



INVITATION FOR BID (IFB)

Name of Good or Service Requested: Transit Tire Lease Program

Contents:

- A. Summary of Invitation for Bid
- B. Instructions to Bidders
- C. Contract Requirements and Specifications
- D. Pricing and Addendum
- E. Standard Terms and Conditions
- F. Conditions and Non-Collusion Form
- G. Intent to Respond Form
- H. Questions

Exhibit A – Master Q & A Form
Exhibit B – Contract Requirements and Specifications
Exhibit C – Bid Form
Exhibit D – FTA Clauses and Debarment Certification



A. Summary of Invitation for Bid

This bid is for the purpose of entering into a contract for Transit Tire Lease Program for the City of Billings. The successful bidder agrees to provide the City of Billings with an acceptable quality of equipment/service, performance and workmanship as determined by the City of Billings.

It is the purpose of this bid to obtain the best quality of equipment/service at the most favorable price to the City of Billings. Consideration will be given for the level of service offered and ability to meet stated specifications as outlined in the contract documents.

The lowest bid need not be accepted if it is documented that a specific supplier in the past has been a poor performer or has provided poor goods.

B. Instructions to Bidders

Sealed bids entitled Transit Tire Lease Program for the City of Billings MET Transit Department, Billings, Montana, will be received by the City Clerk up until 2:00 PM (MST) on Tuesday, September 7, 2021.

ATTENTION Notice regarding bid submittals, public [bid openings](#) and bid security maintenance. The process in which bids may be submitted, accepted, and opened, has changed due to the COVID-19 response. All bids may be submitted to Billings City Clerk via email at bids@billingsmt.gov, or by mail to P.O. Box 1178, Billings, MT 59103 or 210 North 27th Street, Billings, MT 59101.

Bid openings will be held live on the City's Facebook page: <https://www.facebook.com/Billings-MT-City-Government-74352842013/>. No hand-delivered bids will be accepted in order to prohibit the transmission of COVID-19. Bid tabulations will be posted for public viewing after the bids have been opened.

More specific additional information regarding this Transit Tire Lease Program may be obtained by contacting Josh Smith via telephone at 406-657-8378, or via email at smithj@billingsmt.gov.

No bids may be withdrawn after the scheduled time for the public opening of bids, which is 2:00 PM (MST) on Tuesday, September 7, 2021.

The right is reserved to reject any or all bids received, to waive irregularities, to postpone the award of the contract for a period of not to exceed sixty (60) days, and to accept that bid which is in the best interests of the City of Billings, Montana.

The City of Billings is an Equal Opportunity Employer. The Contractor and



subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), which prohibit discrimination against qualified protected veterans and/or qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

EXAMINATION OF DOCUMENTS

Before submitting a bid, the bidder shall:

- a. Carefully examine the Standards and Specifications as well as all other attached documents;
- b. Fully inform themselves of the existing conditions and limitations;
- c. Include with the bid sufficient information to cover all items required in the specifications.

BID COMPLIANCE

It shall be the responsibility of the bidder to see that all bids are submitted to the office of the City Clerk before 2:00 PM (MST) on Tuesday, September 7, 2021

BID MODIFICATIONS

Bids shall be made on the forms provided herein; they shall not contain any recapitulation of the work to be done. Modifications, additions or changes to the terms and conditions of this Invitation for Bid may be cause for rejection of the bid. Bids submitted on other forms may be rejected.

INTERPRETATION PRIORITY

Should a bidder find discrepancies in, or omissions from, the specifications, or be in doubt as to their meaning, bidder shall notify Josh Smith at MET Transit, who will send written instructions or addenda to all bidders. The City will not be responsible for oral interpretation. All addenda issued prior to bid opening shall be incorporated into and become a portion and part of the contract/agreement upon award. Questions received less than ninety-six (96) hours before the bid opening cannot be answered.

WITHDRAWAL OF BIDS

Bidders may withdraw their bid either personally or by written request at any time prior to the time set for bid opening. No bid may be withdrawn or modified after the time set for opening, unless and until the award of the contract is delayed for a period exceeding sixty (60) days.



BID PRICE VALID

Bidders must honor their bid price for sixty (60) days from the date of sealed bid opening.

The prices established from this bid may be extended to other political subdivisions within the State of Montana solely at the vendor's discretion.

CERTIFICATION

The bidder certifies that the bid has been arrived at by the bidder independently and has been submitted without any collusion designed to limit independent bidding or competition. The bidder further certifies that the materials, products, services and/or goods offered herein meet all requirements of the stated specifications and are equal in quality, value and performance with highest quality, nationally advertised brand and/or trade names.

Manufacturer's trade names, if used in specifications, are for the express purpose of establishing a standard of quality and coordination of design, not for the purpose of limiting competition.

INSURANCE

The bidder certifies that it/they shall maintain in good standing the insurance outlined below"

1. Workers' compensation and employer's liability coverage as required by Montana law.
2. Commercial general liability, including contractual and personal injury coverage's -- \$750,000 per claim and \$1,500,000 per occurrence.
3. Automobile liability -- \$1,500,000 per accident.

Each policy of insurance required by this Section shall provide for no less than 30 days' advance written notice to the CITY prior to cancellation.

The CITY shall be listed as an additional insured on all policies except Worker's Compensation Policies.

In addition, all policies except Worker's Compensation shall contain a waiver of subrogation against the CITY.

BIDDER shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Bidder shall maintain workers'



compensation insurance coverage for all members and employees of Bidder's business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA.

The certificate will be provided to the City prior to contract execution.

ELIGIBILITY

The successful bidder will be required to provide copies of the following, or the ability to obtain the following within 15 days of notification of contract award:

- Completed and signed the new vendor forms, if necessary (to be eligible for payment): <http://mtbillings3.civicplus.com/DocumentCenter/View/26004>
- City of Billings Business License: <http://ci.billings.mt.us/981/Business-Licenses>
- Certificate of Workman's Compensation or Certificate of Exemption from Workman's Compensation: <http://erd.dli.mt.gov/work-comp-regulations>

EVIDENCE OF QUALIFICATION

Upon request of the City of Billings, a bidder whose bid is under consideration for award may be required to manifest satisfactory evidence of his financial resources, experience, the organization, and equipment as well as service provisions bidder has available or will make available. In determining the lowest responsible bidder, in addition to price, the following considerations may be addressed:

- a) The ability, capacity, and skill of the bidder to perform the contract or provide the service required.
- b) The character, integrity, reputation, judgment, experience, and efficiency of the bidder.
- c) Whether the bidder can perform the contract within time specified.
- d) The quality of performance of previous contracts, agreements and/or performance.
- e) Previous and/or existing compliance by the bidder with laws relating to the contract or services.
- f) Such other information which may be secured having a bearing on the decision to award the contract.



C. Contract Requirements and Specifications

The supplier will furnish MET Transit with new tires for use on its fixed route transit buses under the terms and conditions set forth in Exhibit A.

D. Pricing and Addendum

See Exhibit B.

E. Standard Terms and Conditions

In addition to the terms and conditions listed below, **BIDDER** is required to abide by federal requirements and regulations indicated in Exhibit D.

In case of default by the successful bidder or failure to deliver the goods or services within the time specified, the City Purchasing Agent, after written notice, may procure them from other sources and hold contractor responsible for excess costs occasioned thereby.

The specifications attached to the instructions to bidders establish a standard of quality desired by the City of Billings. Any bidder may submit quotations on any article which substantially complies with these specifications as to quality, workmanship, and service. The City of Billings reserves the right to make its selections of materials or services purchased, based on its best judgment as to which articles substantially comply with the requirements of the specifications.

No alteration in any of the terms, conditions, delivery, quality, or specifications will be effective without prior written consent of the City of Billings.

No exception to delivery or service dates shall be allowed unless prior written approval is first obtained from the City of Billings.

The contractor warrants all articles supplied under this contract to conform to specifications, herein. The contractor will deliver a warranty stating that all articles supplied under the contract are fit and sufficient for the purpose manufactured, merchantable, and free from defects.

In the event the City is entitled to a prompt payment or cash discount, the period of computation shall commence on the date of delivery, or receipt of correctly completed invoices, whichever is later. If an adjustment of payment is necessary, the discount period shall commence on the date final approval for payment is authorized.

The contractor agrees not to discriminate against any client, employee, or



applicant for employment or for services, because of race, creed, color, national origin, sex, or age with regard to, but not limited to, the following: employment upgrading; demotion or transfer; recruitment or recruitment advertising; layoffs and termination; rates of pay or other forms of compensation; selection for training; rendition of services. It is further understood that any contractor who is in violation of this shall be barred forthwith from receiving awards of any purchase order for the City unless a satisfactory showing is made that discriminatory practices have terminated and that a reoccurrence of such acts is unlikely.

The City reserves the right to cancel and terminate this contract forthwith upon giving 30 days written notice to the contractor. (This provision does not apply to the purchase of materials and equipment. A purchase order for materials and equipment is a binding contract.)

Should either party employ an attorney or attorneys or utilize the services of in-house attorneys to enforce any of the provisions hereof or to protect its interest in any manner arising under this contract, the non-prevailing party in any action pursued in a court of competent jurisdiction agrees to pay to the prevailing party all reasonable costs, damages, expenses, and attorneys' fees, including fees for in-house attorneys, expended, or incurred in connection therewith.

Where applicable, possible, or required, bidder is required to submit descriptive literature, sample material, design sketches and detailed shop drawings. Failure to submit required items may result in rejection of the bid or termination of contract.

The successful bidder may not make any advertising or sale use of the fact that contract items are being used by purchaser and other approved agencies, under penalty of contract termination.

This Agreement shall be construed and enforced in accordance with the laws of the State of Montana. Venue for any suit between the parties arising out of this Agreement shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County.

The contractor may not assign or subcontract the agreement, or the right to receive reasonable performance of any act called for by the contract, shall be deemed waived by a waiver by City of a breach thereof as to any particular transaction or occurrence.

Regardless of FOB point, contractor agrees to bear all risks of loss, injury, or destruction of goods and materials ordered herein and such loss, injury, or destruction shall not release contractor from any obligation hereunder.

All materials submitted in response to this IFB become public records under Article



II, Section 9 of the Montana Constitution and §§ 2-6-102 and 7-1-4144, MCA and may be distributed by written request pursuant to Montana's Constitutional Right to Know or Public Records Acts.

Information provided in response to this IFB will be held in confidence and will not be revealed or discussed with competitors prior to award of Contract by Council. However, one copy of each bid submitted shall be retained for the official files of the Department and will become public record after award of the Contract.

Records and materials that are constitutionally protected from disclosure are not subject to the provisions of this section.

F. Conditions and Non-Collusion Agreement

To receive consideration, this form must be signed in full by a responsible, authorized agent, officer, employee, or representative of your firm.

CONDITIONS AND NON-COLLUSION AGREEMENT

We have read and agree to the conditions and stipulations contained herein and to the Standard Terms and Conditions contained on the attached.

We further agree to furnish the product/services specified at the prices stated herein. We additionally agree to deliver the products/services to the location and by the date set forth herein, if applicable.

In signing this bid, you also certify that you have not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of free competition; that no attempt has been made to induce any other person or firm to submit or not to submit a bid; that this bid has been independently arrived at without collusion with any other bidder, competitor or potential competitor; that this bid has not been knowingly disclosed prior to the opening of bids to any other bidder or competitor; that the above statement is accurate under penalty of perjury.

Legal Name of Firm/Corporation

Authorized Signature

Address

Printed Name

City/State/Zip

Title

Date

Telephone Number



G. Intent to Respond Form

Fax or email the following Intent to Respond form to Josh Smith within two (2) days of the Bid Opening date of Tuesday, September 7, 2021 even if your company chooses NOT to participate.

To: City of Billings – MET Transit
Attn: Josh Smith
Phone: 406-657-8378
Fax: 406-657-8419
Email: smithj@billingsmt.gov

From: _____ Contact Name
_____ Company Name
_____ Company Address

_____ Email Address
_____ Phone Number
_____ Fax Number

Please indicate whether or not you intend to submit a bid on: MET Transit Tire Leasing Program by checking Yes or No.

We intend to respond by the specified due date:

Yes _____ No _____

Company Name Date

Contact Name (please print) Title

Signature of Contact Position

By signing the above, I certify that I am authorized by the Company named above to respond to this request.



H. Questions

Questions regarding this Invitation for Bids must be sent to the contact person listed in Section B no later than 5 business days prior to due date. The City will make every effort to provide a written response within 2 business days. Whenever responses to inquiries would constitute a modification or addition to the original IFB, the reply will be made in the form of an addendum to the IFB, a copy of which will be posted on the City's website and forwarded to all Suppliers who have submitted an "Intent to Respond" form (Section G).

Supplier must submit their questions via email using the "Master Q & A" form found below (Exhibit A), and provide, at a minimum, the following:

- Supplier's name, requester, and appropriate contact information.
- The question, clearly stated.
- Specific reference to the applicable IFB section(s).



EXHIBIT A

MASTER Q & A FORM

IFB: Transit Tire Lease Program

| | |
|------------------------|--|
| Master Q&A | Any questions regarding this IFB should be submitted according to the process outlined below. The City will make every effort to answer within two (2) days of receiving the questions. |
| Q&A Process | <ol style="list-style-type: none">1. Prepare questions or concerns on the template provided.2. Complete the table in full, providing a date for each question and a section of the IFB to reference (if applicable).3. Submit the completed form via email to smithj@billingsmt.gov. Attach associated documents as necessary. <p>Please contact <u>Josh Smith</u> with any questions regarding this process.</p> |

Questions from: _____ **Company:** _____

Email Address: _____

| # | Date | Reference Section | Question or Comment | City Response |
|---|------|-------------------|---------------------|---------------|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |



EXHIBIT B

CONTRACT REQUIREMENTS AND SPECIFICATIONS

MET Transit agrees to use new, not used, tires furnished by the Supplier on;

- a) Seventeen (17) 30-foot Eldorado EZ Rider II
- b) Two (2) 35-foot Gillig Low Floor
- c) Six (6) 31-foot Champion LF Transit / Ford F550 Chassis

Transit buses are owned and operated by the City of Billings – MET Transit. Buses (a) use and require 275/70R 22.5 tires. Buses (b) use and require 315/80R 22.5 tires. Buses (c) use and require 225/70R19.5 tires. It is understood by the Supplier that the new tires to be furnished for buses (a) will be transit radial tubeless black sidewall (BSW) type tires. The sizes and tread depth/32nds of the radial tires to be supplied shall be 275/70R 22.5 18 ply with a minimum tread depth of 21 and load range J. It is also understood by the Supplier that the new tires to be furnished for buses (b) will be transit radial tubeless black sidewall (BSW) type tires. The sizes and tread depth/32nds of the radial tires to be supplied shall be 315/80R 22.5 18 ply with a minimum tread depth of 34 and load range J. It is also understood by the Supplier that the new tires to be furnished for buses (c) will be transit radial tubeless black sidewall (BSW) type tires. The size and the tread depth/32nds of the radial tires to be supplied shall be 225/70R 19.5, 14 ply with a minimum tread depth of 34 and load range G. All supplied tires shall be designed for city transit service. The new transit radial tires supplied shall be equal to the City Transport Radial and must fit on the rims currently owned by MET Transit. The radial transit tires will not be re-grooved or recapped nor will re-grooved or recapped tires be accepted under this contract for use on MET Transit fixed route buses.

The number of tires to be furnished pursuant to the agreement shall be sufficient to keep all buses fully equipped and to provide a reserve supply to be mounted on rims and kept in MET Transit's garage for use in case of an emergency in the quantities set forth in the provision under 'SPARE INVENTORY' in this Exhibit A. Buses operating under this agreement shall be equipped with the sizes and types of rims of sufficient strength to permit inflation necessary for the load carrying capacity required and spaced to conform to the approved standards of the Tire and Rim Association of American, Inc. (TRA).

BUS MILEAGE REPORTS AND INDIVIDUAL TIRE MILEAGE RECORDS

MET Transit shall keep an accurate record of the number of miles run by each bus during the term of the Agreement and render to the supplier a report of such mileage of each bus prior to the 10th day of the month following the month in which the miles were run. All reports as required of MET Transit by the supplier shall be done on a monthly basis.



SERVICE

MET Transit agrees to install, remove, and remount tires on rims or wheels furnished by MET Transit. MET Transit also agrees to perform all other tire service, including emergency road call service, the repair of flat tires, as required to keep them in proper operating condition with tires furnished by the supplier. MET Transit will exercise ordinary care in the use of all tires furnished hereunder and in operating, storing, and parking of its buses equipped with the Supplier's tires so that none of said tires may be subjected to misuse. MET Transit will also maintain in its garage, suitable facilities for the inflation of tires and will keep said tires inflated to conform to the approved standards of the Tire and Rim Association of American, Inc. (TRA). MET Transit will always determine when tires are to be removed from vehicles. Supplier shall have the right to make the determination as to the fitness for return to service of a particular tire or tires provided, however, MET Transit shall not be obligated to use tires which, because of their condition, interfere unreasonably with the use, operation, and safety of transit buses. All tires determined by MET Transit to be permanently unfit for service shall be returned to the supplier by MET Transit at the supplier's expense.

STORAGE

MET Transit agrees to provide a safe and suitable place for the storage of spare tires and tires deemed unfit for further service so that such tires shall not be subject to damage by the elements.

SPARE INVENTORY

The supplier will be required to supply one (1) new tire for every transit bus. Currently MET Transit owns and operates seventeen (17) 35-foot Gillig Phantoms, two (2) 35-foot Gillig Low Floors, and six (6) 31-foot Champion LF Transits for a total of twenty-five transit buses. The seventeen (17) 35-foot Gillig Phantoms are scheduled to be replaced by seventeen (17) 30-foot Eldorado EZ Rider II's by the end of 2021. The size of the MET Transit fleet will require seventeen (17) 275/70R 22.5, two (2) 315/80R 22.5, and six (6) 225/70R 19.5 tires as spare inventory. MET Transit does NOT run recaps or re-grooved tires on its fleet.

TEST PURPOSE

MET Transit may test tires and/or caps other than the Suppliers on five (5) transit buses or 5% of the fleet, whichever is greater. MET Transit will still maintain the option when purchasing additional rolling stock to specify or not specify lease tires for use on the new or used buses. If MET Transit purchases new rolling stock with lease tires of a different size or construction, the mileage rate for the additional tires is to be supplied for additional purchased rolling stock. The



supplier shall also be given a minimum of thirty (30) days prior to notice for delivery of tires to the North American manufacture's facility. If any of the buses equipped with lease tires furnished by the Supplier shall be driven overland, MET Transit will pay the Supplier the following month for the use of the tires at the billing rate per mile, per tire in effect for said tire size. Any tires lost, stolen, or damaged while in the possession of the bus manufacturer, or while the bus is being delivered, shall be paid for by the bus manufacturer or MET Transit.

PURCHASE OF ROLLING STOCK

MET Transit shall have the option when purchasing additional rolling stock to specify or not specify lease tires for use on the units being purchased.

SELLING AND DISPOSAL OF ROLLING STOCK

MET Transit shall have the option of buying the tires installed on rolling stock designated for sale or disposal. MET Transit will notify the Supplier prior to any sale or disposal of rolling stock equipped with leased tires. MET Transit will negotiate the purchase or the unused mileage on each tire which remains in stock after said rolling stock has been sold or disposed of and cannot be used on other units in the fleet. Payment for the unused mileage acquired by MET Transit under this paragraph shall be on the basis set forth in the contract. The mileage will be calculated by using the current per mile rate for the unused portion of each tire on each unit being sold or disposed of.

Supplier's Base Mileage Average

| <u>Size</u> | <u>Mileage</u> |
|--------------|----------------|
| 275/70R 22.5 | 47,000 |
| 315/80R 22.5 | 8,000 |
| 225/70R 19.5 | 8,000 |

When a tire is not available for inspection to apply the formula whether lost, misplaced, destroyed, or involved in an accident, MET Transit shall not reimburse the Supplier in excess of fifty percent (50%) of the current value of a similar tire, unless the Supplier can provide an auditable accounting of the tire's accurate mileage prior to the loss.

APPURENANCES

The successful supplier will provide MET Transit a sufficient number of valves, valve stems, extensions, valve caps, and wheel weights (for steel wheels), needed to maintain the tires provided under the contract.



DISPOSAL OF TIRES

The contractor, at its expense, shall be responsible for the disposal of tires in accordance with applicable EPA, Federal, and local regulations. Record keeping for such activities are the responsibility of the Supplier, with a copy of such record provided to MET Transit within thirty (30) days of disposal.

BASE MILEAGE RATE

On Exhibit C each Supplier will use this form to submit the base mileage rate, which is the initial rate per tire mile MET Transit will pay the Supplier as of the startup date of the contract. The Supplier will also provide a base rate per tire mile in each of the four (4) option years with a total contract of five (5) possible years. The methodology for the base mileage rate charges are as follows. Multiply the effective base rate times the miles each of the six (6) tires travel per month and this will be the lease charge MET Transit shall pay monthly.

TIRE LIFE

Suppliers shall define a tire "life expectancy" for the tires to be used on the MET Transit fleet.

LENGTH OF LEASE CONTRACT

It is MET Transit's intent to award a one (1) year agreement with an additional four (4) one (1) year options for a total possible contract length of five (5) years. The four (4) optional one (1) year options shall be exercised upon mutual consent from both MET Transit and the Supplier.

MET Transit may terminate the contract at any time without cause and without penalty, provided that written notice is given to the Supplier. MET Transit will provide at least thirty (30) days' notice of the termination. In the event of such termination, the Supplier will only be paid for tires in accordance with the mileage rate and provisions of the contract or MET Transit will have the option of buying part or all the inventory. If no termination is filed by MET Transit, then each subsequent year will continue per the rates established on the Bid Sheet, Exhibit B in Section IV.

CURRENT INVENTORY

The current tires owned by MET Transit will continue to be used by MET Transit until MET Transit personnel remove them from service at no additional cost to MET, by the mileage supplier. The Supplier will supply mileage tires to replace MET Transit's current inventory on a unit-by-unit basis, as MET Transit's tires are run out.

PURCHASE OF LEASE TIRES

MET Transit shall have the option to purchase the Supplier's tires at any time during the length of the contract. The Supplier shall be paid by MET Transit for



the unused miles on each tire to be purchased. At the conclusion of the contract MET Transit reserves the option to purchase all or part of the Supplier's inventory within MET Transit's possession. Upon notification prior to the expiration of the contract MET Transit may exercise the option to continue leasing the Supplier's tires, for a thirty-six (36) month period upon the following conditions:

- A. The lease rate shall be the rate in effect during the one (1) year period immediately preceding the expiration date.
- B. MET Transit shall continually use such tires, insofar as practicable on its highest mileage routes, until the tires are rendered permanently unfit for service as determined by MET Transit personnel.
- C. No additional tires, services, supplies, or equipment are to be furnished by the Supplier during such an extension unless requested by MET Transit and agreed to by the Supplier.
- D. Upon expiration of the agreement as so extended, MET Transit shall pay for any mileage remaining at the lease rate in effect immediately preceding the expiration date. The remaining mileage shall be determined in accordance with language under the LOST, SOLD, OR PURCHASED section of this agreement. Any payment for tires required to be purchased by MET Transit under this paragraph shall be made within thirty (30) days after the date of the invoice covering the purchase thereof. MET Transit will acquire each used tire "as is", and the Supplier makes no warranties as to the condition or fitness use of such tire(s), excluding factory recalls.
- E. In lieu of the above run-out option, MET Transit may purchase any mileage remaining thereon at the rental rate in effect immediately preceding the expiration date at the terms specified in Paragraph D above.

TIRE RECALLS

All recalls of tires will be at the sole expense of the tire supplier including, but not limited to freight, storage, destruction, and handling. The tire supplier shall replace recalled tires with tires of equal or greater value than those tires being recalled. All recalled tires, including spare inventory, shall be replaced immediately to ensure that MET Transit is able to safely operate their transit system with no interruption to service.



EXHIBIT C

BID FORM

PRICING FOR LEASE OF TRANSIT MILEAGE TIRES

_____ supplies the following initial BID. We recognize that MET Transit may or may not negotiate with all BIDDERS whose initial BID is in the competitive range. We further recognize that MET Transit may accept the bids as written below.

- I. BASE MILEAGE RATE BID (for Year One September 1, 2021 thru August 31, 2022)

| TIRE SIZE | COST | TYPE | LOAD | YEAR 1 |
|-----------------|-------------|-------------|------|--------|
| 315/80R 22.5 | Per Mile | New Tire | J | \$ |
| 225/70R 19.5 | Per Mile | New Tire | G | \$ |
| 275/70R 22.5 | Per Mile | New Tire | J | \$ |

- II. ESCALATION METHODS:
(Describe or reference attached signed materials) \$

- III. Option Years will begin on September 1st and end on the following year on August 31st.

| TIRE SIZE | COST | TYPE | LOAD | YEAR 2 9/1/21 - 08/31/22 | YEAR 3 9/1/22 - 8/31/23 | YEAR 4 9/1/23 - 8/31/24 | YEAR 5 9/1/24 - 8/31/25 |
|-----------------|-------------|-------------|------|--------------------------------|-------------------------------|-------------------------------|-------------------------------|
| 315/80R 22.5 | Per Mile | New Tire | J | | | | |
| 225/70R 19.5 | Per Mile | New Tire | G | | | | |
| 275/70R 22.5 | Per Mile | New Tire | J | | | | |



I/We acknowledge _____ # _____ addendum.

Company Name

Date

Contact Name (please print)

Title

Signature of Contact Position

By signing the above, I certify that I am authorized by the Company named above to respond to this request.

Commented [KL1]: If you place your pricing section in another area, such as an Exhibit, please cut this acknowledgment and the signature portion and place it with your pricing.



EXHIBIT D

FTA REQUIRED CLAUSES

For clarification purposes, Contract and Agreement throughout these clauses shall mean the same thing.

It is a requirement of the Federal Government that activities financed, in part, with Federal funds and performed by a third party contractor and its subcontractors on behalf of a Federal grantee must be carried out in accordance with Federal requirements. Activities performed resulting from the original Contract to this and any other prior or subsequent Contract amendments thereto are financed, in part, by a grant from the United States Department of Transportation (U.S. DOT), Federal Transit Administration (FTA), and are therefore subject to the applicable grant terms, conditions, and regulations. Accordingly, any **CONTRACTOR** and its subcontractors performing activities under this Contract must adhere to the Federal regulations stated herein as a condition of satisfactory performance. All subcontracts and subcontractors employed as a result of this Contract are subject to the same conditions and regulations as set forth herein unless specifically exempted. The prime **CONTRACTOR** shall ensure that its subcontractors at all tiers are made aware of and comply with these Federal regulations. The prime **CONTRACTOR** will be held liable for compliance failures by its subcontractors. Failure to comply will render the prime **CONTRACTOR** responsible for damages and/or Contract termination.

INCORPORATION OF FTA TERMS

General Contract provisions include, in part, certain standard terms and conditions required by U.S. DOT, whether or not expressly set forth in the Contract provisions. All contractual provisions required by U.S. DOT, as set forth in FTA Circular 4220.1F, as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The **CONTRACTOR** shall not perform any act, fail to perform any act, or refuse to comply with any City of Billings, Aviation and Transit Department, MET Transit Division (hereinafter referred to as **MET**) requests that would cause **MET** to be in violation of the FTA terms and conditions.

ACCESS TO RECORDS AND REPORTS (For Contracts of \$100,000 or Greater Only)

1. Record Retention. The **CONTRACTOR** will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
2. Retention Period. The **CONTRACTOR** agrees to comply with the record retention requirements in accordance with 2 CFR § 200.333. The **CONTRACTOR** shall maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
3. Access to Records. The **CONTRACTOR** agrees to provide sufficient access to FTA and



its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

4. Access to the Sites of Performance. The **CONTRACTOR** agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

BUY AMERICA
(For Contracts of \$150,000 or Greater Only)

The **CONTRACTOR** agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the U.S., unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR § 661.11.

The [bidder or offeror] must submit to the City of Billings **MET** the appropriate Buy America certification below with its [bid or offer]. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

Certificate of Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR Part 661.

Date: _____
Signature: _____
Company: _____
Name: _____
Title: _____

Certificate of Non-Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j) (2), as amended, and the applicable regulations in 49 CFR § 661.7.

Date: _____
Signature: _____
Company: _____
Name: _____
Title: _____

LOBBYING RESTRICTIONS
(For Contracts of \$100,000 or Greater Only)

The undersigned 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 influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
 4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- Signature of Contractor's Authorized Official: _____
Name of Contractor's Authorized Official: _____
Title of Contractor's Authorized Official: _____
Date: _____

CARGO PREFERENCE – USE OF UNITED STATES FLAG VESSELS
(For Contracts of \$100,000 or Greater Only)

The **CONTRACTOR** agrees:

1. To use privately owned U.S. 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 U.S. Flag commercial vessels.
2. To furnish within 20 working days following the date of loading for shipments originating within the U.S. or within 30 working days following the date of loading for shipments originating outside the U.S., 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.); and
3. 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.

CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT
(For Contracts of \$100,000 or Greater Only)

The **CONTRACTOR** agrees:

1. It will not use any violating facilities.
2. It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities."
3. It will report violations of use of prohibited facilities to FTA; and
4. It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).



ENERGY CONSERVATION

The **CONTRACTOR** agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act.

RECORDS RETENTION/AUDIT AND INSPECTION OF RECORDS

1. The **CONTRACTOR** shall permit the authorized representatives of **MET**, the U.S. DOT, and the Comptroller General of the U.S., or any of their duly 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 of the **CONTRACTOR** relating to its performance under the Contract until the expiration of three years after final payment under this Contract.
2. The **CONTRACTOR** further agrees to include in all subcontracts hereunder a provision to the effect that the subcontractor agrees that **MET**, the U.S. DOT, and the Comptroller General of the U.S., or any of their duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any books, documents, papers, and records of the subcontractor directly pertinent to this Contract.
3. The periods of access and examination described above, for records that relate to:
 - a) Appeals under the dispute clause of this Contract.
 - b) Litigation or the settlement of claims arising out of the performance of this Contract.
 - c) Costs and expenses of this Contract to which an exception has been taken by the Comptroller General of the U.S. or any of his duly authorized representatives.Shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

FEDERAL CHANGES

CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including, without limitation, those listed directly or by reference in the Agreement (Form FTA MA (2) dated October 1995) between **MET** 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.

RECYCLED PRODUCTS

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

NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

The **MET** 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 **MET**, **CONTRACTOR**, or any other party (whether or not a party to the Contract) pertaining to any matter resulting from the underlying Contract. The **CONTRACTOR** agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.



It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

The **CONTRACTOR** acknowledges and agrees as follows:

1. The **CONTRACTOR** acknowledges that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to the Project. Accordingly, by signing the underlying Contract, the **CONTRACTOR** certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make 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** also acknowledges that if it makes 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, as amended, on the **CONTRACTOR** to the extent the Federal Government deems appropriate.
2. The **CONTRACTOR** also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 U.S.C. § 5307, the Government reserves the right to impose on the **CONTRACTOR** the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate.

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

Title 49 CFR Part 29 and Executive Order 12549 establish regulations pertaining to DOT and other Federal contractors at any tier, and procedures applicable to their debarment, suspension, ineligibility, or exclusion from participation in any DOT or other Federal contracts. **CONTRACTORS** are required to review the above regulations and to complete and submit a Certification Regarding Debarment, Suspension, Other Ineligibility and Voluntary Exclusion (Section 1.4.15), or furnish an explanation as to why the Certification cannot be provided. The **CONTRACTOR** agrees by submitting the Bid/Proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by **MET**. The **CONTRACTOR** further agrees by submitting this Bid/Proposal that it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion Lower Tier Covered Transaction", in all lower tier covered transactions over \$25,000 and in all solicitations for lower tier contracts.

PRIVACY ACT

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.

ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES ADA
(For Contracts of \$100,000 or Greater Only)

The **CONTRACTOR** agrees to comply with the requirements of 49 U.S.C. 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The **CONTRACTOR** also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. 12101 et seq., which Federal regulations, including any amendments thereto:

1. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
2. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27;
3. Joint U.S. Architectural and Transportation Barriers Compliance Board/ U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38;
4. U.S. DOT requires the provision of accessible facilities and services, and with the following regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35;
5. U.S. DOT regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
6. U.S. GSA regulations, "Accommodations for Physically Handicapped," 41 CFR subpart 101-19;
7. U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
8. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F;
9. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609; and
10. Any implementing requirements FTA may issue.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

1. Goal. **MET** sets an overall DBE goal every three years. While the expected percentage of DBE participation may vary from contract to contract due to availability of DBEs, **MET** believes the overall goals to be realistically obtainable over the year. The amount of DBE participation will be determined by the dollar value of the work subcontracted to DBEs, as compared to the total value of all work performed under this Contract and/or by the percentage of the net profit that the parties agree will be shared by DBEs where a joint



venture is entered into for the completion of the project. **MET's** DBE goal is 2.33%.

2. Instructions to Bidders and Contractors. It is the policy of **MET** that equal opportunity to participate in its procurement will be provided to DBEs. To accomplish this objective, **MET** requires, as applicable, all bidders and contractors to complete and return with the Bid/Proposal submittals, all DBE Forms (included as Attachment B to this Agreement) of these Solicitation Documents), which obligates the **CONTRACTOR** to assert a good faith effort to attain the specified goal for DBE participation. A bidder/contractor may satisfy the requirements of DBE Form A by having DBE status, by subcontracting portions of the work to DBEs, and/or by entering into a joint venture with DBEs.
3. Requirements, Terms, and Conditions. A DBE is defined as a small business concern that is owned and controlled by socially and economically disadvantaged individuals. These socially and economically disadvantaged individuals must own 51 percent of the business, and they must control the management of the business. Socially and economically disadvantaged individuals include Women, Black Americans, Hispanic Americans, Asian-Pacific Americans, Asian-Indian Americans, or any other minorities or individuals found to be disadvantaged by the Small Business Administration (SBA), pursuant to Section 8(a) of the Small Business Act. To be accepted as a qualified DBE, a **CONTRACTOR** must be certified as a DBE by the Montana Department of Transportation (MDT) before the time of Bid/Proposal submittal. The MDT DBE Program Manager is Wendy Stewart (406-444-6337) or westewart@mt.gov. MDT's DBE certification application forms are available, for contractors interested in securing MDT DBE certification prior to Bid/Proposal opening, on line at www.mdt.mt.gov/business/contracting/civil/dbe.shtml. Any questions regarding **MET's** DBE program or questions regarding the DBE forms should be directed to Wendy Stewart.

NOTICE OF FEDERAL REQUIREMENTS

New Federal laws, regulations, policies, and administrative practices may be established after the date of this Contract, which may apply to this Contract. If Federal requirements change, the changed requirements will apply to the Contract or the performance of work under the Contract as required. All standards or limits set forth in this Contract to be observed in the performance of the work are minimum requirements.

DAVIS-BACON ACT

All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor.

PREVAILING WAGE AND ANTI-KICKBACK

For all prime construction, alteration, or repair contracts in excess of \$2,000 awarded by FTA, the **CONTRACTOR** shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The **CONTRACTOR** will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the



CONTRACTOR shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the **CONTRACTOR** agrees to pay wages not less than once a week. The **CONTRACTOR** shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 CFR Part 3, "contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the U.S." The **CONTRACTOR** is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

CONTRACT WORK HOURS AND SAFETY STANDARDS

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the **CONTRACTOR** shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701- 3708), as supplemented by the DOL regulations at 29 CFR Part 5. Under 40 U.S.C. § 3702 of the Act, the **CONTRACTOR** shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the **CONTRACTOR** and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the **CONTRACTOR** and subcontractor shall be liable to the U.S. (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause 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 this clause.

The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the **CONTRACTOR** or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.

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



FLY AMERICA REQUIREMENTS

1. Definitions. As used in this clause:
 - a) "International air transportation" means transportation by air between a place in the U.S. and a place outside the U.S., or between two places both of which are outside the U.S.
 - b) "U.S." means the 50 States, the District of Columbia, and outlying areas.
 - c) "U.S. flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
2. When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S. flag air carriers for U.S. Government financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the U.S., in the absence of satisfactory proof of the necessity for foreign flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the U.S., for international air transportation secured aboard a foreign flag air carrier if a U.S. flag air carrier is available to provide such services.
3. If available, the Contractor, in performing work under this contract, shall use U.S. flag carriers for international air transportation of personnel (and their personal effects) or property.
4. In the event that the Contractor selects a carrier other than a U.S. flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S. Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S. flag air carrier was not available or it was necessary to use foreign flag air carrier service for the following reasons. See FAR § 47.403. (State reasons):

(End of statement)

5. The Contractor shall include the substance of this clause, including this paragraph (5), in each subcontract or purchase under this contract that may involve international air transportation.

(End of Clause)



DEBARMENT CERTIFICATION

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

The **VENDOR**, _____, certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
2. Have not, within a three-year period preceding this Bid/Proposal, been convicted of or had a civil judgment rendered against them for commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public function (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in Paragraph 2. of this certification.
4. Have not, within a three-year period preceding this Bid/Proposal, had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the **VENDOR** is unable to certify to any of the statements in this certification, such **VENDOR** shall attach an explanation to this Bid/Proposal.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE ABOVE FIRM, TO MAKE THIS AFFIDAVIT.

VENDOR

DATE

EXHIBIT D

FTA REQUIRED CLAUSES

For clarification purposes, Contract and Agreement throughout these clauses shall mean the same thing.

It is a requirement of the Federal Government that activities financed, in part, with Federal funds and performed by a third party contractor and its subcontractors on behalf of a Federal grantee must be carried out in accordance with Federal requirements. Activities performed resulting from the original Contract to this and any other prior or subsequent Contract amendments thereto are financed, in part, by a grant from the United States Department of Transportation (U.S. DOT), Federal Transit Administration (FTA), and are therefore subject to the applicable grant terms, conditions, and regulations. Accordingly, any **CONTRACTOR** and its subcontractors performing activities under this Contract must adhere to the Federal regulations stated herein as a condition of satisfactory performance. All subcontracts and subcontractors employed as a result of this Contract are subject to the same conditions and regulations as set forth herein unless specifically exempted. The prime **CONTRACTOR** shall ensure that its subcontractors at all tiers are made aware of and comply with these Federal regulations. The prime **CONTRACTOR** will be held liable for compliance failures by its subcontractors. Failure to comply will render the prime **CONTRACTOR** responsible for damages and/or Contract termination.

INCORPORATION OF FTA TERMS

General Contract provisions include, in part, certain standard terms and conditions required by U.S. DOT, whether or not expressly set forth in the Contract provisions. All contractual provisions required by U.S. DOT, as set forth in FTA Circular 4220.1F, as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The **CONTRACTOR** shall not perform any act, fail to perform any act, or refuse to comply with any City of Billings, Aviation and Transit Department, MET Transit Division (hereinafter referred to as **MET**) requests that would cause **MET** to be in violation of the FTA terms and conditions.

ACCESS TO RECORDS AND REPORTS

(For Contracts of \$100,000 or Greater Only)

1. Record Retention. The **CONTRACTOR** will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
2. Retention Period. The **CONTRACTOR** agrees to comply with the record retention requirements in accordance with 2 CFR § 200.333. The **CONTRACTOR** shall maintain all

EXHIBIT D

books, records, accounts and reports required under this Contract for a period of not less than three (3) 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

3. Access to Records. The **CONTRACTOR** agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
4. Access to the Sites of Performance. The **CONTRACTOR** agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

EXHIBIT D

BUY AMERICA

(For Contracts of \$150,000 or Greater Only)

The **CONTRACTOR** agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the U.S., unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR § 661.11.

The [bidder or offeror] must submit to the City of Billings **MET** the appropriate Buy America certification below with its [bid or offer]. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

Certificate of Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR Part 661.

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____

Certificate of Non-Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j) (2), as amended, and the applicable regulations in 49 CFR § 661.7.

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____

EXHIBIT D

LOBBYING RESTRICTIONS

(For Contracts of \$100,000 or Greater Only)

The undersigned 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 influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature of Contractor's Authorized Official: _____

Name of Contractor's Authorized Official: _____

Title of Contractor's Authorized Official: _____

Date: _____

EXHIBIT D

CARGO PREFERENCE – USE OF UNITED STATES FLAG VESSELS

(For Contracts of \$100,000 or Greater Only)

The **CONTRACTOR** agrees:

1. To use privately owned U.S. 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 U.S. Flag commercial vessels.
2. To furnish within 20 working days following the date of loading for shipments originating within the U.S. or within 30 working days following the date of loading for shipments originating outside the U.S., 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.); and
3. 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.

CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(For Contracts of \$100,000 or Greater Only)

The **CONTRACTOR** agrees:

1. It will not use any violating facilities.
2. It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities."
3. It will report violations of use of prohibited facilities to FTA; and
4. It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

ENERGY CONSERVATION

The **CONTRACTOR** agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act.

RECORDS RETENTION/AUDIT AND INSPECTION OF RECORDS

1. The **CONTRACTOR** shall permit the authorized representatives of **MET**, the U.S. DOT,

EXHIBIT D

and the Comptroller General of the U.S., or any of their duly 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 of the **CONTRACTOR** relating to its performance under the Contract until the expiration of three years after final payment under this Contract.

2. The **CONTRACTOR** further agrees to include in all subcontracts hereunder a provision to the effect that the subcontractor agrees that **MET**, the U.S. DOT, and the Comptroller General of the U.S., or any of their duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any books, documents, papers, and records of the subcontractor directly pertinent to this Contract.
3. The periods of access and examination described above, for records that relate to:
 - a) Appeals under the dispute clause of this Contract.
 - b) Litigation or the settlement of claims arising out of the performance of this Contract.
 - c) Costs and expenses of this Contract to which an exception has been taken by the Comptroller General of the U.S. or any of his duly authorized representatives.

Shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

FEDERAL CHANGES

CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including, without limitation, those listed directly or by reference in the Agreement (Form FTA MA (2) dated October 1995) between **MET** 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.

RECYCLED PRODUCTS

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

NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

The **MET** 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 **MET**, **CONTRACTOR**, or any other party (whether or not a party to the Contract) pertaining to any matter resulting from the underlying Contract. The **CONTRACTOR** agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

EXHIBIT D

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

The **CONTRACTOR** acknowledges and agrees as follows:

1. The **CONTRACTOR** acknowledges that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to the Project. Accordingly, by signing the underlying Contract, the **CONTRACTOR** certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make 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** also acknowledges that if it makes 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, as amended, on the **CONTRACTOR** to the extent the Federal Government deems appropriate.
2. The **CONTRACTOR** also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 U.S.C. § 5307, the Government reserves the right to impose on the **CONTRACTOR** the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate.

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

Title 49 CFR Part 29 and Executive Order 12549 establish regulations pertaining to DOT and other Federal contractors at any tier, and procedures applicable to their debarment, suspension, ineligibility, or exclusion from participation in any DOT or other Federal contracts. **CONTRACTORS** are required to review the above regulations and to complete and submit a Certification Regarding Debarment, Suspension, Other Ineligibility and Voluntary Exclusion (Section 1.4.15), or furnish an explanation as to why the Certification cannot be provided. The **CONTRACTOR** agrees by submitting the Bid/Proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by **MET**. The **CONTRACTOR** further agrees by submitting this Bid/Proposal that it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion Lower Tier Covered Transaction", in all lower tier covered transactions over \$25,000 and in all solicitations for lower tier contracts.

PRIVACY ACT

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

EXHIBIT D

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.

ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES ADA

(For Contracts of \$100,000 or Greater Only)

The **CONTRACTOR** agrees to comply with the requirements of 49 U.S.C. 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The **CONTRACTOR** also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. 12101 et seq., which Federal regulations, including any amendments thereto:

1. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
2. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27;
3. Joint U.S. Architectural and Transportation Barriers Compliance Board/ U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38;
4. U.S. DOT requires the provision of accessible facilities and services, and with the following regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35;
5. U.S. DOT regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
6. U.S. GSA regulations, "Accommodations for Physically Handicapped," 41 CFR subpart 101-19;
7. U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
8. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F;
9. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609; and
10. Any implementing requirements FTA may issue.

EXHIBIT D

DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

1. Goal. **MET** sets an overall DBE goal every three years. While the expected percentage of DBE participation may vary from contract to contract due to availability of DBEs, **MET** believes the overall goals to be realistically obtainable over the year. The amount of DBE participation will be determined by the dollar value of the work subcontracted to DBEs, as compared to the total value of all work performed under this Contract and/or by the percentage of the net profit that the parties agree will be shared by DBEs where a joint venture is entered into for the completion of the project. **MET's** DBE goal is 0.69%.
2. Instructions to Bidders and Contractors. It is the policy of **MET** that equal opportunity to participate in its procurement will be provided to DBEs. To accomplish this objective, **MET** requires, as applicable, all bidders and contractors to complete and return with the Bid/Proposal submittals, all DBE Forms (included as Attachment B to this Agreement) of these Solicitation Documents), which obligates the **CONTRACTOR** to assert a good faith effort to attain the specified goal for DBE participation. A bidder/contractor may satisfy the requirements of DBE Form A by having DBE status, by subcontracting portions of the work to DBEs, and/or by entering into a joint venture with DBEs.
3. Requirements, Terms, and Conditions. A DBE is defined as a small business concern that is owned and controlled by socially and economically disadvantaged individuals. These socially and economically disadvantaged individuals must own 51 percent of the business, and they must control the management of the business. Socially and economically disadvantaged individuals include Women, Black Americans, Hispanic Americans, Asian-Pacific Americans, Asian-Indian Americans, or any other minorities or individuals found to be disadvantaged by the Small Business Administration (SBA), pursuant to Section 8(a) of the Small Business Act. To be accepted as a qualified DBE, a **CONTRACTOR** must be certified as a DBE by the Montana Department of Transportation (MDT) before the time of Bid/Proposal submittal. The MDT DBE Program Manager is Wendy Stewart (406-444-6337) or westewart@mt.gov. MDT's DBE certification application forms are available, for contractors interested in securing MDT DBE certification prior to Bid/Proposal opening, on line at www.mdt.mt.gov/business/contracting/civil/dbe.shtml. Any questions regarding **MET's** DBE program or questions regarding the DBE forms should be directed to Wendy Stewart.

NOTICE OF FEDERAL REQUIREMENTS

New Federal laws, regulations, policies, and administrative practices may be established after the date of this Contract, which may apply to this Contract. If Federal requirements change, the changed requirements will apply to the Contract or the performance of work under the Contract as required. All standards or limits set forth in this Contract to be observed in the performance of the work are minimum requirements.

DAVIS-BACON ACT

All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate

EXHIBIT D

on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor.

PREVAILING WAGE AND ANTI-KICKBACK

For all prime construction, alteration, or repair contracts in excess of \$2,000 awarded by FTA, the **CONTRACTOR** shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The **CONTRACTOR** will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the **CONTRACTOR** shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the **CONTRACTOR** agrees to pay wages not less than once a week. The **CONTRACTOR** shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 CFR Part 3, "contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the U.S." The **CONTRACTOR** is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

CONTRACT WORK HOURS AND SAFETY STANDARDS

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the **CONTRACTOR** shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701- 3708), as supplemented by the DOL regulations at 29 CFR Part 5. Under 40 U.S.C. § 3702 of the Act, the **CONTRACTOR** shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the **CONTRACTOR** and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the **CONTRACTOR** and subcontractor shall be liable to the U.S. (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause 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 this clause.

The FTA 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

EXHIBIT D

work performed by the **CONTRACTOR** or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.

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

FLY AMERICA REQUIREMENTS

1. Definitions. As used in this clause:
 - a) "International air transportation" means transportation by air between a place in the U.S. and a place outside the U.S., or between two places both of which are outside the U.S.
 - b) "U.S." means the 50 States, the District of Columbia, and outlying areas.
 - c) "U.S. flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
2. When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S. flag air carriers for U.S. Government financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the U.S., in the absence of satisfactory proof of the necessity for foreign flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the U.S., for international air transportation secured aboard a foreign flag air carrier if a U.S. flag air carrier is available to provide such services.
3. If available, the Contractor, in performing work under this contract, shall use U.S. flag carriers for international air transportation of personnel (and their personal effects) or property.
4. In the event that the Contractor selects a carrier other than a U.S. flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S. Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S. flag air carrier was not available or it was necessary to use foreign flag air carrier service for the following reasons. See FAR § 47.403. (State reasons):

EXHIBIT D

(End of statement)

5. The Contractor shall include the substance of this clause, including this paragraph (5), in each subcontract or purchase under this contract that may involve international air transportation.

(End of Clause)

DEBARMENT CERTIFICATION

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

The **VENDOR**, _____, certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
2. Have not, within a three-year period preceding this Bid/Proposal, been convicted of or had a civil judgment rendered against them for commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public function (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in Paragraph 2. of this certification.
4. Have not, within a three-year period preceding this Bid/Proposal, had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the **VENDOR** is unable to certify to any of the statements in this certification, such **VENDOR** shall attach an explanation to this Bid/Proposal.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE ABOVE FIRM, TO MAKE THIS AFFIDAVIT.

VENDOR

DATE