahassee.

This project is funded in part by the Federal Transit Administration (FTA). The successful Contractor will be required to execute the CTE Standard Letter Agreement, which includes Federal Terms and Conditions. This project will be awarded to the qualified, lower responsive, responsible bidder determined by a comparison of the total quote amount on the quote forms, experience, and compliance to the scope of work, instructions, and/or background check.

Responses to the Request for Quote (RFQ) must be submitted in accordance with the Scope of Work and Instructions state herein. Please also submit a brief synopsis of your company as well as the experience and qualifications of the intended inspector.

CTE POINT OF CONTACT

The sole point of contact for this bid is Meredith Linscott via email (meredith@cte.tv). Questions regarding this RFQ will be accepted via e-mail, only. The bidders are instructed not to contact other representatives of CTE or STARMETRO, including board members, before announcement of the award. Noncompliance with this requirement may result in your firm's bid being considered nonresponsive.

BID INFORMATION

CINEMATIC PUBLIC SERVICE ANNOUNCEMENT FOR FAST CHARGE BATTERY ELECTRIC
TRANSIT BUSES

BID DUE: 4:00 P.M. EDT ON MARCH 8, 2013

Center for Transportation & the Environment
730 Peachtree Street
Suite 330
Atlanta, GA 30308

ATTN: Meredith Linscott
e-mail: meredith@cte.tv

Attachments: Scope of Work, Quotation Instructions, and Federal Requirements

SCOPE OF WORK

CINEMATIC PUBLIC SERVICE ANNOUNCEMENT FOR FAST CHARGE BATTERY ELECTRIC TRANSIT BUSES

The Center for Transportation & the Environment (CTE) is soliciting qualified contractors to provide direction and production of a cinematic public service announcement that will appeal to the popular public and educate on the benefits of the five (5) new zero emission fast charge battery electric buses being deployed in Tallahassee.

CTE intends to award a contract to the responsible firm whose quote constitutes the lowest responsive responsible bid and whose experience and qualifications meet the evaluation criteria. In general, the work shall include, but is not limited to, all labor, materials, computer equipment, transportation, travel expenses, and all other incidentals required to properly perform the services at all locations.

BACKGROUND

The Center for Transportation & the Environment (CTE) has an existing contract with STARMETRO to provide program management services for a project that includes the purchase and deployment of five (5) Fast Charge Battery Electric Buses. The project is partially funded by FTA through the Transit Investments for Greenhouse Gas and Energy Reduction (TIGGER) program. STARMETRO has purchased buses from Proterra and they are currently under construction.

The scope of work encompasses direction and production of a cinematic public service announcement that will appeal to the popular public and educate on the benefits of the five (5) new zero emission fast charge battery electric buses being deployed in Tallahassee. The work performed will include, but is not limited to, the following:

- Creation of a script/storyboard for the announcement that appeals to targeted demographic
- Provide casting, costume direction, and filming locations
- Film the announcement in High Definition Digital Video
- Provide editing, sound effects and music
- Provide packaged DVDs and electronic files of finished announcement

The final announcement should be a minimum of one minute in length but should not exceed one minute and thirty seconds. A final electronic copy of the announcement should be delivered to STARMETRO on or before June 24, 2013, when the electric buses are expected to begin service (this date may be subject to change).

TASK DESCRIPTION

CTE is soliciting known and experienced organizations to produce a cinematic public service announcement that will educate consumers on the features and benefits of new fast charge electric battery buses that will be deployed in Tallahassee. Film schools and/or universities with film departments are encouraged to apply. The work as described in detail below includes scripting, storyboarding, casting, filming, editing, and packaging the finished product into DVD and electronic formats. The video should be creative and should provide a fun overview of the electric bus. The length of the final edited announcement should be no less than one minute and no more than one minute and thirty seconds.

1. Scripting/Storyboarding:
Create a funny but relevant script that provides pertinent information about the zero-emission fast charge battery electric buses, including where they are located and their environmental benefits. The storyboard should portray the benefits in a creative and entertaining way without diminishing the reputation of STARMETRO or of the agency's reputation for safety and reliability, similar to the following examples:

<http://www.flixxy.com/epic-bus-ad-from-denmark.htm>

<http://www.youtube.com/watch?v=noE1YzvfA08>

<http://www.youtube.com/watch?v=wK0Ago6Kb0E>
2. Casting, Costume Design, and Filming Locations:
Provide casting for all video actors and provide costume direction. Scout filming locations and secure filming rights, when necessary.
3. Film the Announcement
Film the announcement in and around the Tallahassee area using high definition equipment. Film footage should be sufficient to create, at a minimum, a one-minute announcement, post editing.
4. Provide Editing/Sound
Edit footage and add sound effects to ensure the announcement tells a story in a succinct manner with logical transitions. At least two editing check-points should be established with CTE and STARMETRO to discuss storyboard and progress to-date and to obtain approval on direction before proceeding.
5. Deliver DVD/electronic files of Announcement
Deliver, to CTE and STARMETRO, the final, edited announcement in DVD and electronic formats specified prior to delivery. Delivery of the files should occur on or before June 24, 2013 (date may be subject to change).

FINAL ANNOUNCEMENT DELIVERY

CTE shall receive three (3) DVD copies, along with three (3) electronic copies on CD of the completed announcement.

PAYMENT

Full compensation for the work involved, as specified in the Scope of Work, and as directed by the CTE Project Manager, shall be considered as included in the contract lump sum price paid for all contract work completed according to the Scope of Work, and no separate payment will be allowed. Invoices should be submitted after proper performance of services on a monthly basis, at the beginning of each month for the previous months work.

STANDARD SERVICES AGREEMENT AND ATTACHED FEDERAL REQUIREMENTS:

The successful Contractor will be required to execute CTE's Letter Agreement and shall be subject to Federal Requirements Terms and Conditions, attached

QUOTATION INSTRUCTIONS

CTE may, at its sole and absolute discretion, reject any or all parts of the quote; re-solicit this RFQ; postpone or cancel, at any time, this RFQ process; or waive any irregularities in this RFQ. The decision as to who shall receive a contract award, or whether or not an award shall ever be made as a result of this RFQ, shall be at the sole and absolute discretion of CTE.

QUOTE ACCEPTANCE:

CTE will accept quotations electronically via e-mail to meredith@cte.tv, only. Please include "CINEMATIC ANNOUNCEMENT PROPOSAL" in the subject line. The quote must be received no later than 4:00 p.m., prevailing local time on March 8, 2013. No exceptions will be made to this deadline. CTE is not responsible for any issues with electronic submittal that may cause delays in receipt of quotations.

Quotes received later or at a different location than described herein, will not be considered. Quotes may NOT be sent via Fax.

QUOTATION FORMAT AND CONTENT

Submitted Quotations must use the following guidelines for content and format:

1) Cover (1 Page)

- a) Company name, address and telephone.
- b) Identification of subcontractors, if applicable
- c) Name, title, address and telephone number of contact person during period of evaluation.
- d) A statement to the effect that the proposal shall remain valid for a period of not less than 90 days from the date of submittal.
- e) Signature of a person authorized to bind the Proposing Company to the terms of the proposal.

2) Project Narrative

- a) Executive Summary (1 Page)
 - i) Provide a brief synopsis of the company's background and experience with producing/directing services. The Proposing Company shall state its understanding of the overall project objectives and the skill levels required to successfully accomplish the project objectives.
- b) Qualifications and Related Experience (1 Page)
 - i) The Proposing Company shall identify key personnel proposed to perform the proposed scope of work.
 - ii) The Proposing Company shall provide a summary of experience and qualifications for key personnel.
 - iii) The Proposing Company shall provide any additional relevant experience and qualifications
- c) Work Plan (1 Page)
 - i) The Proposing Company shall provide a narrative, which addresses the Scope of Work and demonstrates the Proposing Company's understanding of CTE and STARMETRO's requirements. Key points of the proposal should be summarized including: primary tasks or events and any innovative techniques or solutions, insights, resources, requirements, etc.

3) Cost and Price Proposal (1 Page)

- a) As part of the cost and price proposal, the Proposing Company shall submit proposed pricing for the entire scope of work.
 - i) A list of job classifications and fully burdened hourly rates for each job classification that will be assigned to this project;
 - ii) An estimate of reimbursable expenses that may be incurred (identifying any markups);
 - iii) Sub consultant costs, include a breakdown and mark-ups for sub consultant fees; and
 - iv) Include any other information and/or descriptive aspects of your fee schedule that may not be addressed above, including disclosure of minimum acceptable fee levels, if any.

4) Resumes

- a) Each proposal shall include a resume of not more than two pages, for each key staff member including: Project Manager, task and discipline leaders and key specialists. Resumes will include: title, years of experience, education, professional registrations, specific prior assignments with name of client, specific project role and responsibilities, and start and end dates for each assignment.

5) FTA Required Forms

- a) Each Proposing Company shall complete the attached FTA Required Forms for submittal with their proposal
 - i) Primary Participant Certification
 - ii) Lower Tier Participation Certification, as applicable
 - iii) Restrictions on Lobbying Certification
 - iv) Drug Free Workplace Certification

PROPOSAL VALIDITY

All Quotations submitted must be valid for a period of thirty (30) days from the "Quotation Due Date."

PRE-CONTRACTUAL EXPENSES

CTE and STARMETRO will be under no obligation for payment of pre-contractual expenses. Pre-contractual expenses are defined as expenses incurred by Proposing Company for the following:

- Preparing the Proposal in response to this solicitation;
- Submitting that Proposal to CTE;
- Negotiating with CTE any matter related to this Proposal; and/or
- Other expenses incurred by Proposing Company prior to date of award.

EVALUATION OF QUOTATIONS

This contract will be awarded based on qualifications with respect to which proposer offers CTE and STARMETRO the "Best Solution" to the requirements. This RFP includes specific requirements that will be used for the evaluation of Quotations. In order to be considered a responsive Quotation, the Proposing Company will submit all items as required in the Scope of Work (SOW). CTE and STARMETRO will evaluate Quotations with respect to established evaluation criteria. As part of the evaluation process, CTE may request selected Proposing Companies appear for oral interviews after reviewing the written Quotations. Proposing Companies should be prepared to have key management personnel available for these interviews.

Quotations will be evaluated in accordance with the following criteria:

I. Response to the Scope of Work (20%):

- Understanding of the Project

- General Approach to the Scope of Work
- Responsiveness

II. Experience / Technical Proposal (30%):

- Company Background / qualifications
- Familiarity with city of Tallahassee and available locations for filming
- Staffing
- Specific experience with producing/directing videos

III. Ability to meet Schedule Requirements (20%):

- Proposed timeline of events
- Capacity / Availability

IV. Cost Proposal (30%)

- Portion of budget related to filming/editing vs. travel/expenses

In the event a single Proposal is received, CTE will conduct a price or cost analysis. A price analysis is the process of examining the proposal and evaluating the separate cost elements. It should be recognized that a price analysis through comparison to other similar procurements must be based on an established or competitive price of the elements used in the comparison. The comparison must be made to a purchase of similar quantity and involving similar provisions. Where a difference exists, a detailed analysis must be made of this difference and costs attached thereto.

EVALUATION PROCEDURE

An evaluation committee, in accordance with the criteria established, will evaluate all proposals received as specified. The evaluators, in applying the major criteria to the proposals, may consider additional sub-criteria beyond those listed. Proposing Companies should be aware, however, that award may be made without interviews or further discussion.

AWARD

- (1) CTE reserves the right to withdraw this request at any time without prior notice. Furthermore, CTE makes no representations that an agreement will be awarded to any Proposing Company responding to this invitation. CTE expressly reserves the right to accept or reject any and all Quotations, or any item or part thereof, or to waive any informalities or irregularities in Quotations received without indicating any reasons for such actions.
- (2) CTE may negotiate contract terms with the selected Proposing Companies prior to award, and expressly reserves the right to negotiate with several Proposing Companies simultaneously and, thereafter, to award a contract to the Proposing Company offering the most favorable terms to CTE.
- (3) CTE reserves the right to award its total requirements to one Proposing Company or to apportion those requirements among several Proposing Companies as CTE may deem to be in its best interest. In addition, negotiations may or may not be conducted. Therefore, the proposal submitted should contain Proposing Company's most favorable terms and conditions, since the selection and award may be made without discussion.
- (4) CTE reserves the right to make award within thirty (30) calendar days from the date Quotations are opened. Should award in whole or in part be delayed beyond the period of thirty (30) days, such award shall be conditioned upon successful Proposing Company's acceptance.

FTA Required Forms

FEDERAL TRANSIT ADMINISTRATION

A.1 - Federally Required and Other Model Contract Clauses

Fly America Requirements
Energy Conservation Requirements
Lobbying
Federal Changes
Recycled Products
No Government Obligation to Third Parties
Program Fraud and False or Fraudulent Statements and Related Acts
Termination
Government-wide Debarment and Suspension (Nonprocurement)
Civil Rights Requirements
Patent and Rights in Data
Disadvantaged Business Enterprises (DBE)
Incorporation of Federal Transit Administration (FTA) Terms

FLY AMERICA REQUIREMENTS

**49 U.S.C. § 40118
41 CFR Part 301-10**

Fly America Requirements

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

ENERGY CONSERVATION REQUIREMENTS

**42 U.S.C. 6321 et seq.
49 CFR Part 18**

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

LOBBYING

**31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20**

Mandatory Clause/Language

Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the

Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

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

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

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

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

FEDERAL CHANGES
49 CFR Part 18

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those

listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

RECYCLED PRODUCTS

42 U.S.C. 6962

40 CFR Part 247

Executive Order 12873

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

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Obligation by the Federal Government.

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

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

**PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS
AND RELATED ACTS**

31 U.S.C. 3801 et seq.

49 CFR Part 31 18 U.S.C. 1001

49 U.S.C. 5307

Program Fraud and False or Fraudulent Statements or Related Acts.

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

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

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

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

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

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

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

The certification in this clause is a material representation of fact relied upon by CTE and StarMetro. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to CTE and StarMetro, the Federal Government may pursue

available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

CIVIL RIGHTS REQUIREMENTS
29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.

Civil Rights - The following requirements apply to the underlying contract:

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

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

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

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

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

PATENT AND RIGHTS IN DATA

37 CFR Part 401

49 CFR Parts 18 and 19

Applicability to Contracts

Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

Flow Down

The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

Model Clause/Language

The FTA patent clause is substantially similar to the text of 49 C.F.R. Part 19, Appendix A, Section 5, but the rights in data clause reflects FTA objectives. For patent rights, FTA is governed by Federal law and regulation. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding research grants. This model clause, with larger rights as a standard, is proposed with the understanding that this standard could be modified to FTA's needs.

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. Rights in Data - This following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to

participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor

agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

Disadvantaged Business Enterprises

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's

overall goal for DBE participation is __ %. A separate contract goal **[of __ % DBE participation has] [has not]** been established for this procurement.

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

c. {If a separate contract goal has been established, use the following}

Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

[Bidders][Offerors] must present the information required above **[as a matter of responsiveness] [with initial proposals] [prior to contract award]** (see 49 CFR 26.53(3)).

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

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the **{insert agency name}**. In addition, **[the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily**

completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the {insert agency name} and contractor's receipt of the partial retainage payment related to the subcontractor's work.]

e. The contractor must promptly notify **{insert agency name}**, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of **{insert agency name}**.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS
FTA Circular 4220.1E

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.
