

Cut along the outer border and affix this label to your sealed proposal envelope to identify it as a “Sealed Proposal”. Be sure to include the name of the company submitting the proposal.

SEALED PROPOSAL | DO NOT OPEN

RFP NO: 10-037-MA

TITLE: Consultant Services - Fixed Route Study

DUE DATE/TIME:
February 17, 2010, 3:00 p.m.

SUBMITTED BY:

(PRINT NAME OF COMPANY)



Proposals must be addressed to:

Marta Alvarez, Purchasing Manager
City of Lubbock
1625 13th Street, Room 204
Lubbock, Texas 79401

Consultant Services - Fixed Route Study

CITY OF LUBBOCK, TEXAS
RFP 10-037-MA

Submittal Checklist

Please ensure that you complete and return the following documents and information to the City of Lubbock Purchasing and Contract Management Office before the deadline. Late submittals will not be accepted.

	This document <u>MUST</u> be completed in blue or black ink or by typewriter. Signatures must be original, in blue or black ink, and by hand. Include firm's FEDERAL TAX ID number or SOCIAL SECURITY number.
	Proposal Form <u>MUST</u> be completed.
	One original and three copies of the proposal. If documents are bound, please use a notebook or similar.
	Completed and signed SUSPENSION AND DEPARTMENT CERTIFICATION. Please include Company Federal TAX Id number or Social Security number.
	Disadvantage Business Enterprise Utilization Form
	Certification of Non-segregated Facilities
	Non-Collusion Declaration
	Certification Regarding Use of Contract Funds for Lobbying
	DBE Contracting Requirement and Forms
	Letter of Intent
	Offerors List

FAILURE TO PROVIDE ANY OF THE ABOVE MAY RESULT IN YOUR PROPOSAL BEING DEEMED NON-RESPONSIVE.

PLEASE INCLUDE THIS COMPLETED PAGE AS THE FIRST PAGE OF YOUR SUBMITTAL.

Consultant Services - Fixed Route Study

CITY OF LUBBOCK, TEXAS
RFP 10-037-MA

NOTICE TO OFFERORS

The City of Lubbock hereby notifies all bidders that in regard to any contract entered into pursuant to this advertisement, it is the policy of the Department of Transportation (DOT) that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. All bidders shall make good faith efforts, as defined in Appendix A of 49 CFR Part 26 to subcontract .69 percent of the dollar value of the prime contract to small business concerns owned and controlled by socially and economically disadvantaged individuals (DBE). Details of such requirement are contained in the specifications.

The proposed contract is subject to the Buy American provision under Section 9129 of the Aviation Safety and Capacity Act of 1990. Details of such requirement are contained in the specifications.

The Proposed contract is under and subject to Executive Order 11246 and the Equal Opportunity Clause. The bidder's attention is called to the Equal Opportunity Clause and the Standard Federal Equal Employment Opportunity Construction Contract Specifications, and the Notice of Requirement of Affirmative Action to Ensure Equal Employment Opportunity set forth in the specifications.

The successful bidder will be required to submit a Certification of Nonsegregated Facilities prior to award of the contract and to notify prospective subcontractors of the requirement. The certification is contained in the specifications.

CREDIT AND DISCLAIMER STATEMENT:

The preparation of this report has been financed in part through grant(s) from the Federal Highway Administration and Federal Transit Administration, U.S. Department of Transportation, under the Metropolitan Planning Program, Section 104 (f) of Title 23, U.S. Code.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

- 1 The City of Lubbock hereby notifies all offerors that in regard to any contract entered into pursuant to this RFP, Disadvantaged Business Enterprises (DBE's) will be afforded equal opportunities to submit proposals and will not be discriminated against on the grounds of race, color, sex, disability, or national origin in consideration of an award.
- 2 A DBE is defined as a small business concern which is at least 51% owned and controlled by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals. Socially and economically disadvantaged include Women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans.
- 3 Good Faith Efforts (Information to be submitted)

City of Lubbock treats offerors' compliance with good faith efforts requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offers to submit the following information with its bid/offer as a condition of responsiveness:

DBE Utilization form

DBE Letter of Intent;

DBE Bidder's List

If the goal is not met, evidence of good faith efforts must be demonstrated by the bidders/offers.

4. Demonstration of good faith efforts

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Attachment 7 of the City's DBE plan, <http://purchasing.ci.lubbock.tx.us/vendor.htm>.

The following personnel are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive: Persons assigned to evaluate proposals as specified on the City's "Request to Solicit Competitive Bids or Proposals – Procurement Document Submittal Form."

We will ensure that all information is complete and accurate and adequately documents and bidder/offeror's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

5. Administrative reconsideration

Within 10 days of being informed by City of Lubbock that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidders/Offers should make this request in writing to the following reconsideration official: Marta Alvarez, Purchasing Manager, City of Lubbock, P.O. Box 2000, Lubbock, Texas 79457. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not make/document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder/offeror did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

6. Good Faith Efforts when a DBE is replaced on a contract

City of Lubbock will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. The City will require the prime contractor to notify the DBE Liaison Officer (DBELO) immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

7. Certification

The DEBLO will submit any request for certification and/or information regarding certification to TxDot. TxDot serves as the regional Unified Certification Program Administrator for Lubbock.

For information about the certification process or to apply for certification, firms should contact: Kelly Campbell, Deputy Director Finance and Administration, Lubbock Preston Smith International Airport, Rt. 3 Box 389, Lubbock, Texas 79403, 806/775-3126, kcampbell@mail.ci.lubbock.tx.us.

8. Certification Appeals

Any firm or complainant may appeal the City's decision in a certification matter to DOT. Such appeals may be sent to:

Department of Transportation Office of Civil Rights Certification Appeals Branch, 400 7th St., SW, Room 2104, Washington, DC 20590.

The City will promptly implement any DOT certification appeal decision affecting the eligibility of DBEs for all DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

9. "Recertifications"

The City will review the eligibility of DBEs that the City might have certified under former part 23, to make sure that they meet the standards of Subpart D of part 26. . In order to comply with requirements of re-certification each currently certified DBE the airport works with will be required to comply with the requirements of the UCP. For firms that the City has certified or reviewed and found eligible under part 26, the City will review their eligibility every five years following the date of their certification in accordance with UCP rules and regulations.

10. Offerors List

The City of Lubbock will create an offerors list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the offerors list approach to calculating overall goals. The offerors list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms.

The City will collect this information in the following ways: a notice in all solicitations and direct request to firms quoting on subcontracts to report information directly to the DBELO. The City of Lubbock will work closely with all prime contractors in order to collect necessary information of all firms who quote to them on contracts.

11. Monitoring Payments to DBEs

The City will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City of Lubbock or DOT. This reporting requirement also extends to any certified DBE subcontractor.

The City will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

The City will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE

subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

SUBMIT TO: CITY OF LUBBOCK Purchasing & Contract Management 1625 13 th Street, Rm 204 Lubbock, Tx 79401-3830	 AN EQUAL OPPORTUNITY EMPLOYER	CITY OF LUBBOCK, TEXAS REQUEST FOR PROPOSAL 10-037-MA
CONTACT PERSON: Marta Alvarez		
TEL: 806.775.2167 FAX: 806.775.2164 http://purchasing.ci.lubbock.tx.us		
Consultant Services - Fixed Route Study	SUBMITTAL DEADLINE: February 17, 2010, 3:00 PM CST	
PRE PROPOSAL DATE, TIME AND LOCATION- A pre-proposal meeting will be held at 10:00 a.m., February 3, 2010, at Citibus Conference Room, 801 Texas Avenue, Lubbock, Texas.	Any proposals received after the time and date listed above, regardless of the mode of delivery , shall be returned unopened.	
RESPONDENT NAME:	IF RETURNING AS A “NO RESPONSE”, PLEASE STATE REASON.	
MAILING ADDRESS:		
CITY – STATE – ZIP:	THE CITY OF LUBBOCK RESERVES THE RIGHT TO ACCEPT OR REJECT ANY AND ALL PROPOSALS IN WHOLE OR IN PART AND WAIVE ANY INFORMALITY IN THE COMPETITIVE PROPOSAL PROCESS. FURTHER, THE CITY RESERVES THE RIGHT TO ENTER INTO ANY CONTRACT DEEMED TO BE IN THE BEST INTEREST OF THE CITY. IT IS THE INTENT AND PURPOSE OF THE CITY OF LUBBOCK THAT THIS REQUEST PERMITS COMPETITIVE PROPOSALS. IT IS THE OFFEROR’S RESPONSIBILITY TO ADVISE THE CITY OF LUBBOCK PURCHASING MANAGER IF ANY LANGUAGE, REQUIREMENTS, ETC., OR ANY COMBINATIONS THEREOF, INADVERTENTLY RESTRICTS OR LIMITS THE REQUIREMENTS STATED IN THIS RFP TO A SINGLE SOURCE. SUCH NOTIFICATION MUST BE SUBMITTED IN WRITING AND MUST BE RECEIVED BY THE PURCHASING MANAGER NO LATER THAN FIVE (5) BUSINESS DAYS PRIOR TO THE ABOVE SUBMITTAL DEADLINE.	
TELEPHONE NO:		
FAX NO:		
E-MAIL:		
FEDERAL TAX ID NO. OR SOCIAL SECURITY NO.		

THE OFFEROR HEREBY ACKNOWLEDGES RECEIPT OF AND AGREES ITS PROPOSAL IS BASED ON ANY ADDENDA POSTED ON BIDSYN.COM

The City of Lubbock Charter states that no officer or employee of the City can benefit from any contract, job, work or service for the municipality or be interested in the sale to the City of any supplies, equipment, material or articles purchased. Will any officer or employee of the City, or member of their immediate family, benefit from the award of this proposal to the above firm? _____ YES _____ NO

IN COMPLIANCE WITH THIS SOLICITATION, THE UNDERSIGNED OFFEROR HAVING EXAMINED THE REQUEST FOR PROPOSAL, AND BEING FAMILIAR WITH THE CONDITIONS TO BE MET, HEREBY SUBMITS THE FOLLOWING. AN INDIVIDUAL AUTHORIZED TO BIND THE COMPANY MUST SIGN THE FOLLOWING SECTION. FAILURE TO EXECUTE THIS PORTION MAY RESULT IN PROPOSAL REJECTION.

By my signature I certify that this offer is made without prior understanding, agreement, or connection with any corporation, firm, business entity, or person submitting an offer for the same materials, supplies, equipment, or service(s), and is in all respects fair and without collusion or fraud. I further agree that if the offer is accepted, the offeror will convey, sell, assign, or transfer to the City of Lubbock all right, title, and interest in and to all causes of action it may now or hereafter acquire under the Anti-trust laws of the United States and the State of Texas for price fixing relating to the particular commodity(s) or service (s) purchased or acquired by the City of Lubbock. At the City’s discretion, such assignment shall be made and become effective at the time the City tenders final payment to the vendor.

Authorized Signature

Title

 Print/Type Name

 Date

THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR RESPONSE.

Consultant Services - Fixed Route Study
CITY OF LUBBOCK, TEXAS
RFP 10-037-MA

The City of Lubbock appreciates your time and effort in preparing your proposal. All offerors should familiarize themselves with the following INSTRUCTIONS TO OFFERORS and GENERAL REQUIREMENTS:

I. INSTRUCTIONS TO OFFERORS

1 PROPOSAL DELIVERY, TIME & DATE

- 1.1 The City of Lubbock will receive written and sealed competitive proposals for **Consultant Services - Fixed Route Study** until 3:00 p.m. CST, February 17, 2010 if date/time stamped on or before 3:00 p.m. at the office listed below. Any proposal received after the date and hour specified will be rejected and returned unopened to the offeror. Each proposal and supporting documentation must be in a sealed envelope or container plainly labeled in the lower left-hand corner: "**RFP 10-037-MA, Consultant Services - Fixed Route Study**" and the closing date and time. Offerors must also include their company name and address on the outside of the envelope or container. Proposals must be addressed to:

Marta Alvarez, Purchasing Manager
 City of Lubbock
 1625 13th Street, Room 204
 Lubbock, Texas 79401

- 1.2 Offerors are responsible for making certain proposals and proposed contracts are delivered to the Purchasing Department. Mailing of a proposal does not ensure that the proposal will be delivered on time or delivered at all. If offeror does not hand deliver proposal, we suggest that he/she use some sort of delivery service that provides a receipt. The City of Lubbock assumes no responsibility for errant delivery of proposals, including those relegated to a courier agent who fails to deliver in accordance with the time and receiving point specified.
- 1.3 Proposals will be accepted in person, by United States Mail, by United Parcel Service, or by private courier service. No proposals will be accepted by oral communication, telephone, electronic mail, telegraphic transmission, or telefacsimile transmission. **THE CITY WILL NOT ACCEPT FAX PROPOSALS.**
- 1.4 Proposals may be withdrawn prior to the above scheduled time set for closing. Alteration made before RFP closing must be initiated by offeror guaranteeing authenticity.
- 1.5 The City of Lubbock reserves the right to postpone the date and time for accepting proposals through an addendum.

2 PRE-PROPOSAL MEETING

- 3.1 To familiarize Offerors with the requirements, answer questions, and issue addenda as needed for the clarification of the Request for Proposal (RFP) documents, **a pre-proposal meeting will be held at 10:00 a.m., February 3, 2010, at Citibus' Conference Room, 801 Texas Avenue, Lubbock, Texas.** All persons attending the conference shall be asked to identify themselves and the prospective Offeror they represent. Street parking is available on 9th Street or Texas Avenue. The conference room is on the second floor of the administrative offices; the door to the administrative offices is located on the northeast corner of 9th Street and Texas Avenue.
- 3.2 It is the Offeror's responsibility to attend the pre-proposal meeting though the meeting is not mandatory. The City shall not be responsible for providing information

discussed at the pre-proposal meeting to Offerors who do not attend the pre-proposal meeting.

- 3.3 The City of Lubbock does not discriminate against persons with disabilities. City of Lubbock pre-proposal meetings are available to all persons regardless of disability. If you would like information made available in a more accessible format or if you desire assistance, please contact the City ADA Coordinator, 1625 13th Street, (806)775-2018 at least forty-eight (48) hours in advance of the meeting.

3 CLARIFICATION OF REQUIREMENTS

- 3.1 It is the intent and purpose of the City of Lubbock that this request permits competitive proposals. It is the offeror's responsibility to advise the City of Lubbock Purchasing Manager if any language, requirements, etc., or any combinations thereof, inadvertently restricts or limits the requirements stated in this RFP to a single source. Such notification must be submitted in writing and must be received by the City of Lubbock Purchasing Office no later than five (5) business days prior to the proposal closing date. A review of such notifications will be made.

3.2 ALL REQUESTS FOR ADDITIONAL INFORMATION OR CLARIFICATION CONCERNING THIS REQUEST FOR PROPOSAL (RFP) MUST BE SUBMITTED IN WRITING NO LATER THAN FIVE (5) BUSINESS DAYS PRIOR TO THE PROPOSAL CLOSING DATE AND ADDRESSED TO:

Marta Alvarez, Purchasing Manager
 City of Lubbock
 1625 13th Street
 Lubbock, Texas 79401
 Fax: (806) 775-2164
 Email: malvarez@mylubbock.us
 Bidsync: <http://www.Bidsync.com>

4 ADDENDA & MODIFICATIONS

- 4.1 Any changes, additions, or clarifications to the RFP are made by **ADDENDA** information available over the Internet at <http://www.Bidsync.com>. **We strongly suggest that you check for any addenda a minimum of forty-eight hours in advance of the response deadline. BUSINESSES WITHOUT INTERNET ACCESS** may use computers available at most [public libraries](#).
- 4.2 Any offeror in doubt as to the true meaning of any part of the RFP or other documents may request an interpretation thereof from the Purchasing Department. At the request of the offeror, or in the event the Purchasing Department deems the interpretation to be substantive, the interpretation will be made by written addenda issued by the Purchasing Department. Such addenda issued by the Purchasing Department will be available over the Internet at <http://www.Bidsync.com> and will become part of the proposal package having the same binding effect as provisions of the original RFP. No verbal explanations or interpretations will be binding. In order to have a request for interpretation considered, the request must be submitted in writing and must be received by the City of Lubbock Purchasing **Department no later than five (5) days** prior to the proposal closing date.
- 4.3 All addenda, amendments, and interpretations of this solicitation shall be in writing. Any amendment or interpretation that is not in writing shall not legally bind the City of Lubbock. Only information supplied by the City in writing or in this RFP should be used in preparing

proposal responses. All contacts that an offeror may have had before or after receipt of this RFP with any individuals, employees, or representatives of the City and any information that may have been read in any news media or seen or heard in any communication facility regarding this RFP should be disregarded in preparing responses.

- 4.4 The City does not assume responsibility for the receipt of any addendum sent to offerors.

5 EXAMINATION OF DOCUMENTS AND REQUIREMENTS

- 5.1 Each offeror shall carefully examine all RFP documents and thoroughly familiarize itself with all requirements prior to submitting a proposal to ensure that the proposal meets the intent of this RFP.
- 5.2 Before submitting a proposal, each offeror shall be responsible for making all investigations and examinations that are necessary to ascertain conditions and requirements affecting the requirements of this RFP. Failure to make such investigations and examinations shall not relieve the offeror from obligation to comply, in every detail, with all provisions and requirements of the Request for Proposal.

6 PROPOSAL COPIES

- 6.1 OFFERORS MUST SUBMIT **THE ORIGINAL AND THREE COPIES** OF THE SEALED PROPOSAL TO THE PURCHASING DEPARTMENT PRIOR TO **RESPONSE DUE DATE/TIME**. FAILURE TO SUBMIT THE ADDITIONAL COPIES MAY RESULT IN THE PROPOSAL BEING DECLARED UNRESPONSIVE. The original must be clearly marked **“ORIGINAL”** and the copies must be clearly marked **“COPY”**.
- 6.2 All proposals, responses, inquiries, or correspondence relating to or in reference to this RFP, and all electronic media, reports, charts, and other documentation submitted by offerors shall become the property of the City of Lubbock when received.

7 PROPOSAL PREPARATION COSTS

- 7.1 Issuance of this RFP does not commit the City of Lubbock, in any way, to pay any costs incurred in the preparation and submission of a proposal.
- 7.2 The issuance of this RFP does not obligate the City of Lubbock to enter into contract for any services or equipment.
- 7.3 All costs related to the preparation and submission of a proposal shall be paid by the proposer.

8 TRADE SECRETS, CONFIDENTIAL INFORMATION AND THE TEXAS PUBLIC INFORMATION ACT

- 8.1 If you consider any portion of your proposal to be privileged or confidential by statute or judicial decision, including trade secrets and commercial or financial information, clearly identify those portions.
- 8.2 Proposals will be opened in a manner that avoids disclosure of the contents to competing offerors and keeps the proposals secret during negotiations. All proposals are open for public inspection after the contract is awarded, but trade secrets and confidential information in the proposals are not open for inspection.
- 8.3 The City of Lubbock will honor your notations of trade secrets and confidential information and decline to release such information initially, but please note that the final determination of whether a particular portion of your proposal is in fact a trade secret or commercial or financial information that may be withheld from public inspection will be made by the Texas Attorney General or a court of competent jurisdiction. In the event a public information request is received for a portion of your proposal that you have marked as being confidential information, you will be notified of such request and you will be required to justify your legal position in writing to the Texas Attorney General pursuant to Section 552.305 of the Government Code. In the event that it is determined by opinion or order of the Texas

Attorney General or a court of competent jurisdiction that such information is in fact not privileged and confidential under Section 552.110 of the Government Code and Section 252.049 of the Local Government Code, then such information will be made available to the requester.

- 8.4 Marking your entire proposal CONFIDENTIAL/PROPRIETARY **is not** in conformance with the Texas Open Records Act.

9 DELETED

10 DELETED

11 CONFLICT OF INTEREST

- 11.1 The Offeror shall not offer or accept gifts or anything of value nor enter into any business arrangement with any employee, official or agent of the City of Lubbock.
- 11.2 By signing their proposal, the offeror certifies and represents to the City the offeror has not offered, conferred or agreed to confer any pecuniary benefit or other thing of value for the receipt of special treatment, advantage, information, recipient's decision, opinion, recommendation, vote or any other exercise of discretion concerning this RFP.

12 ANTI-LOBBYING PROVISION

- 12.1 DURING THE PERIOD BETWEEN PROPOSAL SUBMISSION DATE AND THE CONTRACT AWARD, PROPOSERS, INCLUDING THEIR AGENTS AND REPRESENTATIVES, SHALL NOT DISCUSS OR PROMOTE THEIR PROPOSAL WITH ANY MEMBER OF THE LUBBOCK CITY COUNCIL OR CITY STAFF EXCEPT UPON THE REQUEST OF THE CITY OF LUBBOCK PURCHASING DEPARTMENT IN THE COURSE OF CITY SPONSORED INQUIRIES, BRIEFINGS, INTERVIEWS, PRESENTATIONS.
- 12.2 This provision is not meant to preclude offerors from discussing other matters with City Council members or City staff. This policy is intended to create a level playing field for all potential offerors, assure that contract decisions are made in public, and to protect the integrity of the RFP process. Violation of this provision may result in rejection of the offeror's proposal.

13 AUTHORIZATION TO BIND SUBMITTER OF PROPOSAL

Proposals must show vendor name and address of offeror. The original proposal must be manually signed by an officer of the company having the authority to bind the submitter to its provisions. Person signing proposal must show title or **AUTHORITY TO BIND THEIR FIRM IN A CONTRACT**. Failure to manually sign proposal will disqualify it.

14 ABOUT THIS DOCUMENT

This document is a Request for Proposal. It differs from an Invitation to Bid in that the City of Lubbock is **seeking a solution**, as described in the following General Requirements section, **not a bid/quotation** meeting firm specifications for the lowest price. As such, **the lowest price proposed will not guarantee an award** recommendation. Sealed proposals will be evaluated based upon criteria formulated around the most important features of a product or service, of which quality, testing, references, availability or capability, may be overriding factors, and price may not be determinative in the issuance of a contract or award. The proposal evaluation criteria should be viewed as standards that measure how well an offeror's approach meets the desired requirements and needs of the City of Lubbock. Those criteria that will be used and considered in evaluation for award are set forth in this document. The City will thoroughly review all proposals received. The City will also utilize its best judgment when determining whether to schedule a pre-proposal conference

(before proposals are accepted), or meetings with offerors (after receipt of all proposals). A Purchase Order/Contract will be awarded to a qualified offeror submitting the best proposal. **The City reserves the right to select, and subsequently recommend for an award, the proposed service which best meets its required needs, quality levels, and budget constraints.**

15 EVALUATION PROCESS

- 15.1 All proposals will be evaluated by an evaluation committee and may include senior management representatives, a financial officer, and/or an independent consultant.
- 15.2 Respondents to this RFP may be required to submit additional information that the City may deem necessary to further evaluate the offeror's qualifications.
- 15.3 The committee will evaluate and numerically score each proposal in accordance with the evaluation criteria included in the Request for Proposal.
- 15.4 The committee will arrive at a short list of the top respondents and these short-listed respondents may be scheduled for a structured oral presentation and interview. Such presentations will be at no cost to the City of Lubbock. At the end of the oral presentation and interview, the evaluation of the short-listed respondents will be completed. The oral interview may be recorded and/or videotaped.
- 15.5 Final selection will be made in accordance with Chapter 252, Texas Local Government Code, as a high technology procurement.

16 SELECTION

- 16.1 Selection shall be based on the responsible offeror whose proposal is determined to be the most advantageous to the City of Lubbock considering the relative importance of evaluation factors included in this RFP.
- 16.2 NO INDIVIDUAL OF ANY USING DEPARTMENT HAS THE AUTHORITY TO LEGALLY AND/OR FINANCIALLY COMMIT THE CITY TO ANY CONTRACT, AGREEMENT OR PURCHASE ORDER FOR GOODS OR SERVICES, UNLESS SPECIFICALLY SANCTIONED BY THE REQUIREMENTS OF THIS REQUEST FOR PROPOSAL.

17 EQUAL EMPLOYMENT OPPORTUNITY

Offeror agrees that it will not discriminate in hiring, promotion, treatment, or other terms and conditions of employment based on race, sex, national origin, age, disability, or in any way violative of Title VII of 1964 Civil Rights Act and amendments, except as permitted by said laws.

18 NONAPPROPRIATION

All funds for payment by the City under this contract are subject to the availability of an annual appropriation for this purpose by the City. In the event of non-appropriation of funds by the City Council of the City of Lubbock for the goods or services provided under the contract, the City will terminate the contract, without termination charge or other liability, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the goods or services covered by this contract is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this contract, cancellation shall be accepted by the Seller on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and the City shall not be obligated under this contract beyond the date of termination.

19 PROTEST

- 19.1 All protests regarding the RFP process must be submitted in writing to the City Purchasing Manager within five (5) business days following the opening of proposals. This includes all protests relating to advertising of notices, deadlines, proposal opening, and all other related

procedures under the Local Government Code, as well as any protest relating to alleged improprieties with the RFP process.

This limitation does not include protests relating to staff recommendations as to award of contract. Protests relating to staff recommendations may be directed to the City Manager.

All staff recommendations will be made available for public review prior to consideration by the City Council as allowed by law.

19.2 FAILURE TO PROTEST WITHIN THE TIME ALLOTTED SHALL CONSTITUTE A WAIVER OF ANY PROTEST.

20 "A proposal will be subject to being considered irregular and may be rejected if it shows omissions, alterations of form, conditional alternate proposals, additions or alternates in lieu of the items specified, if the unit prices are obviously unbalanced (either in excess of or below reasonably expected values), or irregularities of any kind."

The City of Lubbock is aware of the time and effort you expend in preparing and submitting proposals to the City. Please let us know of any requirement causing you difficulty in responding to our Request for Proposal. We want to facilitate your participation so that all responsible firms can compete for the City's business. Awards should be made approximately two to six weeks after the opening date. If you have any questions, please contact the City of Lubbock Purchasing Manager at (806) 775-2572

Consultant Services - Fixed Route Study

CITY OF LUBBOCK, TEXAS
RFP 10-037-MA

Purchasing Department & Contract Management

In an effort to better serve our suppliers, the City of Lubbock Purchasing Department is conducting the following survey. We appreciate the time and effort expended to submit your offer. Please take an additional moment to complete the information below. If you have any questions or need more information, please call (806)775-2572.

City of Lubbock ITB/RFP # _____

HOW DID YOU RECEIVE NOTICE OF THIS REQUEST FOR BID OR PROPOSAL?

Lubbock Avalanche Journal?

_____ Yes _____ No

The Daily Commercial Record?

_____ Yes _____ No

From Plan Room or other type of service?

_____ Yes _____ No

Did you access the City of Lubbock website to search for bids?

_____ Yes _____ No

Facsimile or email from RFP Depot.com?

_____ Yes _____ No

Did you download from your home computer?

_____ Yes _____ No

Did you download from your company computer?

_____ Yes _____ No

Requested a copy from Lubbock Purchasing Department.

_____ Yes _____ No

Are you a member of Bidsync?

_____ Yes _____ No

Other: _____

THANK YOU.

CITY OF LUBBOCK, TEXAS
RFP 10-037-MA

CONSULTANT SERVICES - FIXED ROUTE STUDY

**Request for Proposal
Citibus Fixed Route Analysis**

The City of Lubbock/Citibus invites qualified consulting firms to submit a proposal, including a fee schedule, to conduct a review of Citibus' fixed route system and provided analyses of improvements that could be made to the existing transit system.

1. Background

Citibus is the only urban public transit provider in the region. Citibus' fixed route system serves destinations within the Lubbock city limits.

Although Citibus has conducted various route studies in-house, the most recent comprehensive analysis conducted by a consultant was in 1991. Since that study was conducted, the population and land area of the city have expanded, but due largely to funding constraints, the route system has not grown at the same rate. In fact, the coverage of the route system remains much as it was in 1991; this has left new areas of the city un- or under-served.

2. Expectation

The selected consulting firm will be expected to work closely with Citibus staff in analyzing the transit system and in making recommendations for improvements. The firm will be expected to prepare and analyze several route options.

The selected consulting firm will be expected to present their results in person to the Lubbock Public Transit Advisory Board, who will give final approval to the plan. The firm may also be requested to make presentations to the Lubbock Metropolitan Planning Organization and the Lubbock City Council.

The ability to explain the options clearly and convincingly, both verbally and in written form, is equally important as the technical capacity to develop the options.

3. Proposed Scope of Work

The selected consultant shall provide professional consulting service to the City of Lubbock/Citibus through the analysis of the existing transit system and recommendation of feasible route and schedule changes to improve service levels.

Information on the current system, including routes and schedules, can be found at www.citibus.com

The proposed scope of work is divided in the following sections:

Section 1: Review of the current transit system

A review of the system as it currently exists is required in order to determine areas that are working and areas that require further improvement.

The review of the current transit system should include, at a minimum, the following components:

- Routes
- Schedules
- Hours of operation
- Areas currently served by the transit system
- Areas not currently served by the transit system
- Identified strengths
- Identified weaknesses

The selected consultant is expected to provide a list of recommended improvements to the existing transit system.

Citibus staff will make available to the selected consultant statistical information that can be used in the preparation of this section of the report.

Section 2: Recommended improvements at current funding levels

This section of the work should address ways that the fixed route system can be modified to address unmet needs at the current level of funding. There are areas within the city that are not currently served by public transit and there are areas currently served by transit that are not well-utilized. The routing options should consider the possibility of both eliminating and extending routes to enhance transit service.

The analysis should focus on reducing travel times, increasing the service area, and increasing the transit ridership. The analysis should include specific routing options, service schedules, expected ridership, and driver scheduling. The route analysis should also consider the areas that are planned to be developed and that have potential to grow in the near future.

This section should also include recommendations on ways to better integrate Citibus' fixed route services with Greyhound and with the regional rural transit providers.

Section 3: Recommended improvements in 5% funding increments up to 20%

This section of the work should address ways that the fixed route system can be modified to address unmet needs at increased funding increments of 5% up to 20%.

Section 4: Recommended improvements without funding constraints

The consultant will be expected to help Citibus formulate what the system could look like if there were no constraints in the amount of funds needed to provide a viable fixed route system. While this is, admittedly, a "dream system," it should be justifiable in terms of the amount of service recommended.

It is Citibus' intention to use this portion as a guide for future system expansion. Because of this, the consultant will be expected to include information about anticipated growth patterns over the next ten years.

Section 5: Public participation

It is expected that the selected firm will highly utilize public involvement tools and techniques while performing the tasks that are outlined in sections 1, 2, and 3.

The selected firm is expected to conduct a ridership survey in Lubbock to capture the general public's transit needs and expectations. The firm will also survey major employers in the area to understand their transit needs, barriers, and opportunities.

The consultant is encouraged to look at traditional methods of public outreach and data collection as well as at the use of such resources as social networking.

As part of the response to this proposal, the firms shall include an outline of proposed public outreach activities.

The firm shall also meet, as necessary, with Citibus staff, the Lubbock Public Transit Advisory Board, the Lubbock Metropolitan Planning Organization, the City of Lubbock, and other entities that may be identified during the course of the study.

4. Expenses

The City of Lubbock/Citibus agrees to reimburse the consultant for allowable reimbursable expenses for on-site activities for a not to exceed amount over the term of this agreement of \$1,000. All expenses must be documented by receipts and submitted for payment approval within 60 days from the date the expense was incurred.

Reimbursable expenses:

- Air travel, not to exceed the coach class rate
- Auto rentals while in Lubbock, not to exceed standard/midsize car class, nor to exceed one auto for every three contractor employees on site
- Lodging and meals not to exceed the Domestic Per Diem rates listed in the current edition of Appendix A of Chapter 301 of the Federal Travel Regulations.
- Use of a private vehicle for project-related duties shall be reimbursed at the published IRS standard mileage rate
- Courier services
- Facsimile and photocopies
- Long distance and conference telephone charges
- Printing charges incurred on behalf of the City of Lubbock/Citibus

Non-reimbursable expenses

- Consultant travel time from point of departure to Lubbock
- Alcoholic beverages
- Maintenance or repair expenses to contractor's vehicle
- Tips, except what is allowed under meal and incidental expenses
- Incidental expenses (laundry, dry cleaning) beyond what is allowed under meal and incidental expenses
- Personal expenses (movies, phone, entertainment, etc.)
- Towing, parking violations, traffic tickets, etc. incurred while traveling
- Flight or travel insurance
- Expenses for lodging at facilities that are not licensed as a hotel or motel

- Expenses that are usually and customarily included as part of the contractor's overhead such as typing, utilization of computer systems, cameras, recording or measurable devices, flashlights, and other small portable equipment, safety supplies, phones, expendable office supplies, etc.
- Administrative fees for time spent in making travel arrangements, obtaining receipts and billing for reimbursable expenses.

5. Submittal Requirements

- General information. Provide a description of your firm, including organizational structure, location of principal office, years in business, number of employees, and other pertinent information
- Key personnel and roles.
 - Name of the principal or project manager in your firm who will have direct and continued responsibility for the services provided for the City of Lubbock/Citibus. This person will serve as the firm's first point-of-contact on all matters dealing with the project and will be expected to handle day-to-day activities through the completion of the project.
 - Outline of responsibilities/roles of your firm's personnel with respect to providing the services requested, if different from the principal or project manager.
 - Resumes of assigned personnel
- Experience. Describe at least three similar projects, and provide references for each, including a name and contact information. Also indicate the length of time the study required to complete.
- Deliverables. Outline, in detail, the types of deliverables that the City of Lubbock/Citibus can expect to receive at the conclusion of the project
- Cost information. The total payments for work completed under this contract, including allowable reimbursable expenses as outlined above, cannot exceed \$60,000. Please identify hourly rates of all consultants likely to work on the project. Please identify, in appropriate detail, the individual activity costs, such as travel and administration, and any other items that may be useful for the selection committee in determining cost effectiveness.

6. Selection Process, Criteria, and Timeline

A selection committee will review all submissions and conduct interviews, if deemed necessary, with selected firms. Below are the criteria that will be used in the screening, interviewing, and selection of a consulting firm.

A. Demonstrated Related Experience (45%)

- Successful experience in projects of a similar type and setting
- Demonstrated experience in coordination of projects, specifically those with multiple entities
- Demonstrated experience in leading/facilitating public meetings
- Timely and cost effective experience in document preparation
- Successful experience in meeting project timetables and project budgets

B. Project Approach or methodology (30%)

- Ability of consultant to provide trained and experienced staff to accomplish work in time allotted
- Understanding the expectation and goals of Citibus
- Description of the general approach to be taken by the consultant
- Outline the general approach your firm would propose for the planning effort.

C. Consultants Fees and Cost (25%)

- Demonstrated successful previous budget performance and experience in meeting project budgets
- Description of approach to budgeting and bidding
- Techniques employed to control costs so that project stays within the established budget
- Techniques employed to manage project so that it remains on schedule
-

7. Insurance Requirements

- Professional Liability:

Consultants insurance shall contain Errors and Omissions Professional Liability Insurance with a combined single limit of a minimum of \$500,000 each occurrence and in the aggregate.

8. Contents of the Proposal

- A Letter of Interest addressed to the Honorable Mayor and City Council summarizing the Consultant's understanding of the project and a brief description of the Consultant's strengths to perform the work successfully (Page Limit: 2)
- Cover sheet (Page Limit: 1)
- Table of Contents (Page Limit: 2)
- The completed Proposal (Page Limit: 30)
- Other Required Documents (No Page Limit)
 - o Insurance Requirement Affidavit
 - o Suspension and Debarment Certificate
 - o Certification of Non-Segregated Facilities
 - o Non-Collusion Declaration
 - o Certification Regarding Use of Contract Funds for Lobbying
 - o DBE Contracting Requirement and Forms
 - o Letter of Intent
 - o Offerors List

NOTE: The page limit is based on an 8.5 inches by 11 inch sheet. If the response exceeds the maximum number of 35 pages, not including required documents, it is rejected without review and is not be considered further. Sheets used for section dividers or covers are not counted towards the sheet total. Pages must be numbered.

Page Format. Respondents are encouraged to use their own format within the guidelines described in the RFP. **Submit one original and three copies** in the following format:

- § Maximum page size for graphics included in the proposal: 11 inches by 17 inches. Additional graphics or printed images may be submitted and will not be counted toward the total page count.
- § Maximum page size for text: 8.5 inches by 11 inches.
- § Minimum line spacing: 1.5
- § Minimum font size: 11 point (except for documents prepared by others; e.g., Professional Liability Insurance Certificate).

**CITY OF LUBBOCK
INSURANCE REQUIREMENT AFFIDAVIT**

To Be Completed by Bidder/Offeror
And Attached to Submittal

I, the undersigned Bidder/Offeror, certify that the insurance requirements contained in this bid document have been reviewed by me with the below identified Insurance Agent/Broker. If I am awarded this contract by the City of Lubbock, I will be able to, within ten (10) days after being notified of such award by the City of Lubbock, furnish a valid insurance certificate to the City meeting all of the requirements defined in this bid/proposal.

Contractor (Signature) Contractor (Print)

CONTRACTOR'S NAME: _____
(Print or Type)

CONTRACTOR'S ADDRESS:

Name of Agent/Broker: _____

Address of Agent/Broker: _____

City/State/Zip: _____

Agent/Broker Telephone Number: (_____) _____

Date: _____

NOTE TO CONTRACTOR

If the time requirement specified above is not met, the City has the right to reject this bid/proposal and award the contract to another contractor. If you have any questions concerning these requirements, please contact the Purchasing Manager for the City of Lubbock at (806) 775-2165.

SUSPENSION AND DEBARMENT CERTIFICATION

Federal Law (A-102 Common Rule and OMB Circular A-110) prohibits non-Federal entities from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000 and all non-procurement transactions (e.g., sub-awards to sub-recipients).

Contractors receiving individual awards of \$25,000 or more and all sub-recipients must certify that their organization and its principals are not suspended or debarred by a Federal agency.

Before an award of \$25,000 or more can be made to your firm, you must certify that your organization and its principals are not suspended or debarred by a Federal agency.

I, the undersigned agent for the firm named below, certify that neither the firm nor its principals are suspended or debarred by a Federal agency.

COMPANY NAME: _____

Firm's Federal Tax ID Number: _____

Signature of Company Official: _____

Printed name of company official signing above: _____

Date Signed: _____

CERTIFICATION OF NONSEGREGATED FACILITIES – 41 CFR PART 60-1.8

Notice to Prospective Federally Assisted Construction **CONTRACTORS**

1. A Certification of Non-segregated Facilities shall be submitted prior to the award of a federally-assisted construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity Clause.
2. Contractors receiving federally-assisted construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of the following notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity Clause. NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

Notice to Prospective **SUBCONTRACTORS** of Requirements for Certification of Non-Segregated Facilities

1. A Certification of Non-segregated Facilities shall be submitted prior to the award of a subcontract exceeding \$10,000, which is not exempt from the provisions of the Equal Opportunity Clause.
2. Contractors receiving subcontract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of this notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity Clause. NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

CERTIFICATION OF NONSEGREGATED FACILITIES

The federally-assisted construction contractor certifies that she or he does not maintain or provide, for his employees, any segregated facilities at any of his establishments and that she or he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally-assisted construction contractor certifies that she or he will not maintain or provide, for his employees, segregated facilities at any of his establishments and that she or he will not permit his employees to perform their services at any location under his control where segregated facilities are maintained. The federally-assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract.

As used in this certification, the term “segregated facilities” means any waiting rooms, work areas, restrooms, and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directives or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason. The federally-assisted construction contractor agrees that (except where she or he has obtained identical certifications from proposed subcontractors for specific time periods) she or he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause and that she or he will retain such certifications in his files.

COMPANY NAME: _____

FEDERAL TAX ID or SOCIAL SECURITY No. _____

Signature or Company Official: _____

Printed name of company official signing above: _____

Date Signed: _____

Non-Collusion Declaration

I, by signing Proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:

1. That the undersigned person(s), Vendor, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the Project for which this Proposal is submitted.
2. That by signing the signature page of this Proposal, I am deemed to have signed and have agreed to the provisions of this declaration.

COMPANY NAME: _____

FEDERAL TAX ID or SOCIAL SECURITY No. _____

Signature or Company Official: _____

Printed name of company official signing above: _____

Date Signed: _____

Certification Regarding Use of Contract Funds for Lobbying

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 – 49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
 - a. 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 any Federal 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.
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal 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.
2. 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. 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.
3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

COMPANY NAME: _____

FEDERAL TAX ID or SOCIAL SECURITY No. _____

Signature or Company Official: _____

Printed name of company official signing above: _____

Date Signed: _____

DBE Contracting Requirements and Forms

Instructions to Offerors

Part A provides information about the requirement.

Part B establishes the City of Lubbock's goal for DBE participation for this prime contract and provides the basis for the bidder/offeror to demonstrate how the goal will be met.

- DBE Utilization form – indicates if bidder/offeror intends to meet the City's DBE participation goal or not. If not, then the bidder/offeror is required to demonstrate what good faith efforts were used in setting a goal.
- Bidders list provides a summary of all subcontractors who bid on the project.
- Letter of Intent provides the required information the City needs on the proposed subcontractors that the prime proposes to use on the contract whether they are small businesses, minority owned, women owned, or are certified DBEs.

DISADVANTAGED BUSINESS ENTERPRISE CONTRACT PROVISIONS (49 CFR PART 26)

PART A

Policy. It is the policy of the Department of Transportation (DOT) that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this agreement.

DBE Obligation. The contractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard all contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of DOT-assisted contracts.

Compliance. All bidders/offerors, potential contractors or subcontractors for this DOT-assisted contract are hereby notified that failure to carry out the DOT policy and the obligation, as set forth above, shall constitute a breach of contract which may result in termination of the contract or such other remedy as deemed appropriate by the owner.

Subcontract Clauses.

All bidders/offerors and potential contractors hereby assure that they will include the above clauses in all subcontracts which offers further subcontracting opportunities.

Prompt Payment: The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of it's contract no later than 30 days from the receipt of each payment the prime contractor receives from the recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the recipient. This clause applies to both DBE and non-DBE subcontractor.

PART B

It is further understood and agreed:

The award procedure for this solicitation will include the selection criteria of 49 CFR Part 26 (i) to ensure that prime contracts are awarded to competitors that meet Disadvantaged Business Enterprise (DBE) goals.

Notification is hereby given that DBE goals are established for this prime contract. The goal for firms owned and controlled by socially and economically disadvantaged individuals is .69 percent of the dollar value of this contract.

As a matter of RESPONSIVENESS to the City's bid submittal process, each bidder/offeror shall submit, along with their bid, the names and addresses of the DBE firms that will participate in the contract along with a description of the work to be performed by each named firm and the dollar value for each contract (subcontract), the age of the firm and the firm's annual gross receipts. If the responses do not clearly show DBE participation will meet the goals above, the bidder/offeror must provide documentation clearly demonstrating, to the satisfaction of the airport sponsor, that it made good faith efforts in attempting to do so and that meeting said goals is not reasonably possible. A bid that fails to meet these requirements will be considered non-responsive.

In order to demonstrate how the bidder/offeror will meet the goal, bidder/offeror shall submit with the bid submittal the following:

1. DBE Utilization form
2. Letter of Intent
3. Offeror's List

Good Faith Effort. *(Note: This clause is only required if contract goals are used).* The following actions, by the bidder/offeror, are generally considered a sign of good faith effort. This list is not exclusive or exhaustive, but should be used as a guide in determining good faith effort.

1. Attendance at pre-proposal meetings scheduled to inform DBE's of the project.
2. Advertisement in a newspaper of general circulation, trade association and minority focus media concerning subcontracting opportunities.
3. Written notice to DBE's allowing sufficient time for reply.
4. Follow up of initial solicitation.
5. Selection of portions of the work likely to be performed by DBE's.
6. Provide interested DBE's adequate information for proposing.
7. Negotiation with interested DBE's.
8. Assist interested DBE's with bonding, insurance and credit.
9. Use of minority contractors' groups and minority business assistance offices.

Agreements between bidder/offeror and a DBE in which the DBE promises not to provide subcontracting quotations to other bidders/offeror are prohibited. All bidders and proposers shall make

a good faith effort to replace a DBE subcontractor that is unable to perform successfully with another DBE subcontractor.

The bidder/offeror shall establish and maintain records and submit regular reports, as required, which will identify and assess progress in achieving DBE subcontract goals and other DBE affirmative action efforts.

DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION

RFP/ITB # _____

TITLE _____

The undersigned has satisfied the requirements of the specifications in the following manner (please check the appropriate space):

- ☐ The proposer is committed to a minimum of (City of Lubbock's goal) of .69 % DBE utilization on this project.
- ☐ The proposer (if unable to meet the City's goal of .69 % DBE) is committed to a minimum of _____ % DBE utilization on this project and has submitted documentation showing good faith effort.

Contractor _____

By _____
(Signature) (Title)

Address _____

City: _____ State: _____ Zip Code: _____

Telephone (including area code): _____

Federal Tax ID/SSN: _____

Offerors List**RFP# 10-037-MA** **TITLE: Consultant Services – Fixed Route Study**

All firms bidding or quoting on subcontracts for this
DOT-assisted project are listed below.

Firm Name	Address	Certified DBE (Y or N)	Age of Firm	GRS*

Note: This form is not necessary if the recipient establishes a bidders list using another methodology (e.g., statistically sound survey of firms, widely disseminated request of firms to report information to the recipient, etc.) as defined in the recipient's DBE plan.

***GRS – Annual Gross Receipts**

Enter 1 for less than \$1 million

Enter 2 for more than \$1 million, less than \$5 million

Enter 3 for more than \$5 million, less than \$10 million

Enter 4 for more than \$10 million, less than \$15 million

Enter 5 for more than \$15 million.

APPENDIX: REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. [General](#)
- II. [Nondiscrimination](#)
- III. [Nonsegregated Facilities](#)
- IV. [Payment of Predetermined Minimum Wage](#)
- V. [Statements and Payrolls](#)
- VI. [Record of Materials, Supplies, and Labor](#)
- VII. [Subletting or Assigning the Contract](#)
- VIII. [Safety: Accident Prevention](#)
- IX. [False Statements Concerning Highway Projects](#)
- X. [Implementation of Clean Air Act and Federal Water Pollution Control Act](#)
- XI. [Certification Regarding Debarment, Suspension Ineligibility, and Voluntary Exclusion](#)
- XII. [Certification Regarding Use of Contract Funds for Lobbying](#)

I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.
3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.
4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

Section I, paragraph 2;

Section IV, paragraphs 1, 2, 3, 4, and 7;

Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.
6. **Selection of Labor:** During the performance of this contract, the contractor shall not:
 - a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or
 - b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract

Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

- a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.
- b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.
3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
 - a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
 - b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
 - c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.
 - d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
 - e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among

minority groups in the area from which the project work force would normally be derived.

- a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.
 - b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)
 - c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.
5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:
 - a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
 - b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
 - c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
 - d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.
6. **Training and Promotion:**
 - a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
 - b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of

apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

- c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
 - d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.
7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:
- a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
 - b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
 - c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.
 - d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.
8. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.
- a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.
 - b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the

contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

- c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.
- 9. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.
 - a. The records kept by the contractor shall document the following:
 - 1. The number of minority and non-minority group members and women employed in each work classification on the project;
 - 2. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;
 - 3. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
 - 4. The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.
 - b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

- 1. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.
- 2. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact,

segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

3. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. General:

- a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics.

The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

- b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records

- accurately set forth the time spent in each classification in which work is performed.
- c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. Classification:

- a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.
- b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:
 - 1. the work to be performed by the additional classification requested is not performed by a classification in the wage determination;
 - 2. the additional classification is utilized in the area by the construction industry;
 - 3. the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 - 4. with respect to helpers, when such a classification prevails in the area in which the work is performed.
- c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary

- e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. Payment of Fringe Benefits:

- a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.
- b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

- a. Apprentices:
 - 1. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.
 - 2. The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

3. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
4. In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

1. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.
2. The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.
3. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

4. In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. **Helpers:**

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under a approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. Apprentices and Trainees (Programs of the U.S. DOT):

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

6. Withholding:

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7. Overtime Requirements:

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation

at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. Violation:

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

II. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. Payrolls and Payroll Records:

- a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.
- b. The payroll records shall contain the name and the last four digits of the social security number, for each such employee; his or her correct classification;

hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

- c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402.

The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

- d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - 1. that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;
 - 2. that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;
 - 3. that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification

of worked performed, as specified in the applicable wage determination incorporated into the contract.

- e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.
- f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.
- g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

III. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:
 - a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.
 - b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.
 - c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.
2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

IV. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the

amount of work required to be performed by the contractor's own organization (23 CFR 635).

- a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.
- b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.
- c. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
- d. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.
- e. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).
3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards

and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."

X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed there under.
3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Instructions for Certification - Primary Covered Transactions:

(Applicable to all Federal-aid contracts - 49 CFR 29)

- a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
- d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered

transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

- f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.
- i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause.

The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

- j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions

- a. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

2. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and
 4. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- b. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. Instructions for Certification - Lower Tier Covered Transactions:

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

XII. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions:

- 1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- 2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XIII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

- 1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
 - a. 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 any Federal 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.

- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal 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.
- 2. 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. 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.
- 3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

Citibus Federally Required Procurement Clauses

****** PLEASE READ CAREFULLY ******

Clauses apply to all bids and become a part of the terms and conditions of any bid submitted.

FEDERAL PROVISIONS (All provisions are applicable unless otherwise noted).

1. **FLY AMERICAN 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 sub recipients 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 transportation.
2. **SCHOOL AND CHARTER BUS REQUIREMENTS: (Applies to operational service contracts).**
 - 2.1 **Charter Service Operations** Contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and sub recipients of FTA assistance (including contractor) are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.
 - 72.2 **School Bus Operations** Contractor agrees to comply with 49 U.S.C. 5323(f) and 49 CFR Part 605, which provides that recipients and sub recipients of FTA assistance (including contractor) may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When and if operating exclusive school bus service under an allowable exemption, contractor may not use federally funded equipment, vehicles, or facilities.
3. **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 (42 U.S.C. 6321).
4. **CLEAN WATER** - The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.
5. **LOBBYING-** The Bidder or Offeror certifies, to the best of its knowledge and belief, that: 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. 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.*) 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. The Contractor must sign the Lobbying certification in Appendix 2.

6. **ACCESS TO RECORDS AND REPORTS** Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49. U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11). FTA does not require the inclusion of these requirements in subcontracts.
7. **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.
8. **CLEAN AIR** - The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as

required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

9. **RECYCLED PRODUCTS** - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.
10. **NO GOVERNMENT OBLIGATION TO THIRD PARTIES** - 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. 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.
11. **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENT AND RELATED ACTS** - The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 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. 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. 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.
12. **TERMINATION - Termination for Convenience (General Provision)** The City of Lubbock/Citibus may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to City of Lubbock/Citibus to be paid the Contractor. If the Contractor has any property in its possession belonging to the City of Lubbock/Citibus, the Contractor will account for the same, and dispose of it in the manner the City of Lubbock/Citibus directs. **Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the City of Lubbock/Citibus may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the City of Lubbock/Citibus that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the City of Lubbock/Citibus, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience. **Opportunity to Cure (General Provision)** City of Lubbock/Citibus in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure

the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to City of Lubbock/Citibus's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from City of Lubbock/Citibus setting forth the nature of said breach or default, City of Lubbock/Citibus shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude City of Lubbock/Citibus from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

- 13. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION** - 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 in 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 Part 29, Subpart C and must include the requirement to comply with 49 CFR Part 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 the City of Lubbock/Citibus. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City of Lubbock/Citibus, 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 Part 29m 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.

- 14. PRIVACY ACT** - (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract. (2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

15. CIVIL RIGHTS - The following requirements apply to the underlying contract: 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. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract: 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. 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. 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. 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.

16. BREACHES AND DISPUTE RESOLUTION - Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of Citibus' General Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the General Manager shall be binding upon the Contractor and the Contractor shall abide by the decision. **Performance During Dispute** - Unless otherwise directed by the City of Lubbock/Citibus, Contractor shall continue performance under this Contract while matters in dispute are being resolved. **Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage. **Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City of Lubbock/Citibus and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the City of Lubbock is located. **Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City of Lubbock/Citibus or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

17. TRANSIT EMPLOYEE PROTECTIVE PROVISIONS - (1) The Contractor agrees to comply with applicable transit employee protective requirements as follows: (a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient' project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause. (b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments

thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter. (c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto. (2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

18. **DISADVANTAGED BUSINESS ENTERPRISES (DBE)** - 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 has not been established for this procurement. 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 the City of Lubbock/Citibus deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)). The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance. 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 City of Lubbock/Citibus. In addition, 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. The contractor must promptly notify the City of Lubbock/Citibus, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the City of Lubbock/Citibus.
19. **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 City of Lubbock/Citibus requests which would cause City of Lubbock/Citibus to be in violation of the FTA terms and conditions.
20. **DRUG AND ALCOHOL TESTING** - Under Option 1, the recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 CFR 653 and 654. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option only for those recipients which have a testing program for their employees, and can add the contractor's safety-sensitive employees to that program. Under Option 2, the recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 CFR 653 and 654, but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that without adequate monitoring of the contractor's program, the recipient may find itself out of compliance with the rules. Under option 3, the recipient specifies some or all of the specific features of a contractor's drug and alcohol compliance program. Thus, it requires the recipient to decide what it wants to do

and how it wants to do it. The advantage of this option is that the recipient has more control over the contractor's drug and alcohol testing program, yet it is not actually administering the testing program. The disadvantage is that the recipient has to specify and understand clearly what it wants to do and why. **Drug and Alcohol Testing Option 1** The contractor agrees to:

(a) participate in (grantee's or recipient's) drug and alcohol program established in compliance with 49 CFR 653 and 654. **Drug and Alcohol Testing Option 2** - The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States

Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. **Drug and Alcohol Testing Option** The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before (insert date or upon request) a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt (insert title of the Policy Statement the recipient wishes the contractor to use) as its policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval before (insert date or upon request) a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to: (to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any.

Signature of Contractor's Authorized
Official

Name and Title of Contractor's Authorized
Official

_____ Date