



Request for Proposals (RFP) #2021-02

The Benzie Transportation Authority (BTA) has formed a consortium to purchase **Up to (4) ADA Trolleys** and is requesting price quotes for 2019 or newer 20-24 seat trolleys. Proposals must be emailed to Bill Kennis, BTA executive director, at bill@benziebus.com by 5 pm on April 26, 2021. The vehicles must be new and unused, and the proposal price must be good for at least ninety days after the submission deadline. Late submissions will not be accepted. Award will be to the best value for proposals that meet (score) at least 80% of the attached minimum evaluation criterion.

Direct all questions in writing to Bill Kennis, BTA executive director, at bill@benziebus.com by 5 pm on April 16, 2021. All questions and BTA's responses will be sent to all vendors sent a Request For Proposal. Verbal comments are not part of this solicitation.

The selected dealer may have to have a third-party subcontract approved by the Michigan Department of Transportation.

BTA reserves the right to accept or reject any or all quotes for sound, documentable, business reasons and to waive any minor irregularities or informalities. Award will only be to a responsive and responsible dealer.

**Benzie Transportation Authority
14150 US Highway 31
Beulah, Michigan 49617
(231) 325-3000**

Request for Proposal

Date: April 13, 2021
For: ADA equipped Trolley
Sealed Proposal Due: April 13, 2021 5 p.m.
Public Proposal Opening: April 13, 2021 5:15 p.m. @
14150 US Highway 31, Beulah, MI 49617
Contact People: Bill Kennis, Executive Director
Chad Hollenbeck, Operations Manager

The bidder hereby offers to furnish the goods and/or services described and for the price stated:

Up to four (4) ADA equipped passenger trolleys

to conform to specifications which are attached and incorporated as part of this bid. Benzie Transportation Authority reserves the right to accept or reject any and all bids, or parts thereof, and to waive any irregularities in the bid except those specifically mentioned in the sealed bid instructions.

This section must be included with your bid!!

I, the undersigned, hereby state that I have full authority to execute this bid on behalf of the bidder and that all attached contracts and clauses will be acknowledged and complied with.

Company:

Address: _____ City: _____ State: _____

Zip code: _____

Telephone: _____ Fax: _____ Email: _____

Title: _____ Fed ID# _____

Signature: _____ Date: _____

This offer is accepted by the issuance of a 3rd party contract which will serve as the “Notice to Proceed”.

DBE, minority-owned and female-owned firms and businesses are encouraged to respond to this solicitation.

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SECTION 1: PROCUREMENT SCHEDULE

The following schedule represents BENZIE TRANSPORTATION AUTHORITY's proposed procurement time line:

April 13, 2021 RFP notices sent to potential bidders/RFP to be advertised.

April 16, 2021 – Request for approved equal and question submission.

April 19, 2021 Responses to request for approved equal and questions issued.

April 26, 2021 5 p.m. Proposals due at BENZIE TRANSPORTATION AUTHORITY Office

April 26, 2021 5:15 p.m. Public proposal opening – 5:15 p.m.,

BENZIE TRANSPORTATION AUTHORITY Office
(14150 US Highway 31, Beulah, Michigan, 49617.)

April 28, 2021 Low bidder notified of recommended selection.

May 3, 2021 (est.) Contract awarded upon State approval of Third-Party Contract

July 1, 2021 1-2 Vehicles delivered

January 31, 2023 Contract completed

SECTION 2: INSTRUCTIONS TO BIDDERS

A. DEFINITIONS

The following are general definitions used in this procurement document and may not all relate directly to the item being procured.

1. RFP: Request for Proposal
2. Procuring Agency: BENZIE TRANSPORTATION AUTHORITY (BTA)
3. Assignability: BTA reserves the right to assign up to (2) vehicles awarded under this Contract to Harbor Transit. This assignment, should it occur, shall be agreed to by BTA and the contractor. Once assigned, each agency will enter into its own contract and be solely responsible to contractor for obligations to the Trolleys assigned. BTA's right of assignment will remain in force over the 18 months or until completion of the contract to include options, whichever occurs first. BTA shall incur no financial responsibility in connection with contracts issued by another public agency. The public agency shall accept sole responsibility for placing orders or payments to the Contractor. Attachment G is a listing of these agencies which are authorized to order from this contract.
4. Contracting Officer: The person who is executing this contract on behalf of BENZIE TRANSPORTATION AUTHORITY and who has complete and final authority except as limited herein.
5. Contractor: The successful bidder who is awarded a contract for providing all equipment described in the contract documents.
6. Authorized Signee: The person who is executing this contract on behalf of the bidder/contractor and who is authorized to bind the bidder/contractor.
7. MDOT: Michigan Department of Transportation
8. Supplier: Any manufacturer, company, or agency providing units, components, or subassemblies for inclusion in the equipment. Supplier items shall require qualification by type and acceptance tests in accordance with requirements.
9. Work: Any and all labor, supervision, services, materials, machinery, equipment, tools and supplies, and facility called for by the contract and necessary to the completion thereof.
10. Defect: Patent or latent malfunction or failure in manufacture or design of any component or subsystem that causes a coach to cease operating or causes it to operate in a degraded mode.
11. Related Defect: Damage inflicted on any component or subsystem as a direct result of a defect.

B. Tax Exempt: Bidders are informed that, by Public Act 196 of 1986, BENZIE TRANSPORTATION AUTHORITY is exempt from state sales taxes and federal excise taxes.

C. Approved Equals and Deviations from Specifications:

If the bidder proposes to submit a bid containing "approved equals" or "deviations" from the specific requirements of these specifications, the bidder must obtain such approval, confirmed in writing, prior to the date of bid opening.

Requests for "approved equals" and clarification must be received by BENZIE TRANSPORTATION AUTHORITY in writing by April 16, 2021. Any request for approved equal must be fully supported with technical data, test results or other pertinent information, as evidence that the substitute offered is equal to, or better than, the specification requirements. Any unapproved deviations, exceptions, substitutions, alternates, or conditional qualifications contained in a bid may be cause for rejection. The decision of BENZIE TRANSPORTATION AUTHORITY, as represented by the Executive Director, shall be final with respect to whether

any proposed deviations from the specifications are acceptable.

BENZIE TRANSPORTATION AUTHORITY reserves the right to postpone the bid opening or receipt of bids for its own convenience.

Changes to the specifications will be made by addendum only and issued by BENZIE TRANSPORTATION AUTHORITY's Executive Director in writing.

Bidders may make appointments to discuss project specifications. This, however, does not relieve them from providing written documented requests.

All requests for approved equals or clarification of specifications should be addressed to:

Bill Kennis, Executive Director
BENZIE TRANSPORTATION AUTHORITY
14150 US 31 Hwy,
Beulah, Michigan 49617
(231) 325-3000 phone
(231) 325-3007 fax
bill@benziebus.com

BENZIE TRANSPORTATION AUTHORITY shall reply to all requests for approved equals or clarification of specifications by April 16, 2021. A copy of the response shall be sent to the requestor and all contractors who requested a copy of the original solicitation.

D. PROPOSALS

1. All proposals shall be subject to all requirements of the contract documents and these instructions to bidders.
2. The contract will be awarded to a responsible bidder on the basis of the best value according to the contract documents.
3. One (1) electronic copy shall be submitted by April 26, 2021.

E. CONDITIONAL Proposals

Conditional bids, or those which take exception to the specifications, will be considered non-responsive and may be rejected unless specific approval from BENZIE TRANSPORTATION AUTHORITY is requested in writing by the bidder at least three (3) days prior to bid due date. All other eligible bidders are to be notified of any approved exceptions to the specifications.

F. CORRECTIONS

Erasures or other changes in the bids must be explained or noted over the signature of the bidder.

G. TIME FOR RECEIVING PROPOSALS

1. Proposals received prior to the advertised hour of opening will be securely kept and sealed. The officer whose duty it is to open them will decide when the specified time has arrived, and no bid received thereafter will be considered.
2. Bidders are cautioned that, while telegraphic modifications of bids may be received as provided above, such modifications, if not explicit and if any sense subject to misinterpretation,

shall make the bid so modified or amended, subject to rejection.

H. WITHDRAWAL OF PROPOSALS

Proposals may be withdrawn upon written request received by BENZIE TRANSPORTATION AUTHORITY prior to the time fixed for bid due date. No bid may be withdrawn for a period of sixty (60) days after the time set herein for bid due date.

I. PROPOSAL ACCEPTANCE OR REJECTION

BENZIE TRANSPORTATION AUTHORITY reserves the right to accept any bids or to reject any or all bids or postpone bid due date or to contract on such basis as BENZIE TRANSPORTATION AUTHORITY deems to be in its best interest.

J. BASIS OF AWARD

A firm-fixed-price contract is awarded to the responsible bidder whose proposal, conforming with all the material terms and conditions of the RFP, is then scored per attachment F & the best value for consortium transit members.

K. SINGLE BID

In the event a single proposal is received, BENZIE TRANSPORTATION AUTHORITY will conduct a price analysis of the proposal. A price analysis is the process of examining the proposal and evaluating costs based on the comparison and established or competitive price of other similar procurements. The comparison must be made to a purchase of similar quantity and quality, involving similar specifications. Where a difference exists, a detailed analysis must be made of this difference and costs attached hereto.

Upon completion of the price analysis, award will be processed if price is determined as fair and reasonable and MDOT approves.

L. LIMITATIONS

This "Request for Proposal" does not commit BENZIE TRANSPORTATION AUTHORITY to award a contract, to pay any cost incurred in the preparation of a bid, or to preclude BENZIE TRANSPORTATION AUTHORITY from canceling, in part or in its entirety, this "Invitation for Bid" if it is in the best interest of BENZIE TRANSPORTATION AUTHORITY.

M. NOTICE TO PROCEED

Upon acceptance by BENZIE TRANSPORTATION AUTHORITY of the bid, a 3rd party contract will be awarded for furnishing the item described in the bid in strict conformity with the specifications, these instructions, and the contract bid. The signed and MDOT approved 3rd party contract will serve as the "Notice to Proceed".

N. CONTRACT DOCUMENTS The Contract Documents consist of the "RFP" and all sections, attachments, and appendices included with these instructions.

O. PROPOSAL AS CONTRACT

Each bid will be submitted with the understanding that acceptance in writing by BENZIE TRANSPORTATION AUTHORITY of the offer to furnish the equipment described therein shall constitute a contract between the successful bidder and BENZIE TRANSPORTATION AUTHORITY which shall bind the bidder to furnish and deliver the equipment at the bid price in accordance with the bid specifications, general conditions and general requirements detailed in the

bid specification package or subsequently added or made a part thereof. There will be no price changes allowed once the bids have been opened.

P. PROPOSAL DISCLOSURE

All information on a bidder's proposal, except proprietary financial information and responsibility, is subject to disclosure under the provisions of Public Act No. 442 of 1976 known as the "Freedom of Information Act". This Act also provides for the complete disclosure of contracts and attachments thereto.

Proposals may be inspected at the office of the BENZIE TRANSPORTATION AUTHORITY Office after the award is completed. Inspections will be during office hours and within specified time limits as directed by BENZIE TRANSPORTATION AUTHORITY.

Information available for inspection shall include the tabulated price bids and copies of the bid documents subject to the exceptions listed above and proprietary legal constraints.

Q. POINT OF CONTACT

All communications, contracted items, contracts, documentation submittals, and correspondence shall take place between the bidder and:

Bill Kennis, Executive Director
BENZIE TRANSPORTATION
AUTHORITY
14150 US 31 Hwy
Beulah, Michigan 49617
(231) 325-3000 (p)
(231) 325-3007 (f)
bill@benziebus.com

R. IRAN LINKED BUSINESS

The bidder certifies that it *is* ____, *is not* ____ an Iran linked business as defined in MCL129.312.

GENERAL

This contract is for the commodities or services specified hereunder to be furnished during the period as noted under Contract Term. Orders for delivery will be issued directly to the Contractor by the agency.

In order of precedence, the contract will consist of published addenda modifying the RFP, the contents of the RFP, and the Contractor's response to the RFP requirements. In case of disagreement, the RFP as modified by the published addenda will rule. The Agency shall not be bound by any part(s) of any bidder's response to the RFP which contained information, options, conditions, terms, or prices not requested nor required in the RFP.

The failure of a party to insist upon strict adherence to any term of this contract shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term or any other term of the contract.

This contract may not be modified, amended, extended, or augmented except by a writing executed by the parties hereto, and any breach or default by a party shall not be waived or released other than in writing signed by the other party.

Each provision of a resulting contract shall be deemed to be severable from all other provisions of the contract and, if one or more of the provisions of the contract shall be declared invalid, the remaining provisions of the contract shall remain in full force and effect.

This contract shall in all respects be governed by, and construed in accordance with, the laws of the State of Michigan.

CONTRACT TERM

The term of the contract will be for an 18-month period and will commence with the issuance of the 3rd party contract which will serve as the Notice to Proceed.

ISSUING OFFICE

BENZIE TRANSPORTATION AUTHORITY is the sole point of contact with regard to all procurement and contractual matters relating to the commodities and/or services described herein and is the only office authorized to change, modify, amend, alter, clarify, etc., the specifications, terms, and conditions of this contract. The Agency will remain the SOLE POINT OF CONTACT throughout the procurement process. All communications covering this procurement must be addressed to:

Bill Kennis, Executive Director
Benzie Transportation Authority
14150 US 131 Hwy
Cadillac, Michigan 49617

CONTRACT ADMINISTRATOR

Upon receipt at the Agency of the properly executed Contract Agreement(s), it is anticipated that the Agency will direct Bill Kennis to authorize and administer the contract on a day-to-day basis during the term of the agreement.

INCURRING COSTS

The Agency shall not be liable for any cost incurred by the bidder prior to signing of a contract. The Agency's fiscal year is 10/1/21 through 9/30/22. The prospective Contractor(s) should realize that payments in any given fiscal year are contingent upon enactment of legislative appropriations. Total liability of the Agency is limited to terms and conditions of this contract.

NEWS RELEASES

News releases pertaining to this contract or project to which it relates shall not be made without prior written approval by the Agency, and then only in accordance with the explicit written instructions from the Agency. No results of the activities associated with this contract are to be released without prior written approval of the Agency and then only to persons designated.

PRIME CONTRACTOR RESPONSIBILITIES

The prime Contractor will be required to assume responsibility for all contractual activities offered in this contract, whether or not that Contractor performs them. Further, the Agency will consider the prime Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated contract. If any part of the work is to be subcontracted, this contract will include a list of subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The Agency reserves the right to approve subcontractors and to require the primary Contractor to replace subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the subcontractor to all provisions of the contract. Any change in subcontractors must be approved by the Agency, in writing, prior to such change.

ASSIGNMENT

The Contractor shall not have the right to assign this contract or to assign or delegate any of its duties or obligations under this contract to any other party (whether by operation of law or otherwise), without the prior written consent of the Agency. Any purported assignment in violation of this Section shall be null and void. Further, the Contractor may not assign the right to receive money due under the contract without the prior written consent of the Agency.

DELEGATION

The Contractor shall not delegate any duties or obligations under this contract to a subcontractor other than a subcontractor named in the bid unless the Agency has given written consent to the delegation.

DISCLOSURE

All information in a bidder's proposal and any contract resulting from this RFP is subject to the provisions of the Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, *et seq.*

RECYCLED MATERIALS

Bidders are encouraged to offer bids for products containing recovered materials suitable for the intended use. By doing so, the bidder warrants the product(s) as at least functionally equivalent to the bid

specifications. "Recovered material" is defined as post-consumer waste (any product generated by a business or consumer which have served their intended end use, and which have been separated or diverted from solid waste for the purpose of collection, recycling, and disposition). and secondary waste (industrial by-products as in wastes generated after completion of a manufacturing process that would normally not be reused). All bidders are requested to indicate on the space provided on the Item Listing the percentage of recycled materials, if any, contained in each item bid.

SPECIFICATIONS

Definite Specifications - All commodities and services to be furnished thereunder shall conform to the specifications as noted in the specifications attached.

All vehicles must be new and of the manufacturer's current models in production at the time of order. All standard or optional equipment to be included shall be as advertised by the manufacturer (OEM) and factory installed and shall not consist of substitute or after market equipment. Equipment not available from the factory may be dealer installed, in compliance with specifications.

MINIMUM ORDER

The minimum order is one ADA passenger Trolley.

F.O.B. POINT

Prices are "F.O.B. Delivered" with transportation charges prepaid on all orders of one (1) unit or more.

DELIVERY

The vehicles ordered from this contract shall be for a current production model at time of order, unless noted and approved otherwise. Delivery shall be within 180 calendar days after receipt of order, or alternate schedule mutually agreed upon in writing by the contractor and the ordering agency. Exact delivery due date will be determined by delivery schedule, plus (+) seven calendar days from order date indicated on the Agency's 3rd party contract.

TAXES

The Agency is exempt from Federal Excise Tax, State or Local Sales Tax. Prices shall not include such taxes. Exemption Certificates for Federal Excise Tax will be furnished upon request.

ADDITIONAL PRODUCTS

The Agency reserves the right to add an item(s) that is not described on the item listing and is available from the contract vendor. The item(s) may be included on the contract, only if prior written approval has been granted by the Agency.

CONTRACT DISTRIBUTION

The Agency shall retain the sole right of contract distribution unless other arrangements are authorized by the Agency.

ACCOUNTING RECORDS

The Contractor and all subcontractors shall maintain all pertinent financial and accounting records and evidence pertaining to the contract in accordance with generally accepted principles of accounting and other procedures specified by the Agency. Financial and accounting records shall be made available, upon request, to the Agency, or its designees at any time during the contract period and any extension

thereof, and for three years from expiration date and final payment on the contract or extension thereof.

NON-DISCRIMINATION CLAUSE

In the performance of this contract or purchase order resulting here from, the prime contractor agrees not to discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability unrelated to the individual's ability to perform the duties of the particular job or position. The prime contractor further agrees that every subcontract entered into for the performance of any contract or purchase order resulting herefrom will contain a provision requiring non-discrimination in employment, as herein specified, binding upon each subcontractor. This covenant is required pursuant to the Elliot Larsen Civil Rights Act, 1976 Public Act 453, as amended, MCL 37.2201, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 Public Act 220, as amended, MCL 37.1101, *et seq.*, and any breach thereof may be regarded as a material breach of the contract or purchase order.

INDEMNIFICATION

1. General Indemnification

The Contractor shall indemnify, defend and hold harmless the Agency, officers, employees and agents, from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:

- (a) any claim, demand, action, citation or legal proceeding against the Agency, its employees and agents arising out of or resulting from (1) the product provided or (2) performance of the work, duties, responsibilities, actions or omissions of the Contractor or any of its subcontractors under this contract.
- (b) any claim, demand, action, citation or legal proceeding against the Agency, its employees and agents arising out of or resulting from a breach by the Contractor of any representation or warranty made by the Contractor in the contract;
- (c) any claim, demand, action citation, or legal proceeding against the Agency, its employees and agents arising out of or related to occurrences that the Contractor is required to insure against as provided for in this contract;
- (d) any claim, demand, action, citation or legal proceeding against the Agency, its employees and agents arising out of or resulting from the death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services by the Contractor, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that such death, bodily injury or property damage is caused solely by the negligence or reckless or intentional wrongful conduct of the Agency;
- (e) any claim, demand, action, citation or legal proceeding against the Agency, its employees and agents which results from an act or omission of the Contractor or any of its

subcontractors in its or their capacity as an employer of a person.

2. Patent/Copyright Infringement Indemnification

The Contractor shall indemnify, defend and hold harmless the Agency, officers, employees and agents from and against all losses, liabilities, penalties, fines, damages (including taxes), and all related costs and expenses (including reasonable attorney's fees and disbursements, costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the Agency to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States or foreign patent, copyright, trade secret or other proprietary right of any person or entity, which right is enforceable under the laws of the United States. In addition, should the equipment, software, commodity, or service, or the operation thereof, become or in the Contractor's sole expense (I) procure for the Agency the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Contractor, (ii) replace or modify the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Contractor, (iii) accept its return by the Agency with appropriate credits to the Agency against the Contractor's charges and reimburse BENZIE TRANSPORTATION AUTHORITY for any losses or costs incurred as a consequence of the Agency ceasing its use and returning it.

3. Indemnification Obligation Not Limited

In any and all claims against the Agency, or any of its officers, employees and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its benefits acts. This indemnification clause is intended to be comprehensive. Any overlap in sub clauses, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other sub clause.

4. Continuation of Indemnification Obligation

The duty to indemnify will continue in full force and effect notwithstanding the expiration or early termination of the contract with respect to any claims based on facts or conditions which occurred prior to termination.

CONTRACTOR'S LIABILITY INSURANCE

The Contractor shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. Claims under workers' compensation, disability benefit and other similar employee benefit act. A non-resident Contractor shall have insurance for benefits payable under Michigan's Workers'

Compensation Law for any employee resident of and hired in Michigan; and as respects any other employee protected by workers' compensation laws of any other State the Contractor shall have insurance or participate in a mandatory State fund to cover the benefits payable to any such employee.

2. Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees.
3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees, subject to limits of liability of not less than \$300,000 each occurrence and, when applicable \$300,000 annual aggregate, for non-automobile hazards and as required by law for automobile hazards.
4. Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom, subject to a limit of liability of not less than \$50,000 each occurrence for non-automobile hazards and as required by law for automobile hazards.
5. Insurance for Subparagraphs (3) and (4) non-automobile hazards on a combined single limit of liability basis shall not be less than \$300,000 each occurrence and when applicable, \$300,000 annual aggregate.

The insurance shall be written for not less than any limits of liability herein specified or required by law, whichever is greater, and shall include contractual liability insurance as applicable to the Contractor's obligations under the Indemnification clause of the Contract.

Before starting work the contractor must furnish to the agency, certificate(s) of insurance verifying liability coverage. The contract number must be shown on the certificate of insurance to assure correct filing. These Certificates shall contain a provision that coverage afforded under the policies will not be cancelled until at least fifteen days prior written notice bearing the Contract No. has been given to Agency.

UNFAIR LABOR PRACTICES

Pursuant to 1980 Public Act 278, as amended, MCL 423.231, et seq, the Agency will not award a contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled pursuant to Section 2 of the Act. A Contractor of the Agency, in relation to the contract, shall not enter into a contract with a subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to Section 4 of 1980 Public Act 278, MCL 423.324, the Agency may void any contract if, subsequent to award of the contract, the name of the Contractor as an employer, or the name of the subcontractor, manufacturer or supplier of the Contractor appears in the register.

USAGE REPORTING

The prime contractor may be required to report the contract usage. Such usage shall be reported when requested, and by item to the Agency.

INVOICING

The prime contractor shall submit two (2) copies of invoices for payment.

No payment will be submitted to the State of Michigan for reimbursement until BENZIE TRANSPORTATION AUTHORITY verifies that the bus meets the bid specifications. Upon acceptance BENZIE TRANSPORTATION AUTHORITY will submit a request to the State which will take a

minimum of forty-five (45) days to be processed. No payment will be made by BENZIE TRANSPORTATION AUTHORITY until the reimbursement check is received by the finance department. The invoice shall be *itemized* stating the base bus price and any additions or deletions in accordance with the bid documents.

PRE-AWARD & POST-DELIVERY AUDITS

All bidders are subject to the Federal Transportation Administration's (FTA) 49 DFR Part 663 for Pre-Award and Post-Delivery Audits of Rolling Stock Purchases. Prior to award, BENZIE TRANSPORTATION AUTHORITY will conduct a pre-award audit of the contractor that has been recommended for award, to verify that the contractor has successfully met all of the following requirements: 1) Federal Motor Vehicle Safety Requirements, 2) Federal Buy American Requirements, and 3) Grantee's Bid Specifications. Post-Delivery Audits shall include a "Road Test" of each unit.

BUS OPERATING INSTRUCTIONS

Instructions, either graphic or audio-visual (video tape), for bus operating shall be included with the bus delivered to the Agency. The instructions shall clearly identify the controls, switches, gauges, and other instructions that bus drivers and operators use while the bus is in service. Instructions shall also be included for operation of the lift interlock system, entrance door, and vehicle engine compartment fluid level fill and check areas.

OPTIONAL EQUIPMENT AND ACCESSORIES

Factory Equipment not specifically listed in the contract and/or specifications may be added in accordance with the current Kelley Blue Book in effect at the time of order, using the Dealer Cost Column.

LIQUIDATED DAMAGES

The dates for the delivery of vehicles as set forth in this RFP have been fixed so that the delivery of vehicles is consistent with timing schedules of the Agency. If the delivery of vehicles do not fall within the time limits set forth in the contract, the delay will interfere with the proper implementation of the Agency utilizing the system pursuant to the contract, to the loss and damage of the Agency. From the nature of the case, it would be impractical and extremely difficult to fix the actual damage sustained in the event of any such delay. The Agency and the contractor, therefore, presume that in the event of any such delay the amount of damage which will be sustained from a delay will be in the amount set forth below, and they agree that in the event of any such delay, the contractor shall pay such amount as liquidated damages and not as a penalty. The Agency at its option, for amounts due the Agency as liquidated damages may deduct such from any money payable to the contractor or may bill the contractor as a separate item.

1. If the contractor does not deliver the vehicle, ready for use on or before the scheduled delivery date, the contractor shall pay to the Agency, as fixed and agreed, liquidated damages, for each calendar day between the delivery date specified and the date of final delivery, but not more than 30 calendar days in lieu of all other damages due to such non-delivery, an amount of 1/10th of 1% of the Purchase Order/Departmental Contract Release Form unit cost per vehicle.
2. If the delay is more than thirty 30 calendar days, then by written notice to the Contractor, the Agency may terminate the right of the contractor to deliver, and may obtain substitute vehicle. In this event, the Contractor shall be liable for liquidated damages in the amounts specified above until acceptable substitute vehicle is delivered, ready for use, or for 30 days from the scheduled delivery date, whichever occurs first.

EXCEPTION: Except with respect to defaults of subcontractors, the Contractor shall not be liable for liquidated damages when delays arise out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God, or of the public enemy, acts of the State and/or Local Unit of Government in either its sovereign or

contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but, in every case, the delays must be beyond the control and without the fault or negligence of the Contractor. If the delays are caused by the default of a subcontractor, if such default arises out of causes beyond the control of both the Contractor and subcontractor and without the fault or negligence of any of them, the Contractor shall not be liable for liquidated damages for delays, unless the supplies or services to be furnished by the subcontractors were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule.

NON-STATE AGENCY REQUIREMENTS

This may be extended to Harbor Transit.

All purchase orders will be submitted by, invoices will be billed to, and payment remitted by an authorized agency on a direct and individual basis in compliance with contract terms and conditions. Orders received from non-approved local units of government shall not be considered unless prior approval is granted by the Agency.

Estimated requirements for authorized transit agencies are two vehicles.

NON-FACTORY INSTALLED EQUIPMENT

All bidders are to provide a listing of equipment to be furnished that is not installed at the point of vehicle manufacturer. The list of non-factory installed equipment should identify the item number(s) to which it applies and list the description of equipment involved.

CANCELLATION

1. The Agency may cancel the contract for default of the Contractor. Default is defined as the failure of the Contractor to fulfill the obligations of the quotation or contract. In case of default by the Contractor, the Agency may immediately and/or upon 30 days prior written notice to the Contractor cancel the contract without further liability to the Agency, its officers, agents and employees, and procure the services from other sources, and hold the Contractor responsible for any excess costs occasioned thereby.
2. The Agency may cancel the contract in the event the Agency no longer needs the services or products specified in the contract, or in the event program changes, changes in laws, rules or regulations, relocation of officer occur, or the Agency determines that implementation of the contract is not feasible, or if prices for additional services requested by the Agency are not acceptable to the Agency. The Agency may cancel the contract without further liability to the Agency, its officers, agents and employees by giving the Contractor written notice of such cancellation 30 days prior to the date of cancellation.
3. The Agency may cancel the contract for lack of funding. The Contractor acknowledges that, if this contract extends for several fiscal years, continuation of this contract is subject to appropriation of funds for this project. If funds to enable the Agency to effect continued payment under this contract are not appropriated or otherwise made available, the Agency shall have the right to terminate this contract without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to the Contractor. The Agency shall give the Contractor written notice of such non-appropriation within 30 days after it receives notice of such non-appropriation.
4. The Agency may immediately cancel the contract without further liability to the Agency its officers, agents and employees if the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor, is convicted of a criminal offense incident to the application

for or performance of a Agency, public or private contract or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence an employee to breach the ethical conduct standards for Agency employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of BENZIE TRANSPORTATION AUTHORITY, reflects on the Contractor's business integrity.

5. The Agency may immediately cancel the contract in whole or in part by giving notice of termination to the Contractor if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, Section 5, and Civil Service Rule 4-6.
6. The Agency may, with 30 days written notice to the Contractor, cancel the contract in the event prices proposed for contract modification/extension are unacceptable to the Agency.

TITLE FEES

Prices include the cost of title fees for each vehicle. If the State of Michigan raises the cost of the vehicle titles during the contract period, contractors may request a price adjustment to reflect the actual cost increases experienced. Contractor shall show satisfactory proof that application for title for the State of Michigan has been applied for.

COMPLIANCE OF SPECIFICATIONS

If equipment does not fully comply with specifications, bidders were to include a list of designated exceptions to specifications. When no statement of exception is indicated, conformance to specifications will be required. Exceptions are registered with the item number(s) to which it applies and list the description of equipment involved.

DRIVER DELIVERY

Contractor assumes all liability until vehicle is delivered. Contractor must contact ordering agency 48 hours prior to scheduled delivery time and date.

PRE-DELIVERY SERVICE & CONDITIONS

Prior to delivery, each vehicle shall be serviced and inspected by the dealer or his agent. At a minimum, this pre-delivery service and inspection shall cover what is listed in the specifications. A copy of the contractor's inspection and service check, including the contractors and vehicle identification, check off of service and inspection performed and the service manager's signature shall be furnished with the delivered vehicle. The vehicle's crank case, differential and transmission shall be filled to the manufacturer's recommended capacity and the fuel tank shall have a minimum of ten (10) gallons of fuel when the vehicle arrives at the delivery destination and no more than three hundred and fifty (350) miles on the odometer, unless approved otherwise. The vehicle shall be clean and free from defects when delivered. Each unit shall have an initial fill of windshield washer solution with solvent giving winter protection. Payment documents, will be delayed if the vehicle fails to comply with specification requirements. Therefore, we wish to impress on contract dealers that close pre-delivery inspection in accordance with specifications be made.

WARRANTY AND WARRANTY REPAIR WORK

The prime contractor will be responsible for all materials and accessories used in the vehicle, whether the same is ready made or from an outside source; and this responsibility may not be transferred, conveyed, assigned to any other person, company, corporation or entity without the previous written approval of the Agency.

Extension of warranty and or other policy adjustments will be considered when constant maintenance is required or if replacement parts prove unsound. The Agency shall expect the manufacturer to have an adequate stock of replacement parts available to service Agency vehicles and to make delivery of all replacement parts to their dealers who may service Agency vehicles, within a reasonable time. The prime contractor will be required to contact the Agency within ten (10) days after receipt of contract, to arrange procedures concerning the implementation of warranty claims and to designate personnel to handle claims. The Agency further expects that warranty service and repairs as well as non-warranty service and repairs will be handled without prejudice.

WARRANTY PERFORMANCE STANDARDS

1. Principle Period of Maintenance (PPM) will be the same hours as the Agency's normal working hours (currently 7:00 AM to 5:00 PM).
2. The PPM hours may be changed upon thirty (30) days written notice by mutual agreement, except the Contractor shall make every reasonable effort to change his schedule in a shorter period of time.

The contractor will proceed expeditiously to complete the repair of any defect or failure reported by the Agency in the shortest practicable time except that it shall not exceed five (5) State working days following notice of defect unless agency and contractor mutually agree on alternate repair arrangements. Such alternate arrangements shall be made within five (5) working days of defect notice. If the Contractor fails to repair the equipment within five (5) State working days, the agency shall have as its option the right to obtain the required repair from other sources, or to complete the work itself and hold the contractor liable for any cost incurred. The Agency as it option for amounts due may deduct such from any money payable to the Contractor or may bill the Contractor as a separate item.

If the Contractor fails to remit amounts due, these claims shall be subject to the standard State of Michigan Collection Claim Procedures by the State Treasury Department, in addition failure to remit amounts due may be considered cause for a contractor to be considered in default.

AGENCY LISTING

The following is the listing of the Agency's Ship To, Bill To, and Title To information. The listing shall not limit participation of additional agencies as the need may develop at the same prices, terms and conditions.

Ship To: BENZIE TRANSPORTATION
AUTHORITY
14150 US Highway 31
Beulah, Michigan 49617

Bill To: BENZIE TRANSPORTATION
AUTHORITY
14150 US Highway 31
Beulah, Michigan 49617

Title To: BENZIE TRANSPORTATION
AUTHORITY
14150 US Highway 31
Beulah, Michigan 49617
**1st Secured on title shall be:
State of Michigan/Department of Transportation
425 W. Ottawa, Lansing, Michigan 48909**

AFFIDAVIT FOR DRIVER DELIVERY

Vehicles may be driven to the final delivery destination if the following conditions are met:

1. The drivers of the vehicles are correctly licensed and trained in proper vehicle operation.
2. The dealership accepts all responsibility and liability for vehicles in transit.
3. The requesting contractor must sign the affidavit below and submit this with the bid.
4. The delivery is for delivery purposes only, it is not acceptance that the vehicle meets the specifications contained in the bid documents.

The contractor accepts all responsibility and liability for vehicles in transit and guarantees vehicles shall be transported in a safe, proper, and efficient manner. I understand that the Agency may cancel approval of this affidavit at any time during the contract if the contractor fails to meet the above obligations.

Signed: _____ Dated: _____

Title: _____

Contractor: _____

MANUFACTURER'S REBATE (INCENTIVES)

In any circumstance during or prior to completion of the contract, whereupon the Agency becomes eligible to receive a rebate for any vehicle purchased under this contract, it shall be the prime contractors responsibility to inform the Agency, in writing, of its qualification for such rebate and to advise the procedures for obtaining such rebates.

LATE PAYMENT TERMS

Payment of "VENDOR LATE PAYMENT CHARGES" will be approved if the deliveries are within the specified time and if the vehicles satisfactorily comply with the specifications in accordance with Public Act 196 of 1986, and reimbursement is made by the State of Michigan and approved by BENZIE TRANSPORTATION AUTHORITY which can take up to 60 days.

CONTRACTOR CONTACT

The person(s) responsible for administering the contract:

NAME: _____

PHONE: _____

FACTORY CONTACT NAME: _____ TITLE: _____

PHONE: _____

MINORITY/WOMEN/HANDICAPPER SUBCONTRACTING

To help ensure participation in state contracts by minority, women and handicapper owned and operated businesses, BENZIE TRANSPORTATION AUTHORITY strongly encourages companies, when responding to Invitation To Bids, to subcontract with certified minority, woman and handicapper owned

and operated businesses. For assistance in locating potential subcontractors, contact:

Michigan Department of Civil Rights
Contractual Services Division
State of Michigan Plaza Building - 5th Floor 1200
Sixth Avenue
Detroit, Michigan 48226
1-313-256-2650

To assist the Agency in monitoring the participation of certified minority/women/handicapper owned and operated firms in Agency contracts, the successful bidder using such firms as subcontractors should submit a report quarterly outlining expenditures to such firms for the reporting period. Reporting forms for this purpose will be sent with the contract.

PARTICIPATION

Bidders should indicate below the names, addresses, and type of work assigned for each proposed minority/women/handicapper owned and operated firm which will be a subcontractor. The total amount and/or percentage of dollars to be paid to such subcontractor(s) should be included.

Total Amount/Percentage: _____

NAME & ADDRESS: _____

(Attachment A)
Minimum Technical Specifications for ADA Public Transit Service Trolley

General: Benzie Transportation Authority is seeking proposals for a Trolley with the listed options on the “Options Page” of these specifications must be priced individually for the proposal. The awarded Contract will be valid immediately for the best available delivery and it is desirable to have a vehicle in service by July 2021.

These are minimum Technical Specification for a propane powered or gas conversion dual fuel engine. The driver controls must be OEM complete.

The following specifications are noted as minimums but not limited to the following:

Model: New vehicle; 2019 model or newer with full factory warranties

GVWR: 22,000 lbs. minimum

Wheelbase: est. 190” range depending on the specific bus lengths which will provide proper approach and departure angles, proper handling, and proper ride characteristics. Maximum rear overhang shall not exceed 1/3 bus overall length.

Chassis: Aluminum side panels preferred

Engine: Gas V-8 or V-10. Must have propane prep kit for dual fuel with hardened seats and valves.

Installed propane/gasoline system

Delete gasoline and add dedicate propane system (Roush equivalent) with largest fuel cell available

Transmission: The electronically controlled transmission shall be a minimum, heavy-duty, five-speed automatic cooled by an “Heavy Duty transmission oil cooler” in series with radiator cooler or equal (cooler capacity to match GVWR of Trolley) The transmission shall have an external spin-on type filter. If a Ford; torqshift matched to the electronic engine and chassis or equivalent.

Axles: Heavy-duty rear axle with full floating axles, limited slip. Gear ratio shall allow buses to travel approximately 65 miles MPH loaded, maximize fuel economy, and not exceed manufacturer’s recommended engine operating RPM. Axles shall be marked if synthetic oil is used.

Shocks: Front and rear heavy duty

Tires wheels: 7 wheels including a spare, truck type all season tubeless, steel radial to meet largest tire per chassis manufacturer to meet GVWR for passenger vehicle (all tires including spare should have low air sensors if available)

Electronic Engine fast idle: The engine shall be equipped with fast idle control which includes manual and automatic control features. Fast idle shall not activate unless the transmission control is in park (P). The control system shall have a manual switch, volt sensor, and indicator light, and activate automatically from voltage sensors. The system shall automatically deactivate when bus is shifted into gear and when the bus foundation brakes are applied.

Fuel Tank: largest available

A/C: Front and rear to be controlled from operators position only

Batteries: two-12 volt, 850 CCA min.

Alternator: 200 amp minimum

Brakes: Power

Color: standard 2-color models acceptable (custom not required)

Cooling System: Heavy Duty

Doors: Must have positive open latch system (power windows on front doors)

Gauges: Complete set including: oil, engine temp. fuel, ammeter/voltmeter with warning lights

Glass: Privacy glass (solar) with upper dark tint on windshield

Headlights: Warning alarm when lights left on

Heater A/C Auxiliary: Passenger compartment not to obstruct wheelchair loading/unloading.

Interior Lights: LED Trolley light package if available

Locks: all doors powered

Mirrors: rear view inside STD, outside largest available with folding head, heated with automatic controls

Radio: Standard AM/FM with PA system, clock & Auxiliary

Driver Seat: Front seats are heavy duty cloth, fully power w/(Freedman #396 Phoenix) or equivalent, high back reclining

Delete heavy duty cloth for fully power heavy duty vinyl

Delete power seat for heavy duty air ride only if air kneeling system is equipped on vehicle

Stabilizing bar: Front

Steering: power with tilt wheel

Sun visor

Hub caps: Must be included on all exterior tires standard full wheel cover

Jack: Furnished on all equipment

Windshield Wipers: Dual, multispeed electric, time delay and automatic type washers

Video Surveillance: 6 camera system (REI) or approved equivalent w/dongle adapter, w/DVR upgrade, large capacity 1TB, hard drive storage

Cruise Control: Included

Wrench: Wheel

Wheel chair lift: rear 1,000 lb. (Braun lift), with (2) wheel chair tie-down position

Driver controlled bus style doors (minimum 36" opening)

Keys: three power sets

Partition behind driver seat

Seats: passenger capacity 20 minimum, wooden bench (ash or oak) w/removable cushions

Undercoating: complete underside, panels plus all wire connections must be clean from overspray that may preclude testing wiring to equipment

Must supply one complete set of repair manuals for engine, suspension, wiring, transmission, body and driveline with parts manuals (CD/DVD disks are allowable)

All delivery costs are to be the responsibility of the vendor

Options:

External 120v plugs on each side including the front and rear

Delete Hub caps for matching painted (powder coated) wheels, stainless wheel simulators

Mounted Fare Box (Main Fare Box M4) or approved equivalent

Bike Rack: Front Mounted Stainless Steel 3-place (sport works) or approved equivalent

Non-standard exterior Paint color

Delete wheel chair tie-down position

Floor

Vendor will install in the area, rear of driver's seat, cargo area sub-floor of ¾" exterior grade plywood minimum and covered with non-skid waterproof floor covering by Altro Flooring or approved equal.

Wheelchair Restraints

1. Vendor shall supply and install (2) complete sets of 5 point "Deluxe System Belts" with a fixed single post made of stainless steel mounted through the floor system (Meeting ADA Specs.) Shoulder Belts will be manual type with (2) belt extensions per van. (The belt anchors must be not less than 50 inches apart in length)
2. Vendor shall furnish an instruction placard/decals for the tie down system. There shall be (1) "9 ½ x 27 ½" placard/decals per vehicle.

Wheelchair lift

Vendor shall install a fully automatic, rear entry or side entry, lift with manual backup system that will lift the max weight in the event of power loss. An electric hydraulic motor shall be powerful enough to lift with a continuous 1000 lbs. load capacity, and a minimum static load of 2,400 lbs.

Rear Lift shall be freestanding type with no overhead support headers by design. Must be equipped with an emergency safety switch bypass plug. One support arm bracket mounted at the top of each upright post to the rear doorpost for added support. Braun Lift series or approved equal. Platform size 34"x 54" minimum. The handheld lift pendant cord must be secured at the lift or vehicle body to prevent cord from being pulled-out of the box. Power cable to the wheel chair must be encased in a protective wrap the full-length of the cable. The circuit breaker to the lift must be mounted inside the engine compartment on the fire wall or inside the vehicle in the protective box near the lift.

Lift lights are to be sealed weatherproof LED type lights and shall be controlled by the headlight switch and the door open switch. (Meeting ADA requirements)

All power required to run the lift and ADA safety switches must use vehicle manufacturer wiring harnesses. If not able to use O.E.M. wiring; vendor must supply a wiring diagram with color, numbers and hook-up points per each vehicle.

Safety Equipment

Vendor shall supply and install the following but not limited to:

1. 3rd brake light LED type
2. Fire extinguisher 5 lb.
3. Triangle kit
4. First aid and body fluid cleanup kits

Passenger Assists

1. Leather hand loops.
2. A passenger assist shall be installed on the forward passenger-loading door.
3. One passenger stanchion post shall be installed to aide people on entering the trolley. Proper placement will be discussed prior to completing interior of trolley.
4. Seating and wheelchair tie downs will be discussed at time of building for proper placement.

5. Partition behind driver seat. Should consist of matching metal stanchions with Plexiglas with smooth rounded corners on upper part and plywood covered in vinyl for lower part. (or equivalent)



Mounted fair box with vault between front seated area. Main Fare Box model M4 (or equivalent)



Back-up Alarm

Vendor shall install electronic back-up alarm with back-up camera.

All vehicle delivery costs are to be the responsibility of the vendor and identified on bid.

All bids must meet ADA standards.

No Exceptions, unless otherwise specified by the purchaser's specifications.

Items to be included:

1. Lift
2. Lift doors & side cargo doors
3. Interior stanchions – handrails and stanchions shall be provided in the entrance to allow persons with disabilities to grasp such assists from outside the vehicle while boarding. Handrails shall have a cross-sectional diameter between 1 ¼ & 1 ½ “and an equivalent grasping surface. Handrails and stanchions shall be sufficient to permit safe boarding, on board circulation, seating and standing assistance and aligning by persons with disabilities.
4. Lighting – stepwell and lift area shall be LED type meeting ADA requirements
5. Interlock (Lift) – The controls shall be interlocked with the vehicle brakes, transmission, or door, or shall provide other appropriate mechanisms or systems to ensure that the vehicle cannot be moved when the lift is not stowed; thus, the lift cannot be deployed unless the interlock(s) or systems are engaged.
6. Wheelchair tie-down – The wheelchair tie-down must maintain a force in a longitudinal direction of at least 5000 lbs. This system shall have a clear floor area of (30 inches by 50 inches min. & meet manufacturer tie-down requirements. These spaces may overlap an access path. Parallel wheelchair spaces may overlap each other a maximum of 6 inches. This 6 inch overlap would be for that of the rear position chair to travel with the footrest under a forward position; providing there is at least 9 inches from the floor to the lowest part of the chair. For each wheelchair or mobility aid securement device, a passenger seat belt, and shoulder harness shall be provided.

THIRD PARTY CONTRACT

(CONTRACT NUMBER)

This AGREEMENT is entered into this ____ (day) of _____ (month) ____ (year) by and between the _____ (hereinafter referred to as "Agency"), located at _____

(TRANSIT AGENCY ADDRESS)

and _____ (hereinafter referred to as "Contractor"),
(NAME OF VENDOR COMPANY)

located at _____
(VENDOR ADDRESS)

WITNESSETH:

In consideration of the covenants, recitals, promises, representations and agreements herein set forth, the Agency and the Contractor do hereby expressly agree as follows:

ARTICLE I SCOPE OF WORK

It is mutually understood and agreed that:

The Contractor shall perform in accordance with this contract, and shall furnish all materials, performance of work, and services required to perform and complete in a sound, economical and efficient manner, and in accordance with provisions hereof and all applicable laws, all the work required for the following project:

(SCOPE OF WORK TO BE PERFORMED)

ARTICLE II COMPONENT PARTS OF THIS CONTRACT

This contract consists of this agreement and the following component parts. Components which are incorporated by reference and made part of this contract even if not attached hereto are referenced by title, date or other method of identification.

(DOCUMENT 1) (BE SPECIFIC WHEN NAMING ATTACHMENT SUCH AS TRANSIT AGENCY NAME, RADIO SYSTEM RFP, ISSUED MONTH/DAY/YEAR).

(DOCUMENT 2)

(DOCUMENT 3)

(DOCUMENT 4)

(DOCUMENT 5)

(DOCUMENT 6)

Attachment A - _____
(FEDERAL CONTRACT CLAUSES)

Appendix A - Prohibition of Discrimination in State Contracts.

Any inconsistency in the terms associated with this Contract will be resolved by the following order of precedence:

- (a) Published addenda modifying the _____.
- (b) The contents of the _____.
- (c) Contractor's response to the _____ requirements.

**ARTICLE III
TIME**

It is mutually understood and agreed that the Contractor will commence the work to be performed under this contract after this document is approved by the Michigan Department of Transportation. The signed and executed Third Party contract will serve as the "Notice to Proceed" subject to authorized adjustments, completion shall be achieved, and the _____

(SCOPE OF WORK FROM ARTICLE I)

shall be delivered according to the Terms and Conditions of this Agreement by _____
(DATE)

**ARTICLE IV
PRICE**

It is mutually understood and agreed that the Agency will pay _____

(DEFINE TERMS (LUMP SUM, ETC) SUBCONTRACT DOLLAR AMOUNT AND ANY LOCAL FUND USED)

_____ in current funds to the contractor, for completion of the work described in Article I as specified, subject to any deduction or additions provided by Change Order as provided in the Terms and Conditions. The total costs are not to exceed the Contract maximum amount of \$ _____.

The Contractor agrees that the costs reported to the Agency for this Contract will represent only those items which are properly chargeable in accordance with this Contract. All travel costs billed will follow the State of Michigan's vehicle and travel rates. Current travel rates can be found on the Department of Technology, Management and Budget's website at: www.michigan.gov/dtmb/0,5552,7-150-9141_13132---,00.html. The Contractor also certifies that it is has read the Contract terms and has made itself aware of the applicable laws, regulations, and terms of this Contract that apply to the reporting of costs incurred under the terms of this Contract.

If progress payments are made for costs incurred by the contractor prior to the completion of work, the Agency shall obtain adequate security for those payments; and, the Contractor will provide sufficient documentation to substantiate the work performed for which payment is requested.

The AGENCY agrees to pay each subcontractor for the satisfactory completion of work associated with the subcontract no later than ten (10) calendar days from the receipt of each payment the AGENCY receives from the DEPARTMENT. The AGENCY agrees further to return retainage payments to each subcontractor within ten (10) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement from these time frames may occur only upon receipt of written approval from the DEPARTMENT. These requirements are also applicable to all sub-tier subcontractors and will be made a part of all subcontract agreements.

This prompt payment provision is a requirement of Title 49 CFR, Part 26.29, and does not confer third-party beneficiary right or other direct right to a subcontractor against the DEPARTMENT. This provision applies to both DBE and non-DBE subcontractors.

Add other sections of text as needed:

**ARTICLE V
MISCELLANEOUS**

ALL terms and conditions included in the prime contract are incorporated in the subcontract. In the event of a conflict between the terms and conditions of the subcontract and those of the prime contract, the terms and conditions of the prime contract shall prevail.

This contract shall in all respects be governed by, and construed in accordance with, the laws of the State of Michigan.

In witness whereof the parties hereto have caused this agreement to be executed on the day and year first above written, in several original counterparts, each of which shall be deemed to constitute an original having identical legal effect.

CONTRACTOR: _____
(NAME OF VENDOR COMPANY)

SIGNATURE TITLE DATE

AGENCY: _____
(NAME OF TRANSIT AGENCY)

SIGNATURE TITLE DATE

INSTRUCTIONS

An MDOT – approved third party subcontract is required between the transit agency and contractor for purchases of more than \$25,000. This template is intended to be a guide to developing a third party subcontract. Your agency or unit of government may require additional contract language. This may be language for indemnification, severability, liquidated damages, force majeure events, assignment, complete agreement, and/or waivers. This is not to be construed as a full and complete list. Consult an attorney or your legal department if you need more information.

NAME OF TRANSIT AGENCY – This is the name of the entity on the project authorization awarding the funds. Use as complete of an agency name as possible. For a transit agency that's a unit of county or city government, this will likely be the name of the city or the county board of commissioners.

CONTRACT NUMBER – This is the project authorization and subcontract number. The project authorization number is the Agreement No.: and Authorization No.: at the upper right of the grant contract. The subcontract number is S followed by the number of subcontracts the project authorization has. For example, the first subcontract on Agreement No.: 2012-0235 and Authorization No.: P11 should be written 2012-0235/P11/S1.

NAME OF VENDOR COMPANY – This is the name of the vendor company providing the product or service. It must match the vendor company name in the vendor company's submitted proposal, bid or quote.

VENDOR ADDRESS - This is the address of the vendor company providing the product or service. It must also match the vendor company name in the vendor company's submitted proposal, bid or quote.

SCOPE OF WORK TO BE PERFORMED – This is the task the vendor company must provide. It is typically a description of the work and a reference to the issued solicitation. A typical scope of work might be "county-wide needs assessment study as described in the City of Hartford's Request for Proposal RFP 2016-7" or "Manufacture and delivery of four 29ft buses."

DOCUMENTS 1, 2, 3, 4, 5, 6 – These are attachments to the subcontract. Two required attachments are the solicitation as issued and the vendor company's submitted proposal, bid or quote. Be specific when naming attachments, such as transit agency name, radio system RFP, issued month/day/year. Your local agency may require additional attachments. You need to make sure the appendices, exhibits and or attachments are numbered and lettered correctly and match your contract language.

FEDERAL CONTRACT CLAUSES – Two other attachments are required after DOCUMENT 6. They are the federal contract clauses issued with the solicitation and the Prohibition of Discrimination in State Contracts (Appendix A). The name of the federal contract clauses appears at the top of page 1 of the clauses.

SCOPE OF WORK FROM ARTICLE 1 – This is the same language used for the SCOPE OF WORK TO BE PERFORMED.

DEFINE TERMS (LUMP SUM, ETC) AND DOLLAR AMOUNT – This is the method how the vendor company will be paid. It will typically be by lump sum for a capital item like a bus or piece of maintenance equipment. It may be per unit cost for an agreed upon number of radios with a not to exceed price. It may be by progress payments per month or per week for work completed for a vendor company conducting a study or providing construction services on a large project.

NAME OF VENDOR COMPANY, SIGNATURE, TITLE, DATE – This is the name of the vendor company providing the product or service. The signature and title must match the person authorized to sign for the vendor company as specified in the vendor company's submitted proposal, bid or quote.

NAME OF TRANSIT AGENCY, SIGNATURE, TITLE DATE – This is the name of the name of the entity on the project authorization awarding the funds. The signature and title must match the person authorized to sign for the transit agency.

**FEDERALLY REQUIRED CONTRACT CLAUSES
(ROLLING STOCK)
GOVERNING DOCUMENTS
PURCHASES GREATER THAN \$150,000
(GRANTS EXECUTED AFTER 12/26/14)**

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INSTRUCTIONS

About: This document contains the federally required contract clauses for a rolling stock procurement greater than \$150,000 for grants executed after 12/26/14.

Applicability: Some of the attached clauses may or may not apply to your procurement. If you are procuring architectural engineering (A&E) services, materials, etc., other clauses will apply so check the FTA website for more information and applicability. **Federal Circular 4220.1F Third Party Contracting Requirements Appendix D** has a handy chart listing the federal model contract clauses, certifications, reports, forms, and their applicability:

www.transit.dot.gov/funding/procurement/third-party-procurement/third-party-contracting-requirements-fta-c-42201f

Complete list of Federal required and other model contract clauses:

www.transit.dot.gov/funding/procurement/bppm-federally-required-and-other-model-clauses

Transit Agency Instructions: Read all the contract clauses and verify if they apply to your procurement. Insert your transit agency's **legal name** where applicable (parts 15, 19, and 21). Insert the applicable clauses in your request for proposal (RFP) or invitation for bid (IFB) or purchase order (if purchasing an applicable State Vehicle Purchasing Program vehicle). The bidder/vendor shall sign all applicable clauses and return to the procuring agency. If this is local purchase, attach the clauses, including the winning bidder/vendor signed sections, in your third party contract to be submitted to MDOT. Copies should be filed with the procuring agency. If this is a State Vehicle Purchasing Program vehicle purchase, keep on file, at the procuring agency, all clauses and vendor signed sections with the purchase order.

NOTE: If a bidder/vendor does not agree to all applicable Federal clauses/terms then the transit agency shall not procure the product from the bidder/vendor.

Bidder/Vendor Instructions: If applicable, complete sections 1, 5, 6, 7, and 20 and return to the procuring transit agency.

1. BUY AMERICA REQUIREMENTS

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

2. CARGO PREFERENCE REQUIREMENTS 46 U.S.C. 1241/46 CFR Part 381

Use of United States-Flag Vessels - The contractor agrees:

- a. to use 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, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of -lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.)
- c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

3. ENERGY CONSERVATION REQUIREMENTS 42 U.S.C. 6321 et seq./49 CFR Part 18

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

4. CLEAN WATER REQUIREMENTS 33 U.S.C. 1251

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 for grants executed after 12/26/14 financed in whole or in part with Federal assistance provided by FTA.

5. BUS TESTING 49 U.S.C. 5323(c)/49 CFR Part 665

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

- (1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
- (2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- (3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- (4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS
The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date _____

Signature _____

Company Name _____

Title _____

6. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS 49 U.S.C. 5323/49 CFR Part 663

The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

- (1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
- (2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.
- (3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT

(To be submitted with a bid or offer exceeding the small purchase threshold for Federal assistance programs, currently set at \$150,000 for grants executed after 12/26/14.)

Certificate of Compliance

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 C.F.R. 661.11:

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

7. LOBBYING 31 U.S.C. 1352/49 CFR Part 19/49 CFR Part 20

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$150,000 or more for grants executed after 12/26/14 shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$150,000 for grants executed after 12/26/14)

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

8. ACCESS TO RECORDS AND REPORTS 49 U.S.C. 5325/18 CFR 18.36 (i)/49 CFR 633.17

The following access to records requirements apply to this Contract:

- (1) Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents,

papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

- (2) Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$150,000 for grants executed after 12/26/14.
- (3) Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
- (4) Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- (5) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (6) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- (7) FTA does not require the inclusion of these requirements in subcontracts.

REQUIREMENTS FOR ACCESS TO RECORDS AND REPORTS BY TYPES OF CONTRACT

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
I. State Grantees						
a. Contracts below SAT \$150,000 for grants executed after 12/26/14	None	Those imposed on state pass thru to Contractor	None	None	None	None
b. Contracts above \$150,000 for grants executed after 12/26/14/Capital Projects	None unless ¹ non-competitive award		Yes, if non-competitive award or if funded thru ² 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
II. Non State Grantees						
a. Contracts below SAT \$150,000 for grants executed after 12/26/14	Yes ³	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
b. Contracts above \$150,000 for grants executed after 12/26/14/ Capital Projects	Yes ³		Yes	Yes	Yes	Yes

Sources of Authority:

¹ 49 USC 5325 (a)² 49 CFR 633.17³ 18 CFR 18.36 (i)

9. FEDERAL CHANGES 49 CFR Part 18

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

10. CLEAN AIR 42 U.S.C. 7401 et seq/40 CFR 15.61/49 CFR Part 18

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 for grants executed after 12/26/14 financed in whole or in part with Federal assistance provided by FTA.

11. RECYCLED PRODUCTS 42 U.S.C. 6962/40 CFR Part 247/Executive Order 12873

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

12. NO GOVERNMENT OBLIGATION TO THIRD PARTIES**No Obligation by the Federal Government.**

- (1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- (2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

13. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS 31 U.S.C. 3801 et seq. /49 CFR Part 31 18 U.S.C. 1001/49 U.S.C. 5307

- (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the

truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

- (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

14. **TERMINATION** 49 U.S.C. Part 18/FTA Circular 4220.1F

- a) **Termination for Convenience (General Provision)** The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.
- b) **Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.
If it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.
- c) **Opportunity to Cure (General Provision)** The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by

Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- d) Waiver of Remedies for any Breach** In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- e) Termination for Convenience (Professional or Transit Service Contracts)** The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- f) Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

- g) Termination for Default (Transportation Services)** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the (Recipient).

- h) Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or

if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

- 1) the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
- 2) the contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.
 - a) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

- i) Termination for Convenience or Default (Architect and Engineering)** The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

- j) Termination for Convenience or Default (Cost-Type Contracts)** The (Recipient) may terminate this contract, or any portion of it, by serving a notice of termination on the

Contractor. The notice shall state whether the termination is for convenience of the (Recipient) or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the (Recipient), the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

15. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

49 CFR Part 29/Executive Order 12549/Executive Order 12689/31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327)

Suspension and Debarment

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

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

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

The certification in this clause is a material representation of fact relied upon by the _____ . If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to _____, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

16. **PRIVACY ACT REQUIREMENTS** 5 U.S.C. 552

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

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

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

The following requirements apply to the underlying contract:

- (1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- (2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
 - a. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other

forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- b. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - c. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- (3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

18. BREACHES AND DISPUTE RESOLUTION 49 CFR Part 18/FTA Circular 4220.1F

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an

approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

19. DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26

- a. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this U.S. DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the _____ **SSSSSSSS** _____ deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- b. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)). Accordingly, as a condition of permission to bid, a certification must be completed and submitted with the bid. A bid which does not include certification may not be considered.

20. DBE TRANSIT VEHICLE MANUFACTURER CERTIFICATION

_____ (Name of Manufacturer), a TVM, hereby certifies that it has complied with the requirement of Section 26.49 of 49 CFR, Part 26 by submitting a current annual DBE goal to FTA. The goals apply to Federal Fiscal Year _____ (October 1, _____ to September 30, _____) and have been approved or not disapproved by FTA. _____ (Name of Contract Vendor), hereby certifies that the manufacturer of the transit vehicle to be supplied _____ (Name of Manufacturer) has complied with the above referenced requirement of Section 26.49 of 49 CFR Part 26.

Signature _____

Date _____

Title _____

Manufacturer _____

21. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS
FTA Circular 4220.1F

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

Attachment D
Statement of No Bid

Dear Sir:

We, the undersigned, have declined to bid on your RFP number **##2021-02** for the following reason:

- _____ We do not offer this product.
- _____ Our policy schedule would not permit us to perform.
- _____ Unable to meet specifications.
- _____ Unable to meet bond requirements.
- _____ Other _____

Company Name _____

Signature _____

Telephone _____

Attachment E
Evaluation Criterion

Technical Requirements
30%

- LP Engine
- GVWR 22,000
- Wheelbase 178"
- Aluminum side panels
- Trans: heavy duty
- Axles: heavy duty
- Shocks: heavy duty
- Tires: duals to specs
- Engine fast idle
- Batteries: 2

Alt: 200 amp
Cooling Heavy Duty
Windshield specs
Manuals

Systems 20%

Power windows
Gauges to specs
Rear heater
Rear A/C
Mirrors specs
Radio specs w/PA
Driver seat specs
Steering wheel tilt
Video system specs
Cruise control
Wheelchair specs

Exterior 15%

2-color paint
Window system
Premium wheel look
Undercoated chassis
Aluminum Side panels
Open window
Weather flaps

**Disadvantaged Business
Enterprise (DBE) 5%**

Interior 15%

Partition

Trolley seats specs

Flooring specs

Safety Equipment

Farebox

Leather Hand loops

Railings

Delivery 15%

First vehicle By July 1st –
2021

Proposals that score 80%
or above meeting criterion
will then be evaluated for
the best value for
selection.

(Attachment F)

Participating Agencies	Proposed Quantity
Benzie Transportation Authority	up to 2
Harbor Transit Authority	up to 2