

2.1 CONTRACT SUBJECT TO FEDERAL FINANCIAL ASSISTANCE

Transpo is funded in part by grants from the Federal Transit Administration (FTA) of the United States Department of Transportation (U.S. DOT). The award of any contract is subject to the requirements of financial assistance contracts between Transpo and the U.S. DOT: compliance with purchasing procedures and standards as set forth in various Federal statutes and regulations including OMB Circular A-102, 49 CFR Part 18, and FTA Circular 4220.1E. The Lessor is required to comply with all terms and conditions prescribed for third-party contracts by the FTA. The following clauses will be incorporated by reference in any contract resulting from this solicitation issued by Transpo.

ELIGIBILITY, PROHIBITED INTERESTS, NON-COLLUSION, ETHICS

2.2 INTEREST OF MEMBERS OF, OR DELEGATES TO, CONGRESS

No member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising there from (41 USC 22).

2.3 PROHIBITED INTEREST

No member, officer, or employee of Transpo or local public official during his tenure or one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

2.4 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

I. The Lessor 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 CFR Part 31, apply to its actions pertaining to this contract. Upon execution of the underlying contract, the Lessor 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 Lessor 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 Lessor to the extent the Federal Government deems appropriate.

II. The Lessor 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 Lessor, to the extent the Federal Government deems appropriate.

III. The Lessor 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.

2.5 COVENANT AGAINST GRATUITIES

The Lessor shall not offer or provide gifts or any other gratuities of monetary value to any official, employee, or agent of Transpo during the period of this contract.

2.6 NON-COLLUSION; AFFIDAVITS

The bidder guarantees that the bid submitted is not a product of collusion with any other bidder and that it has not been communicated by the bidder to anyone (not an employee or agent or surety of the bidder). Bidders are required to furnish a Federal Non-collusion Affidavit (Attachment 3.1). Failure to submit the signed affidavit at the time of bid opening shall be grounds for disqualification of the bidder's bid.

2.7 INELIGIBLE BIDDERS; CERTIFICATION

The bidder certifies that it is not included in the U.S. Comptroller General's List of Ineligible Lessors Debarred for Violations of Labor Standards Provisions. Bidders are required to furnish a signed Ineligible Lessors Certificate (Attachment 3.2). Failure to submit the certificate at the time of bid opening shall be grounds for the disqualification of the bidder's bid.

2.8 CERTIFICATION OF LESSOR REGARDING DEBARMENT, SUSPENSION, OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION.

The following requirements are applicable to any contract or subcontract in excess of \$25,000:

Title 49 CFR Part 29 and Executive Order 12549 establish regulations pertaining to U.S. DOT and other Federal contractors at any tier, and procedures applicable to their debarment, suspension, ineligibility or exclusion from participation in any U.S. DOT or other Federal contracts.

The bidder is required to review the above regulations and to complete and submit a Certification Regarding Debarment, Suspension, Other Ineligibility and Voluntary Exclusion (Attachment 3.3), or furnish an explanation as to why the Certification cannot be provided.

The bidder agrees by submitting this proposal that, should the proposed covered transaction be entered into, he/she 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 in writing by Transpo.

The bidder further agrees by submitting this proposal that it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transaction", provided by Transpo and included in

these specifications as Attachment 1.4, without modification, in all lower-tier covered transactions over \$25,000 and in all solicitations for lower tier contracts.

The following requirements are applicable to any contract or subcontract in excess of \$100,000:

Title 49 CFR Part 29 and Executive Order 12549 establish regulations pertaining to U.S. DOT and other Federal contractors at any tier, and procedures applicable to their debarment, suspension, ineligibility or exclusion from participation in any U.S. DOT or other Federal contracts.

Bidders are required to review the above regulations and to complete and submit a Certification Regarding Debarment, Suspension, Other Ineligibility and Voluntary Exclusion (Attachment 1.3A), or furnish an explanation as to why the Certification cannot be provided.

The bidder agrees by submitting this proposal that, should the proposed covered transaction be entered into, he/she shall not knowingly enter into any upper-tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by Transpo.

The bidder further agrees by submitting this proposal that he/she will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Upper Tier Covered Transaction", provided by Transpo and included in these specifications as Attachment 3.5 without modification, in all upper-tier covered transactions over \$100,000 and in all solicitations for upper tier contracts.

2.9 RESTRICTIONS ON LOBBYING; CERTIFICATION

The following requirements are applicable to any contract or subcontract in excess of \$100,000:

Section 1352 of Title 31, United States Code, provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person by influencing or attempting to influence 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 any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, or the entering into of any cooperative agreement.

Each bidder is required to review the above referenced Regulations and complete and submit a Certification of Compliance with Federal Lobbying Regulations (Attachment 3.6). Pursuant to Federal regulations, the bidder is required to have all subcontractors (at any tier) providing more than \$100,000 towards the contract also complete with this Certification, to be included with the bidder's proposal.

2.10 EQUAL EMPLOYMENT OPPORTUNITY, 49 CFR PART 21

In connection with the execution of this contract, the Lessor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Lessor shall take affirmative action to insure that applicants are employed, and that employees are treated during their employment, without regard for their race, religion, color, sex, or national origin. Such actions 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.

2.11 TITLE VI, CIVIL RIGHTS ACT OF 1964, COMPLIANCE

During the performance of this contract, the Lessor, for itself, its assignees and successors in interest agrees as follows:

- I. Compliance With Regulations: The Lessor shall comply with the regulations relative to non-discrimination in Federal programs of the U.S. DOT, which are incorporated by reference and made a part of this contract.
- II. Non-Discrimination: The Lessor, with regard to work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Lessor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- III. Solicitations For Subcontracts, Including Procurement Of Materials And Equipment: In all solicitations either by competitive bidding or negotiation made by the Lessor for the work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Lessor of the Lessor's obligations under this contract and the Regulations relative to non-discrimination on the grounds of race, color, sex, or national origin.
- IV. Information And Reports: The Lessor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, and other sources of information, and its facilities as may be determined by Transpo or the FTA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required by a Lessor is in the exclusive possession of another who fails or refuses to furnish this information, the

Lessor shall so certify Transpo or the FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

V. Sanctions For Non-Compliance: In the event of the Lessor's non-compliance with the non-discrimination provisions of this contract, Transpo shall impose such contract sanctions as it or the FTA shall deem appropriate, including, but not limited to:

- A. Withholding of payments to the Lessor under the contract until the Lessor complies, and/or,
- B. Cancellation, termination, or suspension of the contract, in whole or in part.

VI. Incorporation Of Provisions: The Lessor shall include the provisions of this Section entitled Title VI, Civil Rights Act of 1964, compliance in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant after change. The Lessor shall take such action with respect to any subcontractor or procurement as Transpo or the FTA may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that, in the event the Lessor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Lessor may request Transpo to enter into such litigation to protect the interests of Transpo and, in addition, the Lessor may request the United States to enter into such litigation to protect the interests of the United States.

PART 26.

I. DBE Program Definitions

A. Disadvantaged Business Enterprise or DBE means a for-profit small business concern:

1. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

B. Small Business Concern means, with respect to firms seeking to participate as DBEs in U.S. DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations.(12 CFR Part 121 & §26.65(b).

C. Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

1. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
2. Any individual in the following groups, members of which are reputedly presumed to be socially and economically disadvantaged:
 - i. “Black Americans”, which includes persons having origins in any of the Black racial groups of Africa;

- ii. “Hispanic Americans”, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- iii. “Native Americans”, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- iv. “Asian-Pacific American”, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of Pacific Islands (Republic of Palua), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- v. “Subcontinent Asian Americans”, which includes persons whose origins are from India, Pakistan, and Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- vi. “Women”;
- vii. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

II. The Federal Fiscal Year Goal has been set by Transpo in an attempt to match projected procurements with available qualified disadvantaged businesses. Transpo's goals for budgeted service contracts, bus parts, and other material and supplies for DBEs have been established by Transpo as set forth by the U.S. DOT Regulations 49 CFR Part 26, and is considered pertinent to any contract resulting from this request for quotation/proposal. If a specific DBE goal is assigned to this contract, it will be clearly stated in the

bid documents, and if the Lessor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBEs in the work provided, Transpo may declare the Lessor noncompliant and in breach of contract. If a goal is not stated in the bid documents, it will be understood that no specific goal is assigned to this contract.

A. Policy – It is the policy of the U.S. DOT and Transpo that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and 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 Contract. It is also the policy of Transpo to:

1. Ensure nondiscrimination in the award and administration of U.S. DOT assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for U.S. DOT assisted contracts;
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs; and
5. Help remove barriers to the participation of DBEs in U.S. DOT-assisted contracts.

The Lessor agrees to ensure that DBEs as defined in 49 CFR Part 26, have the maximum opportunity to participate in whole or in part with Federal funds provided under this Agreement. In this regard, the Lessor shall take all necessary and reasonable steps in accordance

with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Lessor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts.

If it is further the policy of Transpo to promote the development and increase the participation of businesses owned and controlled by DBEs, involvement in all phases of Transpo procurement activities are encouraged.

B. DBE obligation – The Lessor and its subcontractors agree to ensure that DBEs have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under the Agreement. In that regard, all Lessors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the maximum opportunity to compete for and perform contracts.

C. Where the Lessor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBEs in the work provided, Transpo may declare the Lessor noncompliant and in breach of contract. Guidance concerning good faith efforts may be found in the bid documents and are also listed in Transpo's Disadvantaged Business Enterprise Program document.

D. The Lessor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with Transpo's DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of Transpo and will be submitted to Transpo upon request.

E. Transpo will provide affirmative assistance, as may be reasonable and

necessary to assist the Lessor in implementing their programs for DBE participation. The assistance may include the following upon request:

1. Identification of qualified DBEs,
2. Available listing of Minority Assistance Agencies,
3. Holding bid conferences to emphasize requirements.
4. Lessors are encouraged to use the services of DBEs, for example banks, subcontractors, suppliers.

2.13 DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

Background and Application:

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (see 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

The clause language is drawn directly from 29 CFR 5.5(a) and any deviation from the model clause below should be coordinated with counsel to ensure the Acts’ requirements are satisfied.

- I. Minimum wages –
 - A. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under

the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Lessor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the

Lessor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

i. Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

ii. The classification is utilized in the area by the construction industry; and

iii. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

iv. With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

2) If the Lessor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action

taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, 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.

3) In the event the Lessor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

C. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Lessor shall either pay the benefit as

stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

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

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

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

2) If the Lessor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including

the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The 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.

3) In the event the Lessor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the administrator for determination. The administrator, or an authorized representative, will issue a determination with thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the thirty (30) day period that additional time is necessary.

4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

II. Withholding -Transpo shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Lessor under this contract or any other Federal contract with the same Lessor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Lessor, so much of the

accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Lessor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, City Utilities may, after written notice to the Lessor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

III. Payrolls and basic records

A. Payrolls and basic records relating thereto shall be maintained by the Lessor 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 Lessor 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. Lessors 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.

B. 1) The Lessor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to City Utilities for transmission to the Federal Transit Administration as requested. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The Lessor is responsible for the submission of copies of payrolls by all subcontractors.

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

i. That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

ii. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned,

without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

iii. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

4) The falsification of any of the above certifications may subject the Lessor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

C. The Lessor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the FTA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Lessor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Lessor, sponsor, applicant, or owner, take such action 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.

IV. Apprentices and Trainees:

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

fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Lessor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

B. Trainees -Except as provided in 29 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 U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for

the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Lessor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

V. Compliance with Copeland Act requirements - The Lessor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

VI. Subcontracts - The Lessor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Lessor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

VII. Contract termination and debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a Lessor and a subcontractor as provided in 29 CFR 5.12.

VIII. Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

IX. Disputes concerning labor standards -Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Lessor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

X. Certification of eligibility –

A. By entering into this contract, the Lessor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Lessor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

B. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

C. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

2.14 LABOR PROVISIONS: WORK HOURS AND SAFETY STANDARDS ACT, 40 U.S.C. SECTIONS 327-33, 29 CFR 5.5.(B).

The following provisions apply to all Federally assisted non-construction contracts over \$2,500 (29 CFR 5.5.(b)).

I. Overtime Requirements: No Lessor 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 work week in which he or she is employed on such work to work in

excess of forty hours in such work week unless such laborer or mechanic receives compensation no less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week.

II. Violation; Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in subparagraph (b) (1) of 29 CFR Section 5.5, the Lessor and any subcontractor responsible thereof shall be liable for the unpaid wages. In addition, such Lessor 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 such territory), 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 subparagraph (b) (1) of 29 CFR Section 5.5 in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (b) (1) of 29 CFR Section 5.5.

III. Withholding for Unpaid Wages and Liquidated Damages: U.S. DOT, FTA, or Transpo shall upon their own action or upon written request of an authorized representative of the Department of Labor withhold, or cause to be withheld, from any monies payable on account of work performed by the Lessor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (b) (2) of 29 CFR Section 5.5.

IV. Subcontractors: The Lessor or subcontractor shall insert in any subcontracts the clauses set forth in above paragraphs under the heading of Labor Provisions and shall also require subcontractors to include these clauses in any lower tier subcontracts. The Lessor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in the paragraphs of this section.

V. The requirements of the clauses contained in 29 CFR Part 5.5. (b) or (a) through (d) above are applicable to any contract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR Part 5.1. The Lessor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Lessor or the subcontractor for inspection, copying, or transcription by authorized representatives of U.S. DOT, the Department of Labor, FTA, or Transpo. The Lessor or subcontractor will permit such representatives to interview employees during working hours on the job.

2.15 ENVIRONMENTAL VIOLATIONS, 40 CFR PART 15

The following clause applies to any contract or subcontract in excess of \$100,000:

The Lessor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR 15) which prohibit the use under non-exempt Federal contracts or loans of facilities included in the EPA List of Violating Facilities. Lessor shall report violations to the Federal Transit Administration and the USEPA Assistant Administrator for Enforcement (EN0329).

2.16 CONSERVATION, P.L. 94-163

The Lessor shall recognize 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, P.L. 94-163.

2.17 AIR POLLUTION, 40 CFR PARTS 84, 85, 86, 600, VEHICLE PURCHASES

In submitting its bid and executing a contract, the Lessor assures that facilities or equipment (including motor vehicles) furnished, constructed or improved under the contract are or will be designed and equipped to limit air pollution as provided in accordance with EPA regulations as contained in 40 CFR Parts 84, 85, and 86 (Control of Air Pollution from Motor Vehicles and Engines) and 40 CFR Part 600 (Fuel Economy of Motor Vehicles) and all other applicable standards. For vehicle purchases the successful bidder may be required to submit certification to Transpo that the governing air pollution criteria has been met. This evidence and certification will be retained by Transpo.

2.18 CLEAN WATER REQUIREMENTS

(1) The Lessor 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 Lessor agrees to report each violation to Transpo and understands and agrees that Transpo will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Lessor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

2.19 RECYCLED PRODUCTS

The Lessor 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.

2.20 FEDERAL MOTOR VEHICLE SAFETY STANDARDS(FMVSS), 49 CFR PART 500, VEHICLE PURCHASES

The Lessor (whether manufacturer or dealer) certifies that the vehicles to be supplied under the contract shall conform to all applicable Federal Motor Vehicle Safety Standards of the U.S. DOT, National Highway Traffic Safety Administration, and are certified by installation of the required certification plate.

2.21 NEW BUS TESTING, 49 CFR PART 655, BUS PURCHASES

The Lessor will comply with the regulations pertinent to New Vehicle Testing Requirements (49 CFR 655). New models and modified vehicles (as defined by the regulations) shall be certified to have been tested in accordance with the applicable regulations. Bidders will be required to submit test results as a part of their bid package, if available at the time bid documents are submitted. Bidders not certifying compliance with this requirement may be considered non-responsive. The successful bidder will be required to submit final test results as accomplished on a model comparable to the units delivered under this solicitation.

OTHER STATUTORY REQUIREMENTS

2.22 BUY AMERICA PROVISION: STEEL AND MANUFACTURED PRODUCTS OTHER THAN BUSES, ROLLING STOCK AND ASSOCIATED EQUIPMENT

FTA Buy America requirements specified in 49 CFR Part 661 require that all steel and manufactured products purchased under an FTA project be produced in the United States. All items or material used in the product must be of U.S. origin and all manufacturing processes must take place in the U.S. Bidders are required to furnish a certificate indicating compliance or non-compliance with Buy America

requirements of Section 165 (a) of the Surface Transportation Act of 1982. A bid which does not include the certificate (Attachment 3.7) may be considered non-responsive.

2.23 BUY AMERICA PROVISION: BUSES, OTHER ROLLING STOCK AND ASSOCIATED EQUIPMENT (COMMUNICATIONS EQUIPMENT)

FTA Buy America requirements specified in 49 CFR Part 661 require bidders for buses, other rolling stock and associated equipment (including communications equipment) to furnish a certificate indicating compliance or non-compliance with Buy America Requirements of Section 165 (b) (3) of the Surface Transportation Assistance Act of 1982. In order to comply, at least 60 percent of the cost of components must be produced in the United States and final assembly must occur in the United States. A bid which does not include the Certificate (Attachment 3.9) may be considered non-responsive.

2.24 CARGO PREFERENCE: USE OF UNITED STATES FLAG VESSELS, 46 CFR, PART 381

The following provisions apply to any equipment, materials or commodities which may be transported by ocean vessel to carry out the contract:

The Lessor agrees to utilize privately-owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels, and the Lessor agrees to furnish within 20 days following the date of loading for shipments originating outside the United States, a legible copy of a rate, on-board commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph above to Transpo (through the Lessor in the case of subcontractor bills-of lading) and to the Division of National Cargo, Office of Market Development,

Maritime Administration, Washington, D.C., 20230, marked with appropriate identification of the project.

2.25 FLY AMERICA REQUIREMENTS

The Lessor 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 Lessors 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 Lessor 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 Lessor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

2.26 PATENT RIGHTS

Transpo's financial assistance contract with the U.S. DOT, FTA, requires that if any invention, improvement or discovery of Transpo or any of its third party contractors is conceived or first actually reduced to practice in the course of or under this contract, which invention, improvement or discovery may be patentable under the laws of the United States of America or any foreign country, Transpo shall immediately notify the FTA and provide a detailed report. The rights and responsibilities of Transpo, third party contractors and the Government with respect to such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies, and any waiver thereof.

2.27 PATENT INFRINGEMENT

Transpo will advise the Lessor of any impending patent suit and provide all information available. The Lessor shall defend any suit or proceeding brought against the Transit System based on a claim that any equipment, or any part thereof, furnished under this contract constitutes an infringement of any patent, and the Lessor shall pay all damages and costs awarded therein, excluding incidental and consequential damages, against Transpo. In case said equipment, or any part thereof, is in such suit held to constitute infringement and use of said equipment or parts is enjoined, the Lessor shall, at its own expense and at its option, either procure for Transpo the right to continue using said equipment or part, or replace same with non-infringing equipment, or modify it so it becomes non-infringing.

2.28 COMPLIANCE WITH LAWS/PERMITS AND LICENSES

The Lessor will give all notices and comply with all Federal, State, County, and local laws, ordinances, rules, regulations, standards, and order of any public authority bearing on the performance of the contract, or concerning the production of goods there under, including, but not limited to, the laws referred to in these provisions of the contract and the other contract documents. If the contract documents are at variance therewith in any respect, any necessary changes shall be adjusted by appropriate modification. Omission of any applicable laws, ordinances, rules, regulations, standards, or orders by Transpo in the contract documents shall be construed as an oversight and shall not relieve the Lessor from its obligations to meet such fully and completely. Upon request, the Lessor shall furnish to Transpo certificates of compliance with all such laws, orders and regulations. The Lessor shall be responsible for obtaining all necessary permits and licenses required for performance under the contract.

Applicable provisions of all Federal, State, County, and local laws, and of all ordinances, rules, and regulations shall govern any and all claims and disputes which may arise between person(s) submitting a bid response hereto and Transpo by and through its officers, employees, and authorized representatives, or any other persons, natural and otherwise, and lack of knowledge by any Lessor shall not

constitute a cognizable defense against the legal effect thereof.

CONTRACT ADMINISTRATION

2.29 INDEMNITY

The Lessor agrees to indemnify, defend, and hold Transpo harmless from any and all claims and lawsuits by third parties (including, but not limited to, employees and agents of Transpo and the Lessor), including the payment of all damages, expenses, penalties, fines, costs, royalties, charges and attorney's fees incurred by Transpo, whether these claims or lawsuits are based upon breach of warranty, strict liability in tort, any failure by the Lessor to comply with any laws pertaining to the contract documents, the use of patent appliances, products or processes or any breach by the Lessor of any of its other duties, representations, covenants, or other agreements in the contract documents. The Lessor will defend all suits brought upon all such claims and lawsuits and shall pay all reasonable costs and expenses incidental thereto, but Transpo shall have the right, at its option, to participate at its own expense in the defense of any suit, without relieving the Lessor of any of its obligations hereunder.

2.30 SEISMIC DESIGN AND CONSTRUCTION STANDARDS

Any new building or addition to an existing building built with Federal assistance must be designed and constructed in accordance with seismic safety standards. Each proposal or bidder for architectural and design work and/or for construction must provide a certificate to Transpo indicating that the building design or construction complies with all seismic design and construction requirements and in accordance with U.S. DOT implementing regulations, Seismic Safety, 49 CFR, Part 41.

2.31 AUDIT AND INSPECTION OF RECORDS

I. The Lessor shall permit the authorized representatives of Transpo, the U.S.

DOT, and the Comptroller General of the United States to inspect and audit all data and records of the Lessor relating to its performance under the contract until the expiration of three years after final payment under this contract.

II. The Lessor further agrees to include in all subcontracts hereunder a provision to the effect that the subcontractor agrees that Transpo, the U.S. DOT, and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any books, documents, papers, and records of the subcontractor directly pertinent to this contract. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding \$10,000 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

III. The periods of access and examination described above, for records which relate to (1) appeals under the dispute clause of this contract, (2) litigation or the settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this contract to which an exception has been taken by the U.S. Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims or exceptions have been disposed of.

2.32 CONTRACT CHANGES

Any proposed change in this contract shall be submitted to Transpo for its prior approval and Transpo will make changes only by written contract modification.

Transpo may, at any time, by a written order, and without notice to sureties, make changes, within the general scope of this contract, in any one or more of the following: (1) drawings, designs or specifications; (2) method of shipment or packing;

and (3) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for the performance of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified accordingly. Any claim for adjustment under this clause shall be asserted within 30 days from the date of receipt by the Lessor of the notification of change: provided, however, that Transpo, if it decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact; however, nothing in this clause shall excuse the Lessor from proceeding with the contract as changed.

2.33 COMPLIANCE WITH SPECIFICATIONS

The Lessor shall provide the supplies, materials, equipment, and/or services (hereafter referred to as "requirements") in conformance with the General Specifications and all Special and Technical Specifications, and the Bid or Proposal Form.

Transpo wishes to acquire and intends any Special and Technical Specifications or Scope of Work to describe the "requirements" which are complete and ready for use and/or the results of which are ready for use. All procedures, steps, or other details necessary for readiness and completeness shall be deemed included in the specifications even if not expressly set forth, and no advantage shall be taken of any omission thereof. In case of conflict with the General Specifications, the Special and Technical Specifications and the Bid Form shall govern.

2.34 INSPECTION OF SUPPLIES

I. The Lessor shall provide and maintain an inspection system acceptable to Transpo covering supplies under this contract and shall tender to Transpo for acceptance only those supplies that have been inspected in accordance with

the inspection system and have been found by the Lessor to be in conformity with contract requirements. Complete records of all inspection work performed by the Lessor shall be maintained and made available to Transpo during contract performance and for as long afterwards as the contract shall require.

II. Transpo has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. Transpo shall perform inspections and tests in a manner that will not unduly delay the work. Transpo assumes no contractual obligation to perform any inspection and test for the benefit of the Lessor.

III. The Lessor shall remove supplies rejected or required to be corrected. However, Transpo may require or permit correction in place, promptly after notice, by and at the expense of the Lessor.

IV. If the Lessor fails to promptly remove, replace, or correct rejected supplies as required, Transpo may either (1) by contract or otherwise, remove, replace, or correct the supplies and charge the cost to the Lessor or (2) terminate the contract for default. Unless the Lessor corrects or replaces supplies within the delivery schedule, Transpo may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

2.35 INSPECTION OF SERVICES

I. The Lessor shall provide and maintain an inspection system acceptable to Transpo covering the services under this contract. Complete records of all

inspection work performed by the Lessor shall be maintained and made available to Transpo during contract performance and for as long afterwards as the contract shall require.

II. Transpo has the right to inspect and test all services called for by the contract, to the extent practicable, at all places and times during the term of the contract. Transpo shall perform inspections and tests in a manner that will not unduly delay the work.

III. If any of the services do not conform to contract requirements, Transpo may require the Lessor to perform the services again or to make corrections in conformity with contract requirements at no increase in contract amount. When defects in services cannot be corrected by re-performance, Transpo may reduce the contract price to reflect the reduced value of services performed.

IV. If the Lessor fails to promptly perform the services again or to make such corrections as required by Transpo in conformity with contract requirements, Transpo may, by contract or otherwise, perform the services and charge to the Lessor any cost incurred by Transpo that is directly related to the performance of such service or, terminate the contract for default.

2.36 TIMELY PERFORMANCE/FORCE MAJEURE

I. The timely receipt of Transpo's requirements is essential. If the requirements are not received on time in accordance with the contracted delivery schedule, Transpo may cancel the unfilled portion of the contract for cause, purchase substitute requirements elsewhere, and recover from Lessor any increased costs thereby incurred together with all resulting incidental and consequential damages. Transpo may also terminate for cause, purchase substitute requirements elsewhere and recover costs and damages for breach of Lessor's obligations.

II. The Lessor shall be entitled to a reasonable extension of time from Transpo for the delays caused by damage to Lessor's and/or Transpo's property caused by fire, lightning, earthquakes, tornados and other extreme weather conditions, power failures, riots, acts of war and strikes and lockouts beyond the control of the Lessor and his subcontractors. Any delay other than one mentioned above shall constitute a breach of the Lessor's contractual obligation.

2.37 TERMINATION FOR CONVENIENCE - FIXED PRICE CONTRACT

The following clause is incorporated in any fixed-price materials or service contract over \$25,000:

Transpo, by written notice, may terminate this contract, in whole or in part, when it is in Transpo's interest. If this contract is terminated, the rights, duties, and obligations of the parties, including compensation to the Lessor, shall be in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date of this contract. If a fixed-price services contract, Transpo shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

2.38 TERMINATION FOR CONVENIENCE - FIXED PRICE CONTRACT

Transpo may terminate performance of work under this contract in whole or, from time to time, in part if Transpo determines that a termination is in Transpo's best interest. Transpo shall terminate by delivering to the Lessor a Notice of Termination specifying the extent of termination and the effective date.

After receipt of a Notice of Termination, and except as directed by Transpo, the Lessor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

I. Stop work as specified in the notice.

- II. Place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
- III. Terminate all subcontracts to the extent they relate to the work terminated.
- IV. Assign to Transpo, as directed by it, all right, title, and interest of the Lessor under the subcontracts terminated, in which case Transpo shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- V. With approval or ratification to the extent required by Transpo, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification shall be final for purposes of this clause.
- VI. As directed by Transpo, transfer title and deliver to Transpo (a) the fabricated or unfabricated parts, work in progress, completed work, supplies, and other material produced or acquired for the work terminated, and (b) the completed or partially completed plans, drawing, information, and other property that, if the contract had been completed, would be required to be furnished to Transpo.
- VII. Complete performance of the work not terminated.
- VIII. Take any action that may be necessary, or that Transpo may direct, for the protection and preservation of the property related to this contract that is in the possession of the Lessor and in which Transpo has or may acquire an interest.
- IX. Use its best efforts to sell, as directed or authorized by Transpo, any property of the types referred to in subparagraph (VI) above;

PROVIDED, however, that the Lessor (a) is not required to extend credit to any purchaser and (b) may acquire the property under the conditions prescribed by, and at prices approved by, Transpo. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Transpo under this contract, credited to the price or cost of the work, or paid in any other manner directed by Transpo.

Settlement of claims under this Termination for Convenience clause shall be in accordance with paragraphs (c) through (m) of the clause contained in the Federal Acquisition Regulation (FAR), Part 52, subpart 52.249-2, except that wherever the word "Government" or "Contracting Officer" appears it shall be deleted and the word "Transpo" shall be substituted in lieu thereof.

2.39 BONDING REQUIREMENTS

For Bonding requirements, refer to Transpo ' bonding requirements for bid guaranty and performance bond, including the required performance bond form, found in the contract bid documents.

2.40 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by U.S. DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by U.S DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, 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 Lessor shall not perform any act, fail to perform any act, or refuse to comply with any Transpo requests which would cause Transpo to be in violation of the FTA terms and conditions.

2.41 COMPLIANCE WITH FEDERALLY REQUIRED CLAUSES AND REQUIREMENTS

The Lessor is responsible for ensuring its compliance with all applicable FTA requirements. Additionally, the Lessor is responsible for ensuring that subcontractors, at as many tiers of the project as required, perform in accordance with the terms, conditions and specifications of the contract, including all applicable FTA requirements.

Upon request of Transpo or the FTA, the Lessor shall provide evidence of the steps it has taken to ensure its compliance with the FTA requirements, as well as evidence of the steps it has taken to ensure subcontractor performance, and/or submit evidence of subcontractor's compliance, at all tiers.

2.42 AMERICANS WITH DISABILITIES ACT (ADA)

The Lessor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; 49 USC § 5301(d); and any implementing requirements the FTA may issue. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this agreement.

2.43 PROMPT PAYMENT AND RETURN OF RETAINAGE

The Lessor agrees to pay each subcontractor under this contract for satisfactory performance of its contract no later than fifteen (15) calendar days from the receipt of each payment the Lessor receives from Transpo. The Lessor agrees further to return retainage payments to each subcontractor within fifteen (15) calendar 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 Transpo. This clause applies to both DBE and non-DBE subcontractors.

It is the responsibility of the subcontractors to notify Transpo's DBE Liaison Officer

(Chris Kubaszak 574-239-2309) of Lessor noncompliance with the above prompt payment provisions. Upon receipt of such notification, Transpo will investigate and take appropriate action.

2.44 DEFAULT - FIXED PRICE MATERIAL AND SERVICE CONTRACTS

The following clause is incorporated in any fixed price materials or service contract over \$25,000:

I Transpo may, subject to paragraphs (A), (B) and (C) below, by written notice of default to the Lessor, terminate this contract in whole or in part if the Lessor fails to:

- A. Deliver the supplies or to perform the services within the time specified in this contract or any extension;
- B. Make progress, so as to endanger performance of this contract; or
- C. Perform any of the other provisions of this contract.

Transpo's right to terminate this contract under (A) and (B) above may be exercised if the Lessor does not cure such failure within ten (10) days, or more if authorized in writing by Transpo, after receipt of the notice from Transpo specifying the failure.

II. If Transpo terminates the contract in whole or in part, it may acquire, under the terms and in the manner Transpo considers appropriate, supplies or services similar to those terminated, and the Lessor will be liable to Transpo for any excess costs for those supplies or services. However, the Lessor shall continue the work not terminated.

III. Except for defaults of subcontractors at any tier, the Lessor shall not be liable for any excess costs if the failure to perform the contract arises from

causes beyond the control and without the fault or negligence of the Lessor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Lessor.

IV. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Lessor and subcontractor, and without the fault or negligence of either, the Lessor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Lessor to meet the required delivery schedule.

V. If this contract is terminated for default, Transpo may require the Lessor to transfer title and deliver to Transpo, as directed by Transpo, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" herein) that the Lessor has specifically produced or acquired for the terminated portion of this contract. Upon direction of Transpo, the Lessor shall also protect and preserve property in its possession in which Transpo has an interest.

VI. Transpo shall pay contract price for the completed supplies delivered and accepted. The Lessor and Transpo shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. Transpo may withhold from these amounts any sum Transpo determines to be necessary to protect Transpo against loss, because of outstanding liens or claims of former lien holders.

VII. If, after termination, it is determined that the Lessor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Transpo.

VIII. The rights and remedies under this clause are in addition to any other rights and remedies provided by law or under this contract.

2.45 TERMINATION - COST REIMBURSEMENT CONTRACTS

The following clause is incorporated in any cost reimbursement contract:

Transpo may terminate performance of work under this contract in whole or, from time to time, in part, if:

- I. Transpo determines that a termination is in Transpo's interest; or
- II. The Lessor defaults in performing the contract and fails to cure the default within ten (10) days (unless extended by Transpo) after receiving a notice specifying the default. Default includes failure to make progress in the work so as to endanger performance.

Transpo shall terminate by delivering to the Lessor a Notice of Termination specifying whether the termination is for default of the Lessor or for convenience of Transpo, the extent of termination, and the effective date. If, after termination for default, it is determined that the Lessor was not in default or that the Lessors failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Lessor as set forth in the Force Majeure clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Transpo.

After receipt of a Notice of Termination, and except as directed by Transpo, the Lessor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause.

- I. Stop work as specified in the Notice.
- II. Place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
- III. Terminate all subcontracts to the extent they relate to the work terminated.
- IV. Assign to Transpo, as directed by it, all right, title, and interest of the Lessor under the subcontracts terminated, in which case Transpo shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- V. With approval or ratification to the extent required by Transpo, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification shall be final for purposes of this clause.
- VI. As directed by Transpo, transfer title and deliver to Transpo (a) the fabricated or unfabricated parts, work in progress, completed work, supplies, and other material produced or acquired for the work terminated, and (b) the completed or partially completed plans, drawing, information, and other property that, if the contract had been completed, would be required to be furnished to Transpo.
- VII. Complete performance of the work not terminated.
- VIII. Take any action that may be necessary, or that Transpo may direct, for the protection and preservation of the property related to this contract that is in the possession of the Lessor and in which Transpo has or may acquire an interest.
- IX. Use its best efforts to sell, as directed or authorized by Transpo, any

property of the types referred to in subparagraph (6) above; PROVIDED, however, that the Lessor (a) is not required to extend credit to any purchaser and (b) may acquire the property under the conditions prescribed by, and at prices approved by, Transpo. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Transpo under this contract, credited to the price or cost of the work, or paid in any other manner directed by Transpo.

Settlement of claims under this Termination - Cost Reimbursement Contract clause shall be in accordance with paragraphs (c) through (m) of the clause contained in the Federal Acquisition Regulation (FAR), Part 52, subpart 52.249-6, except that wherever the word "Government" or "Contracting Officer" appears it shall be deleted and the word "Transpo" shall be substituted in lieu thereof.

2.46 DISPUTES

I. During the procurement process, proposers may address claims, protests, or disputes may be addressed to the FTA only when such claim is in accordance with Circular 4220.1F.

II. Transpo 's Bid Protest procedures, as contained within its purchasing manual, states:

During the procurement process, the proposer or provider shall have a minimum of fifteen (15) days following publication of the Invitation for bid, RFP, or Request for Qualifications to request clarifications, changes, or approved equals.

The request for clarification, change or approved equals shall be submitted in writing to the individual named in the procurement document as the Contract Administrator, along with a narrative discussing the reason for request, the advantage to Transpo and any pertinent drawings or data substantiating the reasons for the request.

The Contract Administrator or his/her representative will respond within five (5) days of the date of receipt of the request, with copies of the original request and the response being forwarded to all interested individuals or firms (those who have requested bid/proposal documents).

The response of the Contract Administrator will be final.

In the event a supplier of goods or services wishes to protest the award of a contract, the supplier or proposer shall make such protest within ten (10) days of the contract award date. Such protests shall be written and sent by certified mail to the Contract Administrator and shall specify, at a minimum:

- Name and Title of Protestor
- Name and Address of Business
- Telephone Number
- Nature and Extent of Protest
- Action Requested

The General Manager for Transpo will review the protest and respond within ten (10) working days of the receipt of the protest.

The decision issued by the General Manager will be final.

2.47 CONTRACT ADMINISTRATION

The Contract Administrator for the bid of .

SOUTH BEND PUBLIC TRANSPORTATION CORPORATION

IFB/RFP NO.

BID ATTACHMENT 3.1

AFFIDAVIT AND INFORMATION REQUIRED OF BIDDERS

AFFIDAVIT OF NON-COLLUSION

I hereby swear (or affirm) under the penalty for perjury:

1. That I am the bidder (if the bidder is an individual, a partner in the bid (of the bidder is a partnership), or an officer or employee of the bidding corporation having authority to sign on its behalf (if the bidder is a corporation);
2. That the attached bid or bids has been arrived at by the bidder independently and have submitted without collusion and without any agreement, understanding, or planned common course of action with any other vendor of materials, supplies, equipment, or service described in the invitation to bid, designed to limit independent bids or competition;
3. That the contents of the bid or bids has not been communicated by the bidder or its employees or agents to any person not an employee or agent of the bidder or its surety on any bond furnished with the bid or bids, and will not be communicated to any such person prior to the official opening of the bid or bids; and
4. That I have fully informed myself regarding the accuracy of the statements made in the affidavit.

SIGNED

FIRM NAME

Subscribed and sworn to before me this __day of_____,20__.

Notary Public

My commission expires_____, 20

Proposer's E.I.Number_____.

(number used on employer's Quarterly Federal Tax Return)

SOUTH BEND PUBLIC TRANSPORTATION CORPORATION

IFB/RFP NO.

BID ATTACHMENT 3.2

INELIGIBLE LESSORS CERTIFICATE

"The _____
_____(name of the third party Lessor)

hereby certifies that it IS/IS NOT (circle one) included on the U.S. Comptroller General's Consolidated List of Persons or Firms Currently Debarred for Violations for Various Public Contracts Incorporating Labor Standard Provisions.

COMPANY NAME: _____

AUTHORIZED OFFICIAL: _____

TITLE: _____

SIGNATURE: _____

DATE: _____

SOUTH BEND PUBLIC TRANSPORTATION CORPORATION

IFB/RFP NO.

BID ATTACHMENT 3.3

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
INELIGIBILITY AND VOLUNTARY EXCLUSION

The Lessor _____ certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or involuntarily excluded from participation in this transaction by any Federal Department or agency. Where the Lessor is unable to certify to any of the statements in this certification, such Contractor shall attach an explanation to this proposal.

Lessor (Name)

certifies or affirms the truthfulness and accuracy of the contents of the statement submitted on or with this certification and understands that the provisions of 31 U.S.C. Sections 3801 ET Seq. are applicable thereto.

AUTHORIZED OFFICIAL: _____

SIGNATURE: _____

ATTORNEY'S SIGNATURE: _____

DATE: _____

(Note: The above Certification is required to be submitted by the bidder for any contract over \$25,000 with TRANSPO .)

SOUTH BEND PUBLIC TRANSPORTATION CORPORATION

IFB/RFP NO.

BID ATTACHMENT 3.4

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
INELIGIBILITY AND VOLUNTARY EXCLUSION
LOWER TIER COVERED TRANSACTIONS

The Lower Tier Participant (Applicant for a third party subcontract or sub-grant under an FTA project), _____, certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or involuntarily excluded from participation in this transaction by any Federal Department or agency.

Where the Lower Tier Participant (Applicant for a third party subcontract or sub-grant under the FTA project), is unable to certify to any of the statements in this certification, such Participant shall attach an explanation to this proposal.

THE LOWER TIER PARTICIPANT (APPLICANT FOR A THIRD PARTY SUBCONTRACT OR SUB-GRANT UNDER AN FTA PROJECT)_____ CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENT SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C., SECTION 3801 ET SEQ. ARE APPLICABLE THERETO.

AUTHORIZED OFFICIAL: _____

SIGNATURE: _____

ATTORNEY'S SIGNATURE: _____

DATE: _____

(Note: The above Certification shall be obtained by the bidder from any sub-contractor for a sub contract over \$25,000 part of bidders proposed bid).

SOUTH BEND PUBLIC TRANSPORTATION CORPORATION
IFB/RFP NO.
BID ATTACHMENT 3.5
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
INELIGIBILITY AND VOLUNTARY EXCLUSION
UPPER TIER COVERED TRANSACTIONS

The Lower Tier Participant (Applicant for a third party subcontract or sub-grant under an FTA project), _____, certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or involuntarily excluded from participation in this transaction by any Federal Department or agency.

Where the Upper Tier Participant (Applicant for a third party subcontract or sub-grant under the FTA project), is unable to certify to any of the statements in this certification, such Participant shall attach an explanation to this proposal.

THE UPPER TIER PARTICIPANT (APPLICANT FOR A THIRD PARTY SUBCONTRACT OR SUB-GRANT UNDER AN FTA PROJECT)_____ CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENT SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C., SECTION 3801 ET SEQ. ARE APPLICABLE THERETO.

AUTHORIZED OFFICIAL: _____

SIGNATURE: _____

ATTORNEY'S SIGNATURE: _____

DATE: _____

(Note: The above Certification shall be obtained by the bidder from any sub-contractor for a sub contract over \$100,000 part of bidders proposed bid).

SOUTH BEND PUBLIC TRANSPORTATION CORPORATION
IFB/RFP NO.
BID ATTACHMENT 3.6

LOBBYING CERTIFICATION

The Lessor certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or shall be paid, by or on behalf of the Lessor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract. grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence 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 Lessor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients of contracts over \$100,000 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 section 1352, title 31, U.S. Code. 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.

Date:
Signature:
Name:
Title:

(Note: Lessors are required, pursuant to Federal law, to include the above language in subcontracts over \$100,000 and to obtain this lobbying certificate from each subcontractor being paid \$100,000 or more under this contract.)

SOUTH BEND PUBLIC TRANSPORTATION CORPORATION
IFB/RFP NO.
BID ATTACHMENT 3.7
BUY AMERICA CERTIFICATION
CERTIFICATION FOR PROCUREMENT OF STEEL OR
MANUFACTURED PRODUCTS

This procurement is subject to Federal Transit Administration requirements in 49 CFR Part 661. A Buy America Certificate, as shown below, must be completed and submitted with the bid. A bid which does not include the certificate shall be considered non-responsive.

Certification of Compliance with Section 165(a)

The proposer hereby certifies that it shall comply with the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, and the applicable regulations in 49 CFR Part 661.

DATE:

COMPANY NAME:

AUTHORIZED REPRESENTATIVE NAME:

TITLE:

SIGNATURE:

Certificate for Non-Compliance with Section 165(a)

The proposer certifies that it cannot comply with the requirements of section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, and the applicable regulations in 49 CFR Part 661.

DATE:

COMPANY NAME:

AUTHORIZED REPRESENTATIVE NAME:

TITLE:

SIGNATURE:

(Note: The above Certification is required of bidders for all contracts except for buses, other rolling stock and associated control/communications equipment.)

SOUTH BEND PUBLIC TRANSPORTATION CORPORATION

IFB/RFP NO.
ATTACHMENT 3.8

SEISMIC DESIGN AND CONSTRUCTION STANDARDS ASSURANCE

_____ hereby certifies and affirms that

the ____ Design ____ Construction work proposed herein is in full compliance with the seismic design and construction standards and in accordance with 49 CFR, Part 41.

Signed this ____ day of _____, 20__.

Signature:

Title:

Address:

SOUTH BEND PUBLIC TRANSPORTATION CORPORATION

IFB/RFP NO.
BID ATTACHMENT 3.9

BUY AMERICA CERTIFICATION
CERTIFICATION FOR PROCUREMENT OF BUSES, OTHER
ROLLING STOCK, AND COMMUNICATIONS EQUIPMENT

This procurement is subject to Federal Transit Administration requirements in 49 CFR Part 661. A Buy America Certificate, as shown below, must be completed and submitted with the bid. A bid which does not include the certificate shall be considered non-responsive.

Certification of Compliance with Section 165 (b) (3)

The proposer hereby certifies that it shall comply with the requirements of Section 165 (b) (3) of the Surface Transportation Assistance Act of 1982, as amended, and the applicable regulations in 49 CFR Part 661.

DATE:
COMPANY NAME:
AUTHORIZED REPRESENTATIVE NAME:
TITLE:
SIGNATURE:

Certificate for Non-Compliance with Section 165(a)

The proposer certifies that it cannot comply with the requirements of section 165(b) (3) of the Surface Transportation Assistance Act of 1982, as amended, and the applicable regulations in 49 CFR Part 661.

DATE:
COMPANY NAME:
AUTHORIZED REPRESENTATIVE NAME:
TITLE:
SIGNATURE:

(Note: The above Certification is to be furnished only by bidders for buses, other rolling stock and associated control or communications equipment.)

SOUTH BEND PUBLIC TRANSPORTATION CORPORATION

IFB/RFP NO.
ATTACHMENT 3.10

General Terms and Conditions of Contract

The bidder and Transpo agree that the awarded bidder shall enter into a contract with Transpo to be executed after awarding of the bid (the "Contract"). The parties agree that as part of the Contract, the following contractual terms and conditions shall apply:

1. Venue and Choice of Law. Any action to enforce the Contract or this Request for Proposal shall be brought and heard exclusively in the St. Joseph County Circuit or Superior Court. Any action between the parties regarding the Contract, this Request for Proposal, or for any other matter shall be governed exclusively by Indiana law.
2. Transpo shall not be responsible to pay bidder's attorney's fees, costs or expenses related to any dispute between the parties regarding the Contract or Request for Proposal.
3. That Transpo, at its sole discretion, may reject, strike and remove any contractual requirements that would require arbitration or mediation as part of any Contract.
4. That the terms and specifications of this Request for Proposal are incorporated into the Contract and, in the event of any inconsistencies in terms, the terms and conditions of the Request for Proposal shall prevail and supercede.
5. The bidder shall be required, at Transpo's sole discretion, to provide any and all certificates of insurance or evidence of reasonable surety in an amount to be solely determined by Transpo for any award of contract or bid.
6. The successful bidder must include with its bid submission a proposed Contract between the proposed bidder and Transpo with the requirements of the Request for Proposal and these General Terms and Conditions.

SOUTH BEND PUBLIC TRANSPORTATION CORPORATION
IFB/RFP NO.

BID ATTACHMENT 3.11

BIDDER'S LIST

FIRM NAME _____

FIRM ADDRESS _____

ARE YOU A DBE? _____ YES _____ NO

ARE YOU A SMALL BUSINESS? _____ YES _____ NO

NUMBER OF EMPLOYEES _____

AGE OF FIRM _____

ANNUAL GROSS RECEIPTS:

_____ Less than \$250,000 _____ \$250,000 to \$500,000

_____ \$500,001 to \$1,000,000 _____ More than \$1,000,000

Authorized Signature: _____ Date: _____

ALL PRIME LESSORS AND SUBCONTRACTORS ARE REQUIRED TO COMPLETE THIS FORM. FAILURE TO DO SO AT THE TIME OF THE BID OPENING WILL RESULT IN A **NO BID**.

