

REQUEST FOR QUOTES **Digital Mobile Radios and Installation**

Description: (25) Digital mobile radios, (1) Base Station, (2) Hand Held Radios and (2) GPS Base Stations and all associated equipment to include installation. The radio contract will be funded in part by the Federal Transportation Administration and contractors will be required to comply with all federal requirements and provisions. No one who has been disbarred from contracting with the state or federal government should submit a quote.

All submittals shall be addressed as specified below, and received no later than the submittal due date, at which time all submittals will be opened and read aloud as a matter of public record. The front of the envelope shall be marked "Request for Quotes – Digital Mobile Radios." All submittals received after the closing date and time will be returned unopened. Rutherford County reserves the right to reject any and all submittals.

Submittal Due Date: March 28, 2013 at 10:00 AM

Submittals shall be delivered to:

Rutherford County Transit
ATTN: Kerry Giles
294 Fairground Road
Spindale, NC 28160

The RFQ documents will be made available on March 13, 2013. This RFQ will be posted on Rutherford County Transit's website at www.drivingpossibilities.com.

Any questions concerning the RFQ shall be directed by email to:

Kerry Giles
Transportation Director
828-288-4505
kerry.giles@rutherfordcountync.gov



REQUEST FOR QUOTES Digital Mobile Radios and Installation

Introduction

Rutherford County Transit (RCT) is a department agency under Rutherford County Government that coordinates and provides rural and general public transportation for Rutherford County. Rutherford County Transit has a fleet of twenty eight (28) vehicles which provide public transportation services by conversion vans and small buses with many that are ADA accessible in Rutherford County, NC and to distances primarily in a one hour radius of the county. RCT currently uses a county owned repeater that is on the county's Viper Tower. RCT Frequency is not on the Viper Network, just located on the Viper Tower. Rutherford County Transit is funded by Rutherford County, the North Carolina Department of Transportation and the Federal Transit Administration.

Description

This informal Quote process is for the purchase of twenty five (25) two way mobile radios, (2) portable two way radios, (1) control base station located at Dispatcher's office, and (2) GPS base stations. This includes installation of the units into Rutherford County Transit vehicles, installation of base control stations, control station antenna's, removal of old radios, template build, programming, staff training, technical assistance, system maintenance and warranty coverage as required or purchased.

Procurement Schedule

March 13, 2013:	RFQ mailed to vendors and advertised.
March 18, 2013:	Vendor questions due to Rutherford County Transit by 10:00 am
March 19, 2013:	Transcript of questions and answers submitted to all interested vendors
March 22, 2013:	Pre-Quote Meeting at Rutherford County Transit at 10:00 am
March 28, 2013:	Quotes due to Rutherford County Transit offices by 10:00 am
April 12, 2013:	Selection and approval of vendor
April 17, 2013:	Project start date with initial meeting at Rutherford County Transit offices at 10:00 am
June 30, 2013	Project completion date

Rutherford County Transit reserves the right to alter above schedule and reserves the right to reject any informal Quote. The radio contract will be funded in part by the Federal Transportation Administration and contractors will be required to comply with all federal requirements and provisions.

Verbal and Written Questions

Prospective respondents are encouraged to submit written questions, comments or concerns to Kerry Giles by 10:00 am EST March 18, 2013. A transcript of questions and answers will be sent to all vendors on March 19, 2013.

Quote Submission

Vendors should submit their quotes in an envelope clearly marked with "Request for Quotes – Digital Mobile Radios." Electronic submissions will not be accepted. Quotes should be sent to the following contact person by 10:00 am on March 28, 2013.

Name: Kerry Giles, Director - Rutherford County Transit
Mail: 294 Fairground Road, Spindale, NC 28160
Phone: 828.288.4505
Fax: 828.287.6058

Quantity

Respondent shall submit one (1) original and two (2) copies of their quote and attachments or backup material for Two Way Radio System, training proposal, system maintenance, warranty and any other information, which may benefit proposal.

Pre-Quote Meeting

Rutherford County Transit will conduct a pre-quote meeting at 10:00 am EST March 22, 2013, at the Rutherford County Transit Office located at 294 Fairground Road, Spindale, NC 28160. Rutherford County Transit has set aside this time for respondents to visit Rutherford County Transit to look over fleet of vans and agency operations to assist with quotes regarding this Informal Quote process. This will allow respondents to discuss issues, the needs of Rutherford County Transit and our communication system. An addendum will be issued following the meeting with any significant comments or changes.

Financial responsibility of Rutherford County Transit

Payment to contractor will be made as project progresses. Please submit payment terms with your proposal.

Evaluation of Quotes

Rutherford County Transit reserves the right to alter the procurement schedule, accept or reject in whole or in part any or all informal Quotes or quotes, waive any informality, cancel this solicitation and to award a contract deemed in the best interest of Rutherford County Transit. Award of the contract to the successful vendor shall be based upon the quote determined most advantageous to Rutherford County Transit. Quotes must remain firm once submitted and may not be withdrawn for a period of ninety (90) days, subject to provisions for correction of errors in the proposal and finalization of contract.

This contract will be funded in part by the Federal Transportation Administration and contractors will be required to comply with all federal requirements and provisions. No one who has been disbarred from contracting with the state or federal government should submit a quote.

Quotes submitted and awarded are subject to approval by the NCDOT – Public Transportation Division before contract award or issuance of a purchase order.

Rutherford County Transit is an equal opportunity employer. Disadvantaged Business Enterprises will be afforded full opportunity to submit quotes. DBE Contractors must be certified and registered on the NCDOT Directory: <https://apps.dot.state.nc.us/vendor/directory>.

Scope of Work

1.0 Main Requirements:

Rutherford County Transit (RCT) is soliciting informal quotes for the purchase and installation of Digital Mobile Radios (DMR) operating on an existing DMR MOTOTRBO repeater system.

Number of units:

Twenty five (25) 450 MHz DMR digital mobile radios with installation into Rutherford County Transit vehicles.

Two (2) 450MHz DMR Digital Portable Radios with desktop chargers in Dispatcher's office.

One (1) 450Mhz Digital control base station with power supply in the Dispatch office. Installation of a separate outside antenna mounted to the building is required.

Two (2) additional base stations with antennas for GPS functions.

Additional Requirements:

The Contractor must provide all antennas and hardware needed to mount system in all vehicles. The installation shall be neat and professional.

The vehicle installations shall be done at the RCT site or within a five mile radius of RCT offices.

Quote must include removal of current radios and antennas to be identified.

The Contractor must provide antenna, grounding, and lightning protection for the base station at the office location. A UPS of at least 1200VA must be supplied. The antenna shall be grounded at its base and the transmission line shall be grounded at the antenna and before entering the building. The antenna, transmission line, lightning protection and equipment shall be grounded to a single point using Polyphasor lightning protection or equivalent. The outside connections shall be protected against the elements using vapor lock and electrical tape.

Radios must be compatible with the existing MOTOTRBO DMR repeater system operating on 453.200 / 458.200 mhz in dynamic mixed mode. Mobiles and base station must be at least 40 watts and portables must be at least 4 watts.

Radios must be able to operate on the existing MOTOTRBO repeater system in the Digital or Analog mode.

GPS capability shall be included on all (25) digital mobile radios.

Installation of GPS after original installation shall be included on a separate line item so RCT can clearly see total cost of GPS as an optional service for the radios.

A separate line item for software or associated equipment for GPS shall be included in vendor quote.

The software subscription cost for the GPS application on a yearly basis must be included in a separate line item.

Communication between the base station and mobile radios shall be capable of direct communication without the entire channel hearing the conversation. (Private Call)

A hands-free Bluetooth radio solution must be included in the proposal. A hands-free device is required for privacy between drivers and dispatch.

RCT will own all radios, base station, GPS capability and accessories. RCT has no interest in leasing this system.

The Contractor must also provide training on system use to Rutherford County Transit staff after installation is accepted by RCT.

All equipment shall be new and in current production by the manufacturer. All equipment shall be warranted to be free from defects in materials and workmanship for a period of at least three or more years.

The vendor shall state in their response, the number of days required for delivery and installation of the equipment.

The vendor must be able to respond to outages within one hour and not to exceed two hours.

Vendor must be an authorized dealer for the equipment proposed. An elite specialist level dealer is preferred if Motorola equipment is proposed, or approved equal.

RCT requests the names and addresses of three installations in Rutherford County using MOTOTRBO equipment supplied by the contractor and currently in use.

All equipment shall be installed, tested and operational and accepted in writing by RCT within thirty (30) days of receipt of the purchase order by the vendor.

Quote must document any rebates or trade in offers. All existing radios may not be traded in if their value is greater than the rebate offer.

2.0 **Specification Clarification:**

The fact that we may make reference or specify a certain manufacturer or model number, is not meant to limit acceptable product(s), but rather is a means to establish a minimum level of acceptable quality. Feel free to propose any manufacturer and model as long as the product(s) you propose meet or exceed the required specifications. The fact that all standard equipment may not be mentioned in the minimum specifications does not permit a vendor to leave out any item or part shown as standard in the manufacturers detailed cuts or specifications. All quotes must meet minimum specifications as shown. If there is any deviation from these targeted minimum specifications they must be indicated and listed on a separate sheet and signed by the vendor or their representative. The net price to Rutherford County Transit is the total price of the proposed radio equipment as specified; to include programming templates, radio programming, and equipment installation of mobile radios into Rutherford County

Transit vehicles, installation of handheld and Control Station at Rutherford County Transit main office. List each radio model item separately on the Proposal Form; include manufacturer and model number of each item.

3.0 **Minimum Radio Features and Specifications:**

A. Digital Mobile Radios, Qty. (25)

- a. Mobile must meet MOTOTRBO XPR 5550 specifications or approved equal.
- b. Must have dual mode operation (450 MHz **Digital** trunked mode and **Analog** conventional mode).
- c. Radio must have internal speaker standard and optionally able to add external 7.5-Watt speaker
- d. Must have Alphanumeric Display, at least five line color- 16 characters.
- e. Meets or exceeds Military Standards for XPR 5500 mobile radio

1. Transmitter

- a. Frequency 403-470Mhz
- b. RF Power 25-40 Watts
- c. Frequency Stability ± 0.5 ppm
- d. Modulation Limiting ± 2.5 kHz 212.5khz
- e. Channel Spacing 12.5 kHz
- f. FM Hum & Noise -40Db @12.5khz
- g. Audio Response TIA603C
- h. Digital Protocol ETSI TS 102 361-1, -2, -3

2. Receiver

- a. Frequency 403-470 MHz
- b. Channel Spacing 12.5 kHz
- c. Frequency Stability ± 0.5 ppm
- d. Digital Sensitivity 5% BER @ 0.25uV
- e. Intermodulation 75dB
- f. Audio Output 3 W (Int.) 7.5 W (Ext.-8 ohms)
- g. Audio Distortion @ Rated Audio 3%
- h. Hum and Noise -40 dB @ 12.5 kHz
- i. Audio Response TIA603C

3. GPS

Accuracy specs are for long-term tracking (95th percentile values > 5 satellites visible at a nominal -130 dBm signal strength)

- a. TTFF Cold Start < 1 minute
- b. TTFF Hot Start < 10 seconds
- c. Horizontal Accuracy < 5 meters

4. Operational Features

- a. Channels/ Modes Up to 1,000
- b. Integrated Voice & Data capability.
- c. Must have Extended 3-Year Service Warranty.
- d. Utilizes Windows based customer programming software.
- e. Embedded Blue Tooth Audio.
- f. Ability to utilize IMPRESS bluetooth audio accessories

B. MOTOTRBO Portable Radio, Qty. (2)

- a. Portable must MOTOTRBO XPR 7550 specifications or approved equal.
- b. Must have dual mode operation (450 MHz **Digital** mode and **Analog** conventional mode).
- c. Portable must have Alphanumeric Display (4-lines/12 characters).

- d. Portable must include a rechargeable IMPRES Li-Ion 2150 mAh Battery. With 11.1 hours (analog) and 16 hours (digital).
- e. Meets or exceeds Military Standards XPR 7550 portable radios.

1. Transmitter

- a. Frequency 403-470Mhz
- b. RF Power Output 1-4 Watts
- c. Frequency Stability ± 0.5 ppm
- d. Modulation Limiting ± 2.5 kHz @ 12.5kHz
- e. Channel Spacing 12.5 kHz
- f. FM Hum & Noise -40dB @ 12.5kHz
- g. Audio Response TIA603C
- h. Adjacent Channel Power 60 dB @ 12.5 kHz
- i. Audio Distortion 3%
- j. FM Modulation 12.5 kHz: 11K0F3E
- k. 4FSK Digital Modulation 12.5 kHz Data Only: 7K60FXD
- l. Digital Vocoder Type AMBE +2
- m. Digital Protocol ETSI TS 102 361-1, -2, -3

2. Receiver

- a. Frequency 403-470 MHz
- b. Channel Spacing 12.5 kHz
- c. Frequency Stability ± 0.5 ppm
- d. Digital Sensitivity 5% BER: 0.3uV
- e. Adjacent Channel Selectivity TIA603 (60 dB @ 12.5 kHz)
TIA603C (45 dB @ 12.5 kHz)
- f. Spurious Rejection (TIA603C) 70 dB
- g. Intermodulation 70 dB
- h. Audio Output Power 500mW
- i. Audio Distortion 3.0%
- j. Hum & Noise -40dB @ 12.5kHz
- k. Audio Response TIA603C

3. GPS

- Accuracy specs are for long-term tracking (95th percentile values > 5 satellites visible at a nominal -130 dBm signal strength)
- a. TTFF Cold Start < 1 minute
 - b. TTFF Hot Start < 10 seconds
 - c. Horizontal Accuracy < 10 meters

4. Operational Features

- a. Channels/ Modes Up to 1,000
- b. Frequency 403-470 MHz
- c. Must meet Water & Dust Intrusion IP54, MIL-STD
- d. Integrated Voice & Data capability.
- e. Must have an extended 3-Year Service Warranty.
- f. Utilizes Windows based customer programming software.
- g. Selective Call Feature.Talkgroup Call/ Group Call Alert.
- h. Embedded Blue Tooth Audio.
- i. Ability to utilize IMPRESS bluetooth audio accessories
- j. Portable should include required antenna, Belt Clip, Smart Rapid Desk Charger and optional Vehicular Charger.

C. Digital Desktop Control Base Station, Qty. (1)

- a. Mobile must meet MOTOTRBO XPR 5550 specifications or approved equal.
- b. Must have dual mode operation (450 MHz **Digital** trunked mode and **Analog** conventional mode).
- c. Radio must have internal speaker standard and optionally able to add external 7.5-Watt speaker
- d. Must have Alphanumeric Display, at least five line color- 16 characters.
- e. Station must include Desk Microphone and internal 5 Watt speaker.
- f. Must include a switching power supply, 115 volts AC input, 12 volts DC output, at least 20 amps continuous with radio cover (shroud) for the base station mobile radio.
- g. Base station must be configured to automatically return to the “on” mode in the event of a power outage.
- h. A UPS with at least 1200va capacity must be included with the dispatch base station.
- i. Meets or exceeds Military Standards for XPR 5500 mobile radio

1. Transmitter

- a. Frequency 403-470Mhz
- b. RF Power 25-40 Watts
- c. Frequency Stability ± 0.5 ppm
- d. Modulation Limiting ± 2.5 kHz 212.5khz
- e. Channel Spacing 12.5 kHz
- f. FM Hum & Noise -40Db @12.5khz
- g. Audio Response TIA603C
- h. Digital Protocol ETSI TS 102 361-1, -2, -3

2. Receiver

- a. Frequency 403-470 MHz
- b. Channel Spacing 12.5 kHz
- c. Frequency Stability ± 0.5 ppm
- d. Digital Sensitivity 5% BER @ 0.25uV
- e. Intermodulation 75dB
- f. Audio Output 3 W (Int.) 7.5 W (Ext.-8 ohms)
- g. Audio Distortion @ Rated Audio 3%
- h. Hum and Noise -40 dB @ 12.5 kHz
- i. Audio Response TIA603C

3. GPS

Accuracy specs are for long-term tracking (95th percentile values > 5 satellites visible at a nominal -130 dBm signal strength)

- a. TTFF Cold Start < 1 minute
- b. TTFF Hot Start < 10 seconds
- c. Horizontal Accuracy < 5 meters

4. Operational Features

- a. Channels/ Modes Up to 1,000
- b. Integrated Voice & Data capability.
- c. Must have an extended 3-Year Service Warranty.
- d. Utilizes Windows based customer programming software.

D. Location and Messaging System, Qty. (2) Base Stations

- a. GPS & Text Messaging must be provided in the same software application with real time asset tracking and management.
- b. GPS shall monitor digital radios operating with GPS revert

- c. Radios used for GPS functions only should be similar to Motorola XPR4550 or approved equal. (Two radios shall be provided for GPS functions with GPS revert on time slot [TS] 2 Repeater voice on TS1 and GPS data on TS2).
- d. Radios used for GPS Base Station(s) shall each use a switching power supply of at least 18 amps continuous.
- e. GPS client shall track up to 50 assets
- f. A UPS with at least 1200va capacity must be included with the GPS base stations.
- g. GPS client shall use a dedicated computer meeting minimum standards for the software proposed. Contractor shall provide the minimum standards required for the computer and RCT will supply the computer.
- h. Radios used for GPS Base Stations shall include antennas and installation of the antennas. Antennas may be installed inside the RCT building but the radios must not interfere with existing computer or electronic equipment located in the RCT building.
- i. Contractor shall separately list the pricing of the locating and messaging server software, Contractor shall separately list the price of the (up to 50 assets) client software per year and shall list the price for one year of telephone technical support option for the messaging and GPS location software.
- j. GPS software shall use high resolution Tana maps to improve operational efficiency.
- k. Reports shall be exported in Excel, CSV or TXT formats. Excel format is preferred.
- l. Software shall have the capability for online updates if needed for the latest data and functionality.

We are requesting your most advantageous and economical option packages that will meet our stated minimum specifications.

Attachments:

1. Sample Price Sheet
2. Federal and State Requirements and Special Conditions for Rolling Stock Purchases (rev. 2/12).

RUTHERFORD COUNTY TRANSIT PRICE SHEET

RADIO EQUIPMENT:

(25) Mobile Radios: Make/Model: _____ \$ _____
(2) Portable Radios: Make/Model: _____ \$ _____
(1) Digital Desktop Base Station Make/Model: _____ \$ _____
(2) GPS Base Stations Make/Model: _____ \$ _____

Installation (Labor) \$ _____

Communication Equipment and Labor - TOTAL \$ _____

**Radio equipment should be priced to include all necessary cables, wires, and antenna. Installation should include all programming and training.*

By submitting this informal bid/quote, the potential contractor certifies the following:

- This quote is signed by an authorized representative of the firm.
- The vendor shall make the mobile radios available at the above price for purchase for a period of up to 12 months from the date of award of the contract. This would be for the purchase of up to an additional 10 mobile radios.

Therefore, in compliance with this Request for Quote, and subject to all conditions herein, the undersigned offers and agrees, if this quote is accepted within 45 days from the date of submission, to furnish the subject materials/equipment, labor and warranty for a cost not to exceed the prices indicated above.

OFFEROR: _____

ADDRESS: _____

CITY: _____ **STATE:** _____ **ZIP:** _____

TELEPHONE: _____ **FAX:** _____

E-MAIL: _____

By: _____
Signature Title Date

Printed Name

RUTHERFORD COUNTY TRANSIT ACCEPTANCE OF QUOTE

By: _____
Signature Title Date

FEDERAL AND STATE REQUIREMENTS
AND SPECIAL CONDITIONS
for
ROLLING STOCK PURCHASES (Rev 2/12)
(Purchases under \$100,000)

1. General

The work performed under this contract will be financed, in part, by grants provided under programs of the Federal Transit Administration. Citations to federal law, regulation, and guidance references include, but are not limited to, the Master Agreement FTA MA (18), dated October 1, 2011; FTA Circular 4220.1F, dated November 1, 2008; "Best Practices Procurement Manual", updated March 13, 1999 with revisions through October 2005; 49 CFR Part 18 (State and Local Governments) and 49 CFR Part 19 (Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations) and any subsequent amendments or revisions thereto.

**THE FOLLOWING MAY BE USED SYNONYMOUSLY:
"BIDDER" AND "CONTRACTOR"
"PURCHASER", "PROCURING AGENCY" AND "OWNER"**

2. Federal Changes

Contractor shall at all times comply with all applicable Federal Transit Administration (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 comply shall constitute a material breach of this contract.

3. Notification of Federal Participation

To the extent required by Federal law, the State of North Carolina agrees that, in administering any Federal assistance Program or Project supported by the underlying Grant Agreement or Cooperative Agreement, any request for proposals, solicitation, grant application, form, notification, press release, or other publication involving the distribution of FTA assistance for the Program or the Project that it will identify the FTA grant source by listing the Catalog of Federal Domestic Assistance Number of the program. The following FTA grant programs will be eligible to participate in this bid, 20.505, 20.507, 20.500, 20.513, 20.509, 20.516, and 20.521. Federal funding assistance up to eighty (80%) percent may be provided.

4. Definitions

Third Party Agreement, in accordance with the Master Agreement unless FTA determines otherwise in writing, includes all of the following agreements, such as:

- (1) Third party contracts,
- (2) Leases,
- (3) Third party subcontracts; and

(4) Other similar arrangements or agreements.

Third Party Participant, in accordance with the Master Agreement unless FTA determines otherwise in writing, includes all of the following participants, such as:

- (1) Third party contractors,
- (2) Lessees,
- (3) Third party subcontractors, and
- (4) Other participants in the Project

5. **Conflict of Interest**

No employee, officer, board member, or agent of the Owner shall participate in the selection, award, or administration of a contract supported by Federal Transit Administration (FTA) funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, board member, or agent, any member of his or her immediate family, his or her partner, or an organization that employs, or is about to employ any of the above, has a financial or other interest in the firm selected for award.

6. **Lobbying**

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601, et seq.). Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S. C. 1352. Each tier shall comply with Federal statutory provisions to the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence congress to a State legislature on legislation or appropriations, except through proper official channels. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

The requisite "Lobbying Certification" is included as ATTACHMENT A (attach Standard Form-LLL if necessary) and must be executed for contracts of \$100,000 or more and prior to the award of the contract.

7. **Civil Rights**

(1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, 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.

(a) The third party contractor and all lower tiers shall comply with all provisions of FTA Circular 4701.1A, "Title VI and Title VI Dependent Guidelines for Federal Transit Administration recipients", May 13, 2007.

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

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

(b) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Contractor agrees to comply and assures the compliance of each subcontractor at any tier of the Project, with all applicable equal employment opportunity requirements of 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 No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e) note, and also with any Federal laws, regulations, and directives affecting construction undertaken as part of the Project.

(3) Nondiscrimination on the Basis of Age – The Contractor agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 et seq., and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance, 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age.

The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625, which

prohibits discrimination against individuals on the basis of age.

(4) **Nondiscrimination on the Basis of Sex** - The Contractor agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and with implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, that prohibit discrimination on the basis of sex.

(5) **Access for Individuals with Disabilities** - The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities. In addition, the Contractor agrees to comply with applicable Federal regulations and directives and any subsequent amendments thereto, except to the extent the Federal Government determines otherwise in writing, as follows:

- (1) U.S. DOT regulations "Transportation Services for Individuals with Disabilities (ADA)" 49 C.F.R. Part 37;
- (2) U.S. DOT regulations "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F. R. Part 38;
- (4) U.S. DOJ regulations "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities." 28 C.F.R. Part 36;
- (6) U.S. GSA regulations "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) 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;

- (8) U.S. Federal Communications Commission regulations "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 49 C.F.R. Part 64, Subpart F;
- (9) U.S. Architectural and Transportation Barriers Compliance Board regulations, "Electronic and Information Technology Accessibility Standards." 36 C.F.R. Part 1194;
- (10) FTA regulations, "Transportation of Elderly and Handicapped Persons," 49 C.F.R. part 609; and
- (11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

(6) **Access to Services for Persons with Limited English Proficiency.** The Contractor agrees to comply with Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 *Fed. Reg.* 74087, December 14, 2005, except to the extent that the Federal Government determines otherwise in writing.

(7) **Environmental Justice.** The Contractor agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note; and DOT Order 5620.3, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 *Fed. Reg.* 18377 *et seq.*, April 15, 1997, except to the extent that the Federal Government determines otherwise in writing.

(8) **Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections.** To the extent applicable, the Contractor agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq.*, with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq.*, and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.

(9) **Other Nondiscrimination Laws.** The Contractor agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable directives prohibiting discrimination, except to the extent that the Federal Government determines otherwise in writing.

(10) 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.

8. Disadvantaged Business Enterprises

Pursuant to 49 CFR 26.49, the Contractor, as a condition of being authorized to respond to this solicitation, must certify that it has filed with the Federal Transit Administration

(FTA) an approved or not disapproved annual Disadvantaged Business Enterprise (DBE) subcontracting participation goal.

The requisite “Transit Vehicle Manufacturer's Certification” is included as ATTACHMENT B and MUST be completed and executed for ALL contracts and submitted with the bid or quote.

A BID OR QUOTE THAT IS SUBMITTED WITHOUT THE CERTIFICATION WILL NOT BE CONSIDERED FOR AWARD.

9. Clean Air Act

(a) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to Section 306 of the Clean Air Act as amended, 42 U.S.C. § 7606, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. The Contractor agrees to report any violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to the State and/or FTA and the appropriate EPA Regional Office.

(b) 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.

10. Clean Water

(a) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377, The Contractor agrees to report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(b) 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.

11. Environmental Protection

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. §§ 4321 through 4335 (as restricted by 42 U.S. C. § 5159, if applicable); Executive Order No. 11514, as amended, “Protection and Enhancement of Environmental Quality,” 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5324(b); U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508; and joint FHWA FTA regulations, “Environmental Impact and Related Procedures,” 23 C.F.R. Part 771 and 49 C.F.R. Part 622; and other applicable Federal environmental protection regulations that may be promulgated at a later date. The Contractor agrees to comply with the applicable provisions of 23 U.S.C. § 139 pertaining to environmental procedures, and 23 U.S.C. § 326, pertaining to Purchaser’s responsibility for categorical exclusions, in accordance with the provisions of joint FHWA/FTA final guidance, “SAFETEA-LU Environmental Review Process (Public Law 109-59),” 71 Fed. Reg. 66576 *et seq.* November 15, 2006 and any applicable Federal

directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing.

12. Energy Conservation

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. Sect. 6321 et seq.

13. Cargo Preference

46 U.S.C. 55305 and 46 CFR Part 381 impose cargo preference requirements in contracts and subcontracts in which equipment, materials or commodities may be transported by ocean vessel in carrying out the project. If the Contractor has knowledge of or anticipates any equipment, materials or commodities that may be shipped by ocean vessel, the Contractor is obligated to inform the Owner, so that additional requirements and clauses may be attached to this Contract.

14. Buy America

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, to the extent those regulations are consistent with SAFETEA-LU provisions, and subsequent amendments to those regulations that may be promulgated. The Contractor also agrees to comply with FTA directives to the extent those directives are consistent with SAFETEA-LU provisions, except to the extent that FTA determines otherwise in writing. Buy America requirements state that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waiver requirements are listed in 49 CFR 661.7. Appendix A grants a general public interest waiver from the Buy America requirements that apply to microprocessors, computers, microcomputers, or software, or other such devices, which are used solely for the purpose of processing or storing data. This general waiver does not extend to a product or device, which merely contains a microprocessor or microcomputer and is not used solely for the purpose of processing or storing data. Small purchases (currently less than \$100,000) made with capital, operating, or planning funds are also exempt from the Buy America requirements.

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11, which provide that Federal funds may not be obligated unless rolling stock is manufactured in the United States and have a sixty (60%) percent domestic content. Rolling stock that is not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content. ***Rolling stock includes:*** buses, other vehicles used in transportation, train control equipment, communication equipment, and traction power equipment.

Effective July 24, 1995 small purchases (under the \$100,000 threshold) made with FTA funds, will not be subject to the Buy America requirement. The value of small purchases should be determined by using "contract price" and not "unit price".

These regulations require, as a matter of responsiveness, that the Bidder or Contractor submit to the purchaser the appropriate Buy America certification (Attachment C or D) with all bids where FTA funds are provided, except those subject to a general waiver or less than \$100,000.

BIDS OR OFFERS THAT ARE SUBMITTED WITHOUT THE COMPLETED BUY AMERICA CERTIFICATION MUST BE REJECTED AS NONRESPONSIVE. BIDDERS ARE ADVISED THAT SUBMISSION OF BOTH CERTIFICATIONS WITH THE BID IS ALSO CONSIDERED NONRESPONSIVE AND WILL RESULT IN REJECTION OF THE BID; ONLY ONE CERTIFICATION (either C or D) SHALL BE SUBMITTED.

15. **Fly America**

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

16. **Debarment and Suspensions**

This contract is a covered transaction for purposes of 2 CFR Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.940, 180.935 and 180.945.

The contractor is required to comply with 2 CFR 180, Subpart C and must include the requirement to comply with 2 CFR 180, 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 **Procuring Agency**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **Procuring Agency**, 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 2 CFR 180, 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.

The Procuring Agency agrees and assures that its third party contractors and lessees will review the "Excluded Parties Listing System" at <http://epls.gov/> before entering into any subagreement, lease or third party contract.

The Procuring Agency will be reviewing all third party contractors under the Excluded Parties Listing System at <http://epls.gov/> before entering into any contracts.

The requisite Debarment and Suspension Certification is included as ATTACHMENT E (attach additional statement if necessary) and must be executed for contracts of \$25,000 or more and prior to the award of the contract.

17. Pre-Award and Post-Delivery Audits of Rolling Stock Purchases

49 U.S.C. Section 5323(m) and FTA's implementing regulation 49 CFR Part 663, dated September 24, 1991, and, when promulgated, any amendments to those regulations, require all recipients purchasing vehicles carrying passengers to conduct pre-award and post-delivery audits. If the provisions of 49 U.S.C. Section 5323(m), as amended by SAFETEA-LU conflict with FTA's implementing regulations as currently promulgated the provisions of 49 U.S.C. Section 5323(m), as amended, prevail.

Pre-Award Audit:

The two lowest bidders, determined at bid opening, will be required to submit the following information within three working days of the Purchaser's request. Pre-award information may also be submitted with the bid.

(1) Buy America Requirements: (for contracts of \$100,000 and more)

The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America (see Section 14. Buy America). If the Contractor certifies compliance with Buy America, it shall provide supporting documentation that indicates that 60% of the cost of all components are manufactured in the United States and that final assembly takes place in the United States. The documentation shall include:

- a) the component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs;
- b) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of the final assembly; and
- c) a copy of the letter from FTA granting a waiver on the vehicle(s) for all or part of the Buy America requirement under section 165(b)(1), (b)(2), or (b)(4) of the Surface Transportation Assistance Act (STAA) of 1982, as amended;

- (2) Federal Motor Vehicle Safety Standards (FMVSS) Certification: (must be completed for all purchases)
The Contractor shall submit:
- a) the manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS regulations; or
 - b) the manufacturer's certified statement that the contracted vehicles will not be subject to the FMVSS regulations.
- (3) Solicitation Specification Requirements:
The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

Post-Delivery Audit:

Upon completion of the vehicle(s), and prior to filing of the title, the successful bidder shall provide the information indicated in 1-3 above. This post-delivery audit is required to ensure that the vehicle(s) were manufactured as intended. Failure to comply with this requirement or inability to certify Buy America compliance shall be cause for rejection of the vehicle(s).

Upon delivery and acceptance of the equipment, the vehicle(s) shall undergo a thorough visual inspection and road test to assure compliance to contract specifications.

*Note - The term "manufacturer" shall include, but not be limited to, the chassis manufacturer; the secondary manufacturer; a second party providing additions or modifications to the vehicle, and/or the bidder.

Please refer to EXHIBIT I regarding computation of component and subcomponent parts.

The two lowest bidders, determined at bid opening, will be required to submit the Pre-Audit information within three (3) working days of the Purchaser's request. This information may also be submitted with the bid. This pre-award audit information is required to be eligible for award of the bid. Failure to comply with this requirement shall be cause for rejection of the bid.

18. Geographic Preference

Procurements shall be conducted in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in evaluation or award of bids or proposals, except where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws.

19. Termination or Cancellation of Contract

Termination or cancellation of the contract, in whole or in part, may be determined by the project if it is in the best interest of the project. A notice of termination shall be delivered to the Contractor, specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. The Contractor shall be paid for work that has been performed and completed up to the time of

termination. The Contractor shall promptly submit its termination claim to be paid. A 30 day notice of termination shall be required.

20. Breach of Contract

If the Contractor fails to make delivery of the equipment, supplies, or services within the specified terms of the contract, or fails to perform within the provisions of the contract, the contract may be terminated by reason of default or breach. A written notice of default or breach of contract shall be presented to the Contractor within three (3) working days of such failure. The Contractor will only be paid the contract price for equipment, supplies, or services delivered and accepted in accordance with the requirements set forth in the contract.

If it is determined 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 Owner, 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.

The Owner in its sole discretion may, in the case of breach of contract, allow the Contractor a specified period of time in which to correct the defect. In such case, the notice of termination will state the time period in which the correction is permitted and other appropriate conditions.

If Contractor fails to remedy to the Owner's satisfaction the breach or default or any of the terms, covenants, or conditions of this contract within twenty (20) days after written notice from the Owner setting forth the nature of said breach or default, the Owner 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 the Owner from also pursuing all available remedies against Contractor and its sureties for said breach or default.

21. Resolution of Disputes

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 the Owner. 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 authorized representative of the Owner. 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 authorized representative of the Owner shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the Owner, the 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

therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Owner 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 Owner is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available there under 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 Owner, Architect 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 there under, except as may be specifically agreed in writing.

22. Protest Procedures

To ensure that protests are received and processed effectively the Purchaser shall provide written bid protest procedures upon request. In all instances information regarding the protest shall be disclosed to the N.C. Department of Transportation (NCDOT). All protest requests and decisions must be in writing. A protester must exhaust all administrative remedies with the Purchaser before pursuing remedies through the NCDOT. Reviews of protests by the NCDOT will be limited to the Purchaser's failure to have or follow its protest procedures, or its failure to review a complaint or protest. An appeal to the NCDOT must be received by the Department within three (3) working days of the date the protester knew or should have known of the violation. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester knew or should have known of the violation. Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local authorities.

23. Nonconstruction Employee Protection Requirements

Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, in particular the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.

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

2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$ 10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** - The Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the 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 (2) of this section.

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

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

24. No Federal Government Obligations to Third Parties

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

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

25. Program Fraud and False or Fraudulent Statements and Related Acts

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

(2) The Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, or agreement with or to the Federal Government involving a project authorized by 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Contractor the penalties of 49 U.S.C. 5323(l), 18 U.S.C. § 1001 or other applicable Federal law to the extent the Federal Government deems appropriate.

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

26. Access to Records and Reports

The Contractor agrees to permit, and require its subcontractors to permit, the U.S. Secretary of Transportation, and the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Contractor and its subcontractors pertaining to the Project, as required by 49 U.S.C. § 5325(g).

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. D. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5303, 5307, 5309, 5310, 5311, 5316, or 5317.

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 State of North Carolina, Office of the State Auditor, now requires that all records now be retained for five (5) years after that 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.

27. Bus Testing Program

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

1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.

2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

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

The Bus Testing Certification is included as ATTACHMENT F and must be executed for ALL contracts prior to the award of the contract.

28. State and Local Disclaimer

The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the grantees procurement documents, the grantees should consult with their local attorney.

29. 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 4220.1F, dated November 1, 2008, and are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

30. Hold Harmless

Except as prohibited or otherwise limited by State law, the Contractor agrees to indemnify, save, and hold harmless the Purchaser/Owner of this Purchase Contract and its officers, agents, and employees acting within the scope of their official duties against any liability, including all claims, losses, costs and expenses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the contractor or subcontractor in the performance of this contract and that are attributable to the negligence or intentionally tortuous acts of the contractor.

The Contractor represents and warrants that it shall make no claim of any kind or nature against the Purchaser or it's agents who are involved in the delivery or processing of contractor goods to the Purchaser. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.

31. Safe Operation of Motor Vehicles

a. Seat Belt Use.

Pursuant to Executive Order No. 13043, April 16, 1997, 23 U. S. C. § 402, the Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned, rented, or personally-operated vehicles and include this provision in any third party subcontracts, leases or similar documents in connection with this project.

b. Distracted Driving, Including Texting While Driving.

Consistent with Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. Section 402 note, and DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, FTA encourages each third party contractor to promote policies and initiatives for its employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to include this provision in any third party subcontract leases or similar documents in connection with this project.

c. Safety. The Contractor is encouraged to:

- (1) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving—

Company-owned or rented vehicles; Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or any vehicle, on or off duty, and using an electronic device.

- (2) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

d. Definitions

- (1) "Driving" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

- (2) "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

32. Exclusionary or Discriminatory Specifications

The Contractor agrees that it will comply with the requirements of 49 U.S.C. Sect. 5325(h) by refraining from using any funds derived from FTA in performance of this Contract to support procurements using exclusionary or discriminatory specifications.

33. Metric System

To the extent required by U.S. DOT or FTA, the Contractor agrees to use the metric system of measurement in its Contract activities as may be required by 49 U.S.C. Sect. 205a et seq.; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. Sect. 205a; and other regulations, guidelines and policies issued by U.S. DOT or FTA. To the extent practicable and feasible, the Contractor agrees to accept products and services with dimensions expressed in the metric system of measurement.

34. North Carolina State Ethic's Requirement

Pursuant to Governor Perdue's Executive Order # 24, this section should be included in the terms and conditions of all contracts let by the Governor's Cabinet Agencies and the Office of the Governor:

- 1) “By Executive Order 24, issued by Governor Perdue, and N.C. G.S. § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor’s Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:
 - (1) have a contract with a governmental agency; or
 - (2) have performed under such a contract within the past year; or
 - (3) anticipate bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and G.S. Sec. 133-32.

Executive Order 24 also encouraged and invited other State Agencies to implement the requirements and prohibitions of the Executive Order to their agencies. Vendors and contractors should contact other State Agencies to determine if those agencies have adopted Executive Order 24.”

To be added near the signature portion of all contracts let by the Governor’s Cabinet Agencies and the Office of the Governor:

“N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.”

35. Sensitive Security Information

Each third party contractor must protect, and take measures to ensure that its subcontractors at each tier protect, “sensitive security information” made available during the administration of a third party contract or subcontract to ensure compliance with 49 U.S.C. Section 40119(b) and implementing DOT regulations, “Protection of Sensitive Security Information,” 49 CFR Part 15, and with 49 U.S.C. Section 114(r) and implementing Department of Homeland Security regulations, “Protection of Sensitive Security Information,” 49 CFR Part 1520.

EXHIBIT I

PRE AWARD AND POST DELIVERY AUDIT REQUIREMENTS

Component Cost requirements of the manufacturer to meet Buy America:

The cost of components that are produced in the US (domestic) must be more than 60% of the cost of all the components of a vehicle and final assembly takes place in the US.

For a component to be domestic, more that 60% of the subcomponents cost must be of domestic origin and manufacture of component must be in US

Level of documentation of costs required must comply with 661.11(o)(1):

The cost of a component or a subcomponent is the price that a bidder or contractor must pay to a subcontractor or supplier for that component or subcomponent.

The cost used in the computation of domestic content may include appropriate fully allocated costs of the component or subcomponent, which would include overhead and profit allocation.

Costs may be presented in percentage form or dollar amount.

Domestic Content Example

<u>Item</u>	<u>Total Cost of Components</u>	<u>Percent/Domestic</u>
One bus (ABC Mfr.)	\$100	At least 60% of total cost

60% Domestic Component

<u>Component</u>	<u>Domestic content</u>
1. Engine (X Co.)	\$30 (30% of total component cost)
2. Transmission (Y Co.)	\$20 (20% of total component cost)
3. Wheels (Z Co.)	<u>\$15</u> (15% of total component cost)
Subtotal	\$65 (65% of total component cost) (5% more that required no further components need be identified)

Breakdown of components for domestic sub-component content

<u>Sub-component</u>	<u>Domestic content</u>
1. Engine (total cost \$30)	
a) Valves (A Co.)	\$12.00 (40% of cost of engine)
b) Block (B Co.)	<u>\$10.50</u> (35% of cost of engine)
Subtotal	\$22.50 (75% of cost of engine) (15% more than required; no further sub-components need be identified)
2. Transmission (total cost \$20)	
a) Gears (C Co.)	\$ 4.00 (20% of cost of trans.)
b) Housing (D Co.)	<u>\$ 8.00</u> (40% of cost of trans.)
Subtotal	\$12.00 (60% of cost of trans.) (minimum percent achieved; no further sub-components need be identified)
3. Wheels (total cost \$15)	
a) Castings (F Co.)	<u>\$10.00</u> (66.7% of cost of wheels)
Subtotal	\$10.00 (66.7% of cost of wheels) (6.7% more than required; no further sub-components need be identified)

ATTACHMENT B

TRANSIT VEHICLE MANUFACTURERS CERTIFICATION OF COMPLIANCE WITH 49 CFR PART 26.49

(To be submitted with all bids. A bid, which does not include this certification, will not be eligible for award.)

This procurement is subject to the provisions of 49 CFR, Part 26.49. Accordingly, as a condition of permission to bid, the following certification must be completed and submitted with the bid.

TRANSIT VEHICLE MANUFACTURER CERTIFICATION

_____, a TVM, hereby certifies that it has complied with the requirement of
(Name of Manufacturer)
49 CFR Part 26.49 by submitting a current annual DBE goal to FTA. The goals apply to Federal Fiscal Year ____, October 1, ____ to September 30, ____ and have been approved or not disapproved by FTA.

1.1 OR

_____, hereby certifies that the Manufacturer of the transit vehicle to
(Name of Dealer/Distributor)
be supplied, _____, has complied with the above-referenced
(Name of Manufacturer)
requirement of 49 CFR Part 26.49.

DATE _____

SIGNATURE _____

TITLE _____

COMPANY _____

State of _____

County of _____

Subscribed and sworn to before me this ____ day of _____, 20 ____.

Notary Public _____

My Appointment Expires _____

ATTACHMENT E

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY and VOLUNTARY EXCLUSION
LOWER TIER COVERED TRANSACTION**

(To be submitted with all bids exceeding \$25,000.)

- (1) The prospective lower tier participant (Bidder/Contractor) certifies, by submission of this bid or 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) The prospective Bidder/Contractor also certifies by submission of this bid or proposal that all subcontractors and suppliers (this requirement flows down to all subcontracts at all levels) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (3) Where the prospective lower tier participant (Bidder/Contractor) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid or proposal.

The lower tier participant (Bidder/Contractor), _____, certifies or affirms the truthfulness and accuracy of this statement of its certification and disclosure, if any.

DATE _____

SIGNATURE _____

COMPANY _____

NAME _____

TITLE _____

State of _____

County of _____

Subscribed and sworn to before me this ____ day of _____, 20____.

Notary Public _____

My Appointment Expires _____

ATTACHMENT F

**CERTIFICATION OF COMPLIANCE
WITH FTA'S BUS TESTING REQUIREMENTS
(To be submitted with all bids.)**

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

(Indicate with an "X" only one of the following statements.)

1. ___ The vehicles offered herewith have been tested in accordance with 49 CFR Part 665 on _____ (date). The vehicles being sold should have the identical configuration and major components as the vehicle in the test report, which must be submitted with this Bid. If the configuration or components are not identical, the manufacturer shall provide with its Bid a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
2. ___ The vehicles offered are a new model, or with a major change in configuration or components to be acquired, and will be tested and the full bus testing report(s) and any applicable partial testing report(s) will be submitted to the Purchaser before final acceptance of the first vehicle.
3. ___ The manufacturer represents that the vehicles offered are "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), and submits with this Bid the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.
4. ___ The manufacturer represents that the vehicles offered are not required to be bus tested. The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

SIGNATURE _____

TITLE _____

COMPANY _____

DATE _____

State of _____

County of _____

Subscribed and sworn to before me this ___ day of _____, 20___.

Notary Public _____

My Appointment Expires _____