

Eureka Springs Transit  
System

REQUEST FOR  
PROPOSALS FOR  
COMMERCIAL  
INSURANCE

Eureka Springs Transit System

# REQUEST FOR PROPOSALS FOR COMMERCIAL INSURANCE

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# REQUEST FOR PROPOSALS FOR COMMERCIAL INSURANCE

## Eureka Springs Transit System

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### AGENCY PROFILE

Eureka Springs Transit System (ESTS) was formed in 1978 as a public transportation service– to provide safe and reliable transportation to our visitors and residents. ESTS is under the oversight of the Mayor and city council of the city of Eureka Springs in the State of Arkansas. ESTS operates a fixed route system in the city limits of Eureka Springs, Arkansas as well as a demand/response system in Carroll, Boone, Washington, Madison and Benton counties.

Eureka Springs Transit System (ESTS) operates its administrative office 137 W Van Buren, in Eureka Springs, Arkansas with depots at 177 S Main Street and 60 S Main Street in Eureka Springs. ESTS utilizes 11 fixed route vehicles, 3 demand/response vehicles, 3 support staff vehicles and 2 trams with trailers.

ESTS serves provides over 130,000 rides per year in transportation. The ESTS currently employs 25 full and part time individuals.

ESTS's transportation program is a Section 5311 rural public passenger bus transportation program that collects fares from passengers, funding by state and federal agencies and has been doing so since 1984. The program is funded by a grant from Arkansas State Highway and Transportation Department (AHTD) and Federal Transit Administration (FTA) of U. S. Department of Transportation.

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## GENERAL INFORMATION

The City of Eureka Springs is soliciting proposals from qualified vendors to furnish Comprehensive Auto and Physical Damage for the FTA-transit and non-FTA transit vehicles.

Proposals will be accepted only from insurance companies having a policyholder's rating and financial rating acceptable to the city of Eureka Springs. The City of Eureka Springs is asking ***for Minimum Acceptable latest BEST rating of the company: A minus 10.***

A copy of the Request for Proposal is available at Eureka Springs Transit & Welcome Center, 137 W Van Buren, Eureka Springs, Arkansas 72632. Copies of this proposal can also be obtained by calling Kenneth Smith at 479-253-9572, by email at [smitty@cityofeurekasprings.org](mailto:smitty@cityofeurekasprings.org), or on our website at [www.eurekatrolley.org/bids.htm](http://www.eurekatrolley.org/bids.htm)

Clarifications on Comprehensive Auto and Physical Damage for transit vehicles must be directed in writing to Kenneth Smith, ESTS Director, 137 W Van Buren, Eureka Springs, Arkansas 72632 or e-mail to [smitty@cityofeurekasprings.org](mailto:smitty@cityofeurekasprings.org).

## PROPOSAL SCHEDULE

<b>RFP Advertisement</b>	<b>December 11, 2016</b>
<b>Bid Questions Due</b>	<b>January 20, 2017</b>
<b>Proposals Due</b>	<b>February 17, 2017</b>
<b>Award of Services</b>	<b>March 3, 2017</b>
<b>Coverage Start Date</b>	<b>March 20, 2017</b>

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## INSTRUCTIONS TO BIDDERS

Eureka Springs Transit System (ESTS) is requesting proposals from qualified individuals/firms to furnish Comprehensive Auto and Physical Damage for the transit vehicles and non-transit vehicles.

ESTS' comprehensive auto insurance coverage is for the year beginning March 20, 2017 with a one-year renewal option, for each of the four subsequent fiscal years through the fiscal year ending March 19, 2021, totaling a maximum of five years (if the price does not increase more than 10% annually).

**Sealed proposals will be received by ESTS until 10:00 a.m. Central Standard Time (CST), February 17, 2017.** In order to be considered a responsive bidder, those individuals/firms interested are instructed to submit each of two bid pricing sheets, signed and completed and clearly marked: "SEALED BID – TRANSIT INSURANCED - DO NOT OPEN" on the front exterior of the package. Any bid submitted without indicating SEALED BID will be returned to sender. FAXES WILL NOT BE ACCEPTED OR CONSIDERED RESPONSIVE TO THIS REQUEST FOR SEALED BIDS.

Bids should be sent to ESTS, 44 S Main Street, Eureka Springs, Arkansas 72632 and will be opened at same location on **10:30 a.m. CST.**

Questions concerning comprehensive auto and physical damage should be directed in writing to Kenneth Smith, 137 W Van Buren, Eureka Springs, Arkansas 72632. Telephone 479-253-9572 or e-mail at [smitty@cityofeurekasprings.org](mailto:smitty@cityofeurekasprings.org)

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## REQUEST FOR PROPOSAL COMMERCIAL AUTO

This procurement contract for insurance for passenger fleet of 17 Federal Transit Administration (FTA) public passenger carrying vehicles and 5 non Federal Transit Administration (non-FTA) vehicles that purchased by the city for a total of 22 vehicles. The procurement needs to include a renewal option for up to 2, 3 and/or 4 years with up to a maximum of 10% average annual increase in premium. Copies of the current commercial fleet insurance policy are available for inspection upon request from the Arkansas Municipal League Vehicle Programs, 301 West 2<sup>nd</sup>, North Little Rock, Arkansas 72115.

Eureka Springs Transit System (ESTS) owns a 20% interest in all FTA public passenger carrying vehicles (except where otherwise noted). ESTS's financial statement is available for review. ESTS has had a rural public passenger bus transportation program that collects fares from passengers and uses paid drivers since 1978. The program is funded through a grant from Arkansas State Highway and Transportation Department and Federal Transit Administration of U. S. Department of Transportation. Coverage will be effective March 20, 2017 and price bid will have to be held good until that date.

**Minimum Acceptable latest BEST rating of the company: A minus 10**

**Each bid package for Commercial Auto contains:**

- a. **Passenger FTA fleet bid pricing sheet**
- b. **Vehicle Inventory/FTA passenger fleet**
- c. **Non-FTA fleet bid pricing sheet**
- d. **Vehicle Inventory/Non-FTA non-passenger fleet**
- e. **List of current drivers**
- f. **Company Loss Run for 5 years**

Certificates of fleet insurance Accords are to be provided by the successful bidder to Lakeysha Walker at Arkansas State Highway and Transportation Department, P. O. Box 2261, Little Rock, Arkansas 72203 for state transportation regulatory purposes and to Mr. Donny McMillen, Public Transit Administrator at that same address. The successful bidder shall furnish Mr. McMillen with an Accord Certificate of Insurance showing the lien, description of the vehicle (VIN, Make and Model) full coverage and expiration date.

**RETURN BIDS NO LATER THAN 10:00 A.M. CST, February 17, 2017.**

BID OPENING WILL BE **10:30 A.M. CST, February 17, 2017** AT EUREKA SPRINGS CITY HALL, 44 S MAIN STREET, EUREKA SPRINGS, ARKANSAS 72632. VOICE 479-253-9703.

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EACH OF THE BID SHEETS (ONE FOR FTA PASSENGER FLEET AND ONE FOR THE NON-PASSENGER NON-FTA FLEET) MUST BE SIGNED, COMPANY NAMED AND BEST RATING SHEET ATTACHED.

An insured binder must be issued to ESTS prior to the effective date of the policy. All complete policies must be delivered within thirty (30) days of the effective date of the policy to ESTS.

ESTS reserves the right to reject any and all proposals or to waive technical defects as it may deem desirable.

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**BUSINESS AUTO – ANY AUTO  
FEDERAL TRANSIT ADMINISTRATION (FTA)  
PASSENGER FLEET BID SHEET**

TYPE	COVERAGE	PREMIUM BID
LIABILITY:	\$1,000,000 COMBINED SINGLE LIMIT	\$
COMPREHENSIVE	\$ 1,000 DEDUCTIBLE	\$
COLLISION – ACV:	\$ 1,000 DEDUCTIBLE	\$
PIP	\$ 1,000 EACH PERSON/ \$5,000 ACCIDENTAL DEATH	\$
AUTO MED PAY	\$1,000 EACH PERSON	\$
UNINSURED LIMITS	\$50,000 BI PER ACCIDENT \$50,000 PD PER ACCIDENT	\$ \$
UNDERINSURED LIMITS	\$ 50,000 PER ACCIDENT	\$

HIRED AND NON-OWNERSHIP LIABILITY INCLUDED POLICY TERM EFFECTIVE 3/21/16

**AUTO PREMIUM TOTAL:** \$ \_\_\_\_\_ /30 DAYS

\$ \_\_\_\_\_ /12-MONTH CYCLE

2016 EDITION BEST RATING (MINIMUM A-10 OR BETTER)

**NAME OF COMPANY:** \_\_\_\_\_

**NAME OF AGENCY ENTERING BID:** \_\_\_\_\_

**ADDRESS & PHONE NUMBER OF AGENCY:** \_\_\_\_\_

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\_\_\_\_\_  
Signature of Authorized Representative

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Initial of Bidder \_\_\_\_\_



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## FILL IN EACH BLANK BELOW OR ENTER "NONE":

1. Any restrictions on eligible Driver/Operators: \_\_\_\_\_  
\_\_\_\_\_
2. Any limitations hours of operation: \_\_\_\_\_
3. Procedure/related costs for adding insured operators, motor vehicle reports, inspection fees, etc.: \_\_\_\_\_  
\_\_\_\_\_
4. Any restriction on radius of operation: \_\_\_\_\_
5. List below any other companies you contracted on our behalf for this coverage and what their response was. Specific if "NONE": \_\_\_\_\_  
\_\_\_\_\_

# REQUEST FOR PROPOSALS FOR COMMERCIAL INSURANCE

## Eureka Springs Transit System

### FTA VEHICLES – ESTS

Januray 1,  
2017

VEHICLE NO	SEATS	YEAR	MAKE/MODEL	VIN. NUMBER	PRICE NEW	APPROX . VALUE	MILEAGE 12/1/16
#1 *%	28	2001	CHANCE TROLLEY	1C9S2HFS91W535220	\$259,137	\$70,000	201,905
#3 *%	28	2003	OPTIMA TROLLEY	1Z9S2HSS43W216270	\$272,516	\$90,000	145,056
#4 *%	28	2004	OPTIMA TROLLEY	1Z9S2HSS94W216296	\$272,516	\$100,000	179,948
#5 *!	28	2006	OPTIMA TROLLEY	1Z9S2HSS56W216329	\$278,654	\$175,000	136,525
#6 *!AR	27	2011	HOMETOWN VILLAGE TROLLEY	4UZADEDU7BCAY9357	\$216,692	\$200,000	75,513
#7 *!AR	27	2011	HOMETOWN VILLAGE TROLLEY	4UZADEDU7CCBT9014	\$223,044	\$203,500	64,179
#8 *!	22	2014	HOMETOWN CARRIAGE TOLLEY	1GB6G6BL6E1213427	\$195,729	\$195,500	26,787
#9 *!	22	2015	HOMETOWN CARRIAGE TROLLEY	1GB6G5BLXF1158010	\$196,879	\$196,000	15,867
#10*!	22	2016	HOMETOWN CARRIAGE TROLLEY	1GB6G5BL1F1285776	\$197,996	197,996	10,566
#27 *!	10	2007	FORD HIGHTOP VAN	1FTSS34L47DA72654	\$36,287	\$20,000	91,666
#29 *!	10	2009	FORD HIGHTOP VAN	1FTDS34L49DA28519	\$39,670	\$27,000	98,413
#30 *!AR	24	2009	CHEVROLET GOSHEN BUS	1GBE5V1979F400606	\$97,270	\$50,000	146,767
#31 *!AR	24	2009	CHEVROLET GOSHEN BUS	1GBE5V1929F413280	\$97,270	\$50,000	149,980
#32 !	12	2011	FORD HIGHTOP VAN	1FTDS3EL5BDA45432	\$39,340	\$33,500	45,689
#50 !AR	3	2010	FORD F250 PICKUP	1FTSX2B55AEB04643	\$22,996	\$18,000	15,587
#51 !AR	2	2010	DODGE DAKOTA PICKUP	1D7CW3BKXAS161866	\$18,065	14,500	31,795
#52 %	2	1999	DODGE RAM PICKUP	3B7KF26ZXXM587081	\$18,859	\$5,300	71,321

**NOTE:**

- \* W/C LIFT EQUIPPED
- % WHOLLY OWNED BY ESTS
- ! LIEN HELD BY AHTD
- AR ARRA FUNDS 100%

# REQUEST FOR PROPOSALS FOR COMMERCIAL INSURANCE

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**BUSINESS AUTO – ANY AUTO**  
**NON-FEDERAL TRANSIT ADMINISTRATION (NON-FTA)**  
**FLEET BID SHEET**

<b>TYPE</b>	<b>COVERAGE</b>	<b>PREMIUM BID</b>
LIABILITY:	\$ 1,000,000 COMBINED SINGLE LIMIT	\$
COLLISION – ACV:	\$ 1,000 DEDUCTIBLE	\$
COMPREHENSIVE	\$1,000 DEDUCTIBLE	\$
PIP	\$1,000 EACH PERSON/ \$5,000 ACCIDENTIAL DEATH	\$
AUTO MED PAY	\$1,000 EACH PERSON	\$
UNINSURED LIMITS	\$50,000 BI PER ACCIDENT \$50,000 PD PER ACCIDENT	\$ \$
UNDERINSURED LIMITS	\$ 50,000 PER ACCIDENT	\$

HIRED AND NON-OWNERSHIP LIABILITY INCLUDED POLICY TERM EFFECTIVE 3/21/16

**AUTO PREMIUM TOTAL:** \$ \_\_\_\_\_ /30 DAYS

\$ \_\_\_\_\_ /12-MONTH CYCLE

2015 EDITION BEST RATING (MINIMUM A-10 OR BETTER)

**NAME OF COMPANY:** \_\_\_\_\_

**NAME OF AGENCY ENTERING BID:** \_\_\_\_\_

**ADDRESS & PHONE NUMBER OF AGENCY:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Representative

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## FILL IN EACH BLANK BELOW OR ENTER "NONE":

1. Any restrictions on eligible Driver/Operators: \_\_\_\_\_

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2. Any limitations on hours of Operation: \_\_\_\_\_

3. Procedure/related costs for adding insured operators, motor vehicle reports, inspection fees, etc.:

\_\_\_\_\_  
\_\_\_\_\_

4. Any restriction on radius of Operation: \_\_\_\_\_

5. List below any other companies you contacted on our behalf for this coverage and what their response was. Specify if "NONE": \_\_\_\_\_

\_\_\_\_\_

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## NON-FTA VEHICLES ESTS AGENCY

VEHICLE NO.	SEATS	YEAR	MAKE/MODEL	VIN. NUMBER	COST NEW	APPROX. VALUE
#10T	16	1996	Ford Tramstar power tram	1FDHE27Y0THA81336	116,975	\$38,000
#11T	16	2015	FORD TRAMSTAR POWER CAR	1FDWE3FL5GDC24927	162,570	\$162,570
#9TRAIL	24	1996	FORD TRAILING MODULE	1C9CT232XTW535040	57,920	\$14,000
#10TRAIL	24	1996	FORD TRAILING MODULE	1C9CT2321TW535041	57,920	\$14,000
#11TRAIL	24	1998	FORD TRAILING MODULE	1C9CT2326WW275093	57920	\$14,000

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### DRIVERS

2017 SEASON

NAME	DATE OF BIRTH	DRIVER LICENSE NUMBER
Arcangeli, Bowie	2/23/62	W130067007
Arcangeli, Doug	4/8/53	W130067006
Frost, Sharon	7/8/53	E0244344
Hutchinson, Jon	7/20/86	K02247024
Hutchinson, Scott	9/5/56	Y069256005
McDuffey, Sharon	11/18/53	937943258
Ogg, Daniel	01/04/50	937715786
Schroeder, William	10/12/43	909790519
Smith, Kenneth	4/14/61	920420316
Stubblefield, Maurice	2/21/46	923602881
Thomas, Larry	1/22/52	911256228
Youngblood, Robert	7/22/69	925977081

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## Arkansas Municipal League

report of loss last 5 years

ACCOUNT	SEQ #	CLAIM #	CVG	LOSS DATE	CLM AMT
<b>2012</b>					
1140	38	71712	101	7/17/2012	\$552.35
1140	38	71712	101	7/17/2012	\$94.00
<b>2014</b>					
<b>2013</b>					
1140	38	32513	101	3/25/2013	\$424.80
1140	38	32513	101	3/25/2013	\$490.80
<b>2015</b>					
1140	19	62015	101	6/20/2015	\$2,040.43
1140	19	62015	101	6/20/2015	\$257.98
1140	45	70515	101	7/5/2015	\$1,069.60
1140	45	70515	101	7/5/2015	\$113.50
1140	45	70515	101	7/5/2015	\$109.81
1140	29	103115	101	10/31/2015	\$18,243.91
1140	29	103115	101	10/31/2015	\$429.50
1140	29	103115	101	10/31/2015	\$6,756.09
1140	29	103115	101	10/31/2015	\$239.00
1140	41	110615	102	11/6/2015	\$1,280.35
1140	41	110615	102	11/6/2015	\$104.50
1140	41	110615	101	11/6/2015	\$2,673.06
1140	41	110615	101	11/6/2015	\$485.00
<b>2016</b>					
1140	19	60416	101	6/4/2016	\$94.00
1140	19	60416	101	6/4/2016	\$1,649.43
<b>Total:</b>					<b>\$37,108.11</b>

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## FEDERAL TRANSIT ADMINISTRATION GRANT PROGRAM

### APPENDIX

#### REQUIRED FEDERAL CERTIFICATIONS AND CONTRACTUAL PROVISIONS

**The Bidder shall comply with the following requirements.**

**Conflict of Interest:** The Bidder hereby certifies that no employee, officer, or agent of the grantee shall participate in the selection or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: a) The employee, officer, or agent; b) any member of his immediate family; c) His or her partner; or d) Any organization which employs, or is about to employ, has a financial or other interest in the firm selected for award. The Agency's officers, employees or agents shall neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from Bidders, potential Bidders, or parties to sub agreements.

**Prohibited Interest:** The Bidder hereby certifies that no member, officer, employee of the Agency during his or tenure or for one (1) year thereafter shall have any interest, direct or indirect, in any bid award or the proceeds therefore.

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

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act. Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases. The Fly America requirements flow down from FTA recipients and subrecipients to first tier Bidder, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The relevant statutes and regulations do not mandate any specified



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

**Buy America:** The Bidder 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 final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and 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.

Required Use of American Iron, Steel, and Manufactured Goods –Section 1605 of the American Recovery and Reinvestment Act of 2009.

“This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub.L.111-5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph 2 CFR 176.140 (b)(3) and 2 CFR 176.140(b)(4). This requirement does not apply to the material listed by the Federal Government under 2 CFR 176.140(b)(2).”

“A prospective applicant requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub.L.111-5)(Recovery Act) should submit the request to the U. S. Federal Transit Administrator in time to allow a determination before submission of applications or proposals. The prospective applicant shall include the information and applicable supporting data required by paragraphs at 2 CFR 176.140(c) and (d) in the request. If an application has not requested a determination regarding the inapplicability of 1605 of the Recovery Act before submitting its application or proposal, or has not received a response to a previous request, the applicant shall include the information and supporting data in the application or proposal.

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**Energy Conservation:** The Bidder 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.

**Seismic Safety** - The Bidder agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Bidder also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

**Clean Water:** (1) The Bidder agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, amended, 33 U.S.C. 1251 et seq. The Bidder agrees to report each violation to the Purchaser and understands 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 Bidder also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**Pre-Award and Post-Delivery Audit Requirements:** The Bidder agrees to comply with 49 U.S.C. § 5323(I) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications: (1) Buy America Requirements: The Bidder 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 Bidder shall submit evidence that it will be capable of meeting the bid specifications. 3) Federal Motor Vehicle Safety Standards (FMVSS): The Bidder 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.

**Lobbying: Mandatory Clause/Language:** - Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

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

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

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

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

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

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

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

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

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

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(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

**Access to Records:** The following access to records requirements apply to this Bidder:

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 Bidder 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 Bidder which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Bidder 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 Bidder'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, Bidder agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Bidder, access to the Bidder's records and

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construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

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, Bidder 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 Bidder 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 Bidder 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 Bidder 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 Bidder 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.

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### Requirements for Access to Records and Reports by Types of Bids

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<u>I State Grantees</u>  a. Contracts below SAT (\$100,000)  b. Contracts above \$100,000/Capital Projects	None  None unless <sup>1</sup> non-competitive award	Those imposed on state pass thru to Contractor	None  Yes, if non-competitive award or if funded thru <sup>2</sup> 5307/5309/5311	None  None unless non-competitive award	None  None unless non-competitive award	None  None unless non-competitive award
<u>II Non State Grantees</u>  a. Contracts below SAT (\$100,000)  b. Contracts above \$100,000/Capital Projects	Yes <sup>3</sup>  Yes <sup>3</sup>	Those imposed on non-state Grantee pass thru to Contractor	Yes  Yes	Yes  Yes	Yes  Yes	Yes  Yes



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### Sources of Authority:

1 49 USC 5325 (a)

49 USC 5325 (a)

2 49 CFR 633.17

49 CFR 633.17

3 18 CFR 18.36 (i)

18 CFR 18.36 (i)

**Federal Changes:** Bidder 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. Bidder's failure to so comply shall constitute a material breach of this contract.

**Bid Bond Requirements (Construction):** (a) Bid Security – A Bid Bond must be issued by a fully qualified surety company acceptable to Eureka Springs Transit System (ESTS) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder. (b) Rights Reserved – In submitting this Bid, it is understood and agreed by bidder that the right is reserved by ESTS to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of ninety (90) days subsequent to the opening of bids, without the written consent of ESTS. It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within ninety (90) days after the bid opening without the written consent of ESTS, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of ESTS' damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefore. It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by ESTS as provided in Item x "Bid Security" of the Instructions to Bidders) shall prove inadequate to fully recompense ESTS for the damages occasioned by default, then the undersigned bidder agrees to indemnify ESTS and pay over to ESTS the difference between the bid security and ESTS' total damages, so as to make ESTS and pay over to ESTS the difference between the bid security and ESTS' total damages, so as to make ESTS whole. The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than requested, will render the bid unresponsive. **Performance and Payment Bonding Requirements (Construction)** the Bidder shall be required to obtain performance and payment bonds as follows: (a) Performance bonds – 1. The penal

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amount of performance bonds shall be 100 percent of the original contract price, unless ESTS determines that a lesser amount would be adequate for the protection of ESTS. 2. ESTS may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. ESTS may secure additional protection by directing the Bidder to increase the penal amount of the existing bond or to obtain an additional bond. (b) Payment bonds – 1. The penal amount of the payment bonds shall equal; (i) Fifty percent of the contract price if the contract price is not more than \$ 1 million. (ii) Forty percent of the contract price if the contract price is more than \$ 1 million but not more than \$ 5 million; or (iii) Two and one half million if the contract price is more than \$ 5 million. 2. If the original contract price is \$ 5 million or less, ESTS may require additional protection as required by subparagraph 1 if the contract price is increased.

**Performance and Payment Bonding Requirements (non-construction)** The Bidder may be required to obtain performance and payment bonds when necessary to protect the ESTS' interest. (a) The following situations may warrant a performance bond: 1. ESTS property or funds are to be provided to the Bidder for use in performing the contract or as partial compensation (as in retention of salvaged material). 2. A Bidder sells assets to or merges with another concern, and ESTS, after recognizing the latter concern as the successor in interest, desires assurance that is financially capable. 3. Substantial progress payments are made before delivery of end items starts. 4. Contracts are for dismantling, demolition, or removal of improvements. (b) When it is determined that a performance bond is required, the Bidder shall be required to obtain performance bonds as follows: 1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless ESTS determines that a lesser amount would be adequate for the protection of ESTS. 2. ESTS may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. ESTS may secure additional protection by directing the Bidder to increase the penal amount of the existing bond or to obtain an additional bond. (c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in ESTS interest. (d) When it is determined that a payment bond is required, the Bidder shall be required to obtain payment bonds as follows: 1. The penal amount of payment bonds shall equal: (i) Fifty percent of the contract price if the contract price is not more than \$ 1 million; (ii) Forty percent of the contract price if the contract price is more than \$ 1 million but not more than \$ 5 million; or (iii) Two and one half million if the contract price is increased. **Advance Payment Bonding Requirements** – The Bidder may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. ESTS shall determine the amount of the advance payment bond necessary to protect ESTS. **Patent Infringement Bonding Requirements (Patent Indemnity)** – The Bidder may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Bidder is unknown or doubtful. ESTS shall determine the amount of the patent indemnity to protect ESTS. **Warranty of the Work and Maintenance Bonds** –1. The Bidder warrants to ESTS, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by ESTS, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards



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shall be considered defective. If required by the Project Manager, the Bidder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. 2. The Work must be of safe, substantial and durable construction in all respects. The Bidder hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by ESTS and shall replace or repair any defective materials or equipment for faulty workmanship during the period of the guarantee at no cost to ESTS. As additional security for these guarantees, the Bidder shall, prior to the release of Final Payment as provided in Item X below, furnish separate Maintenance (or Guarantee) Bonds in form acceptable to ESTS written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Bidder's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

**Clean Air:** (1) The Bidder 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 Bidder 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 Bidder also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

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

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

(3) Withholding for unpaid wages and liquidated damages – ESTS shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Bidder or subcontractor under any such contract or any other Federal contract with the same prime Bidder, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the

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same prime Bidder, such sums as may be determined to be necessary to satisfy any liabilities of such Bidder or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts – The Bidder or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors include these clauses in any lower tier subcontracts. The prime Bidder shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

**No Obligation by the Federal Government:** (1) The Purchaser and Bidder 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, Bidder, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

**Program Fraud and False or Fraudulent Statements or Related Acts:** (1) The Bidder 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 Bidder certifies or affirms the truthfulness and accuracy of any statements 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 Bidder 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 Bidder to the extent the Federal Government deems appropriate.

(2) The Bidder 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. chapter 53, the Government reserves the right to impose the penalties of 49 U.S.C. § 5323(1) and 49 U.S.C. § 1001 or other applicable Federal law on the Bidder, to the extent the Federal Government deems appropriate.

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(3) The Bidder 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.

**Termination: a. Termination for Convenience (General Provision)** ESTS may terminate this contract, in whole or in part, at any time by written notice to the Bidder when it is in the Government's best interest. The Bidder shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Bidder shall promptly submit its termination claim to ESTS to be paid the Bidder. If the Bidder has any property in its possession belonging to ESTS, the Bidder will account for the same, and dispose of it in the manner ESTS directs.

**b. Termination for Default [Breach or Cause] (General Provision)** If the Bidder does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Bidder fails to perform in the manner called for in the contract, or if the Bidder fails to comply with any other provisions of the contract, ESTS may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Bidder setting forth the manner in which the Bidder is in default. The Bidder will only be paid the contract price for supplies delivered and accepted, or serviced performed in accordance with the manner of performance set forth in the contract.

If it is later determined by ESTS that the Bidder 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 Bidder, ESTS, after setting up a new delivery of performance schedule, may allow the Bidder to continue work, or treat the termination as a termination for convenience.

**c. Opportunity to Cure (General Provision)** ESTS in its sole discretion may, in the case of termination for breach or default, allow the Bidder [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 Bidder fails to remedy to ESTS' satisfaction the breach or default of any of other terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Bidder of written notice from ESTS setting forth the nature of said breach or default, ESTS shall have the right to terminate the Contract without any further obligations to the Bidder. Any such termination for default shall not in any way operate to preclude ESTS from also pursuing all available remedies against Bidder and its sureties for said breach or default.

**d. Waiver of Remedies for any Breach** In the event that ESTS elects to waive its remedies for any breach by Bidder of any covenant, term or condition of this Contract, such waiver by ESTS shall not limit ESTS' remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

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**e. Termination for Convenience (Professional or Transit Service Contracts) ESTS**, 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, ESTS 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 Bidder fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Bidder fails to comply with any other provisions of this contract, ESTS may terminate this contract for default. ESTS shall terminate by delivering to the Bidder a Notice of Termination specifying the nature of the default. The Bidder 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 Bidder 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 ESTS.

**g. Termination for Default (Transportation Services)** If the Bidder 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 Bidder fails to comply with any other provisions of this contract, ESTS may terminate this contract for default. ESTS shall terminate by delivering to the Bidder a Notice of Termination specifying the nature of default. The Bidder 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 Bidder has possession of ESTS goods, the Bidder shall, upon direction of ESTS, protect and preserve the goods until surrendered to ESTS or its agent. The Bidder and ESTS 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 Bidder 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 ESTS.

**h. Termination for Default (Construction)** If the Bidder 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 Bidder fails to comply with any other provisions of this contract, ESTS may terminate this contract for default. ESTS shall terminate by delivering to the Bidder a Notice of Termination specifying the nature of the default. In this event, ESTS 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 Bidder and its sureties shall be liable for any damage to ESTS resulting from the Bidder's refusal or failure to complete the work within specified time, whether or not the Bidder's right to proceed with the work is terminated. This liability includes any increased costs incurred by ESTS in completing the work.

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The Bidder's right to proceed shall not be terminated nor the Bidder 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 Bidder. Examples of such causes includes: acts of God, acts of ESTS, acts of another Bidder in the performance of a contract with ESTS, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Bidder, within ten (10) days from the beginning of any delay, notifies ESTS in writing of the causes of delay. If in the judgment of ESTS, the delay is excusable, the time for completing the work shall be extended. The judgment of ESTS shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Bidder's right to proceed, it is determined that the Bidder 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 ESTS.

**i. Termination for Convenience or Default (Architect and Engineering)** ESTS may terminate this contract in whole or in part, for ESTS' convenience or because of the failure of the Bidder to fulfill the contract obligations. ESTS shall terminate by delivering to the Bidder a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Bidder 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 ESTS, 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 Bidder to fulfill the contract obligations, ESTS may complete the work by contract or otherwise and the Bidder shall be liable for any additional cost incurred by ESTS.

If, after termination for failure to fulfill contract obligations, it is determined that the Bidder 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 ESTS.

**j. Termination for Convenience of Default (Cost-Type Contracts)** ESTS may terminate this contract, or any portion of it, by serving a notice or termination on the Bidder. The notice shall state whether the termination is for convenience of ESTS or for the default of the Bidder. If the termination is for default, the notice shall state the manner in which the Bidder has failed to perform the requirements of the contract. The Bidder shall account for any property in its possession paid for from funds received from ESTS, or property supplied to the Bidder by ESTS. If the termination is for default, ESTS may fix the fee, if the contract provides for a fee, to be paid the Bidder in proportion to the value, if any, of work

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performed up to the time of termination. The Bidder shall promptly submit its termination claim to ESTS and the parties shall negotiate the termination settlement to be paid the Bidder.

If the termination is for the convenience of ESTS, the Bidder 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, ESTS determines that the Bidder 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 Bidder, ESTS, after setting up a new work schedule, may allow the Bidder to continue work, or treat the termination as a termination for convenience.

**Suspension and Debarment:** This contract is a covered transaction for purposes of 49 CFR Part 29, As such, the Bidder is required to verify that none of the Bidder, 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 Bidder 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 ESTS. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to ESTS, 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.



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## Debarment and Suspension Certification (Lower Tier Covered Transaction)

(Required Form for Procurements of \$25,000 or more)

(Vendor certifies)

The prospective lower tier participant \_\_\_\_\_ certifies by submission of this Offer that neither it nor its “principals,” as defined at 49 CFR, Section 29.105(p), is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

If the prospective lower tier participant (Bidder) is unable to certify to the statement above, it shall attach an explanation and indicate that it has done so by placing an “X” in the following space\_\_\_\_  
\_\_\_\_\_.

**THE BIDDER \_\_\_\_\_, CERTIFES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERITIFCATION AND EXPLANATION, IF ANY. IN ADDITION, THE BIDDER OR OFFERER UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 U.S.C., SECTIONS 3801, ET SEQ., APPLY TO THIS CERTIFICATION AND EXPLANATION, IF ANY.**

\_\_\_\_\_  
Signature of the Bidder Authorized Official

\_\_\_\_\_  
Name and Title of the Bidder Authorized Official

\_\_\_\_\_  
Date

**Federal Privacy Act Requirements:** The following requirements apply to the Bidder and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Bidder 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 Bidder agrees to obtain the express consent of the Federal Government before the Bidder or its employees operate a system of records on behalf of the Federal Government. The Bidder understands that the requirements of the Privacy Act, including the civil and criminal penalties for violations 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.

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Initial of Bidder \_\_\_\_\_

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(2) The Bidder 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.

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

(1) Nondiscrimination – In accordance with Title VI of the Civil Rights Act, 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 Bidder 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 Bidder 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 Bidder 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 bidder 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 Bidder 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 Bidder agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Bidder agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities – In accordance with section 102 of the American with Disabilities Act, as amended, 42 U. S. C. §12112, the Bidder agrees that it will comply with the requirements of U. S. Equal Employment Opportunity Commission, “ Regulations to Implement the Equal Employment Provision of the Americans with Disabilities Act, “ 29 C. F. R. Part 1630, pertaining to employment of persons with



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disabilities. In addition, the Bidder agrees to comply with any implementing requirements FTA may issue.

(3) The Bidder 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.

**Free Competitive Bidding Affidavit:** Bidder has not, either directly, or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the bid submitted herein.

**Non-Collusion Certification:** The Bidder attests that he or she is the person responsible within its firm for the final decision as to the price(s) and amount of this bid and further attest that: 1) The price(s) and amount of this bid have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition with any other Vendor, Bidder or potential Bidder. 2) Neither the price(s) or the amount of this bid has been disclosed to any other firm or person who is a Bidder or potential Bidder on this project, and will not be so disclosed prior to bid opening. 3) No attempt has been made or will be made to solicit, cause or induce any firm or person to refrain from bidding on this project, or to submit a bid higher than the bid of this firm, or any intentionally high or non-competitive bid or other form of complimentary bid. 4) The bid of its firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complimentary bid. 5) Its firm has not offered or entered a subcontract or agreement regarding the purchase of materials or services from any firm or person, or offered, promised or paid cash of anything of value to any firm or person, in consideration for an agreement or promise by any firm or person to refrain from bidding or to submit a complementary bid on this project. 6) Its firm has not offered or promised any subcontract or agreement regarding the sale of materials or services to any firm or person, and has not been promised or paid cash or anything of value to any firm or person, whether in connection to any other project, in consideration for my firm's submitting a complementary bid, or agreeing to do so, on this project. 7) The Bidder has made a diligent inquiry of all members, officers, employees, and agents of its firm with responsibilities relating to the preparation, approval, or submission of its firm's bid and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in this affidavit.

**Breaches and Dispute Resolution:** All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where Bidders violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

**Disputes** – Disputes arising in the performance of this Bidder which are not resolved by agreement of the parties shall be decided in writing by the Arkansas State Highway and Transportation

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Department's (AHTD) Chief Legal Counsel. This decision shall be final and conclusive unless with fourteen (14) days from the date of receipt of its copy, the Bidder mails or otherwise furnishes a written appeal to the Department's Chief Legal Counsel. In connection with any such appeal, the Bidder shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Department's Chief Legal Counsel shall be binding upon the Bidder and the Bidder shall abide by the decision.

**Performance During Dispute** – Unless otherwise directed by Agency, the Bidder shall continue performance under this Contract while matters in dispute are being resolved.

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

**Remedies** – Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Agency and the Bidder arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, Bidder 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 Agency 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 Agency or Bidder 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.

### **Patent and Rights in Data:**

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

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

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

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

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

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
2. Any rights of copyright purchased the Purchaser or Bidder using Federal assistance in whole or in part provided by FTA.

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

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

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be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

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

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

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

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

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

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

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

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Bidder's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Bidder agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U. S. Department of Commerce regulations, "Rights to Inventions

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Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” 37 C.F.R. Part 401.

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

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

**DISADVANTAGED BUSINESS ENTERPRISE (DBE):** a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency’s overall goal for DBE participation is 4.5 %. A separate contract goal [of \_\_ % DBE participation has] [has not] been established for this procurement.

b. The Bidder shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Bidder shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Bidder 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 ESTS deems appropriate. Each subcontract the Bidder signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

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

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;

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4. Written documentation of the bidder/offeror 's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

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

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

- d. The Bidder is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Bidder's receipt of payment for that work from the ESTS. In addition, **[the Bidder may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within thirty (30) days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within thirty (30) days after incremental acceptance of the subcontractor's work by ESTS and Bidder's receipt of the partial retainage payment related to the subcontractor's work.]**
- e. The Bidder must promptly notify ESTS, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Bidder may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of ESTS.

**Prohibition Against Exclusionary or Discriminatory Specifications: – Apart from inconsistent requirements imposed by Federal statute or regulations, the Bidder shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.**

**Prohibition Against Geographic Preferences:** ESTS shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E)



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services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

**Options:** Grantees may include options in contracts. An option is a unilateral right in a contract by which, for a specified time, a grantee may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. If a grantee chooses to use options, the requirements below apply:

(1) Evaluation of Options. The option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.

(2) Exercise of Options.

(a) A grantee must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.

(b) An option may not be exercised unless the grantee has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.

**Written Record of Procurement History:** Grantees shall maintain records detailing the history of each procurement. At a minimum, these records shall include:

- (1) the rationale for the method of procurement,
- (2) selection of contract type,
- (3) reasons for contractor selection or rejection, and
- (4) the basis for the contract price.

**Contract Administration System:** ESTS shall maintain a contract administration system that ensures that Bidders perform in accordance with the terms, conditions, and specifications of their Bids.

**Incorporation of Federal Transit Administration (FTA) Terms** - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F 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 Bidder shall not perform any act, fail to perform any act, or refuse to comply with any ESTS requests which would cause ESTS to be in violation of the FTA terms and conditions.

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**Protests:** Protests to any decision made by ESTS, or its delegate, may be filed in writing with ESTS; bidders must submit full documentation as to the nature of the protest and/or reasons why the action of ESTS has inhibited competition or violated its procurement regulations within fourteen (14) days.

### Overall Federal Regulation Compliance

All contractual provisions required by the Department, as set forth in FTA Circular 4220.1E dated January 2006 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 the Department requests which would cause the Department to be in violation of the FTA terms and conditions.

\_\_\_\_\_  
The Department Representative

\_\_\_\_\_  
Vendor Representative

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Vendor



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**These required Federal certifications and contractual provisions for procurement under the Federal Transit Administration Grant Programs must be completed and signed in order that the bid shall be considered responsive. In signing this document, I declare under penalties of perjury that the certifications and assurances, and any other statements made by me, are true and correct.**

\_\_\_\_\_  
Printed Name of Company/Organization

\_\_\_\_\_  
Printed Name of Bidder/Authorized Agent

\_\_\_\_\_  
Signature of Bidder/Authorized Agent

\_\_\_\_\_  
Title of Bidder/Authorized Agent

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**NOTICE OF NONDISCRIMINATION** The Eureka Springs Transit System (ESTS) complies with all civil rights provisions of federal statutes and related authorities that prohibit discrimination in programs and activities receiving federal financial assistance. Therefore, ESTS does not discriminate on the basis of race, sex, color, age, national origin, religion, disability, Limited English Proficiency (LEP), or low-income status in the admission, access to and treatment in the ESTS's programs and activities, as well as the ESTS's hiring or employment practices. Complaints of alleged discrimination and inquiries regarding the ESTS

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nondiscrimination policies may be directed to **Kenneth "Smitty" Smith, Director (Title VI Coordinator), 137 W Van Buren, Eureka Springs, AR (479) 253-9572** or the following email address:  
smitty@cityofeurekasprings.org  
**(ADA/504 Coordinator).**

Free language assistance for Limited English Proficient individuals is available upon request.

This notice is available from the Title VI Coordinator in large print, on audiotape and in Braille.