



Request for Quotes – CPA Services

REQUEST FOR QUOTES (RFQ)

Certified Public Accounting (CPA) Services

ISSUE DATE: SEPTEMBER 8, 2025

SUBMITTAL DUE DATE: OCTOBER 31, 2025

2:00 PM CENTRAL DAYLIGHT TIME (CDT)

THE OTTER EXPRESS

The Otter Express
1225 N Tower Road
Fergus Falls MN 56537
Point of Contact: Kayla Sullivan
kaylas@productivemn.org



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Instructions for Submitters

1 Request for Submittals

THE OTTER EXPRESS referred to further in this RFQ as OTTER EXPRESS, a newly established public transit agency governed by a Joint Powers Board (JBP), is seeking quotes from a qualified and experienced Certified Public Account (CPA) or CPA Firm, herein referred to as CONTRACTOR. CONTRACTOR to provide financial services to support its transition to independent operations. The selected CONTRACTOR will help establish and maintain compliant accounting systems, assist with grant management, and ensure fiscal oversight in alignment with federal and state requirements. Additionally, CONTRACTOR shall provide payroll supportive services.

Attachment A, Scope of Work, outlines the project's scope of work and associated requirements and deliverables.

This RFQ and identified attachments shall be used to prepare the quotes packet. Failure to follow these instructions and requirements may result in rejection of the submittal. OTTER EXPRESS is not responsible for any costs incurred by CONTRACTOR in preparation and submittal.

2 Background – Agency/Client Information

OTTER EXPRESS is a small, newly independent public transit agency based in Otter Tail County, Minnesota. The agency has 22 employees with the option of adding 4 additional staff. Formerly operated under the umbrella of another organization, Productive Alternatives, Otter Express is in the process of transitioning into a stand-alone entity governed by a newly formed JPB. This transition is being guided and supported by the Minnesota Department of Transportation (MnDOT) and includes the development of independent financial systems, administrative processes, and organizational governance.

As part of this transition, OTTER EXPRESS is establishing its own financial infrastructure, including new bank accounts, budgeting and forecasting, cash flow management, payroll administration, records retention, and grant oversight fiscal policies and procedures. The agency receives federal and state transit funding, including Federal Transit Administration (FTA) Section 5311 Formula Grants for Rural Areas, 49 U.S. Code § 5311 and Minnesota transit assistance funds, and must ensure compliance with all applicable financial and reporting requirements from the MnDOT, USDOT, FTA, Uniform Guidance, and other funding partners.

The agency is seeking a qualified CONTRACTOR to:

- Support this transition/foundational phase by providing professional accounting and financial advisory services. These services will be critical in supporting OTTER EXPRESS with ongoing financial operations, audit preparedness including single audit services required for federal funds, grant financial compliance, fiscal reporting, as well as helping to establish sound internal controls and financial procedures aligned with state and federal expectations. The Firm shall also provide payroll services for OTTER EXPRESS.



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OTTER EXPRESS anticipates becoming fully operational under its new governance by January 1, 2026. The goal is to have a transparent and accountable financial foundation to support its long-term sustainability and service to the public.

- Provide annual professional services including, but not limited to, professional support services for ongoing financial operations, audit preparedness, grant financial compliance, fiscal reporting, payroll, tax preparation and planning, and payroll management. Beyond these essential functions, the CONTRACTOR shall provide advisory and consulting services to help OTTER EXPRESS with financial planning, improvement, and growth.

3 Project Goals/Needs

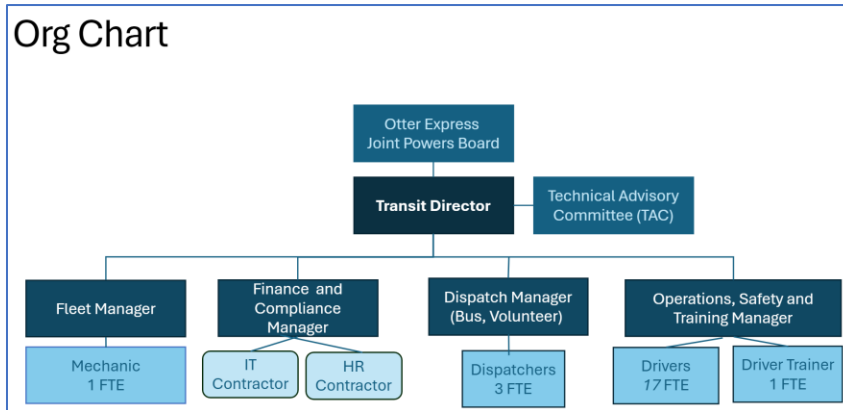
OTTER EXPRESS is seeking support during a critical transition period, and beyond, as it establishes itself as an independent public transit provider. The selected CONTRACTOR will play a key role in developing and maintaining a strong financial foundation that ensures fiscal integrity, transparency, and compliance with all applicable local, state and federal requirements. Continued professional services will extend throughout the life of the contract, with core services that include bookkeeping, payroll administration, financial statement preparation, audit preparation, and consulting.

Project Goals:

1. **Establish Financial Independence**
Support the agency in setting up and managing its own financial systems, including chart of accounts, internal controls, and accounting procedures separate from the previous fiscal agent.
2. **Ensure Compliance**
Provide guidance and oversight to ensure compliance with MnDOT and FTA financial requirements, including proper use and reporting of FTA-Section 5311 and other federal and state revenue source requirements.
3. **Support Audit Readiness**
Assist in preparing for future audits by helping develop audit-ready records, reconciling financials, and ensuring consistent documentation of expenditures and revenues.
4. **Support Grant Tracking and Reporting Systems**
Work with agency staff to create and maintain financial tracking mechanisms that align with operating and capital grant requirements, reimbursement schedules, financial reporting systems, and financial reporting deadlines. OTTER EXPRESS will continue to use the BlackCat transit grant management system to meet state fiscal report requirements.
5. **Offer Strategic Financial Guidance**
Provide ongoing financial advice and consultation to the agency's leadership and governing board, including cost-benefit analysis, budget planning, and financial forecasting.
6. **Payroll services compliant to Minnesota, Federal compliance.**
Provide required services for bimonthly (twice a month) payroll services for the organizational structure noted below.



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Agency Needs:

- Assistance with transitioning financial responsibilities from the prior fiscal agent.
- Establishment and / or validation of new bank accounts and financial management systems.
- Guidance on allowable costs and funding source restrictions.
- Administration of cash flow management. Analyze cash flows to help manage expenses and prepare for lean periods. Set in place best practices and internal control policies for farebox revenue.
- Support in preparing MnDOT-required monthly, quarterly, and annual financial reports. Provide General Ledger and monthly reconciliation support.
- Coordination with agency staff to improve/develop sustainable budgeting and accounting practices.
- Periodic attendance at board or staff meetings to present financial updates, as requested.
- Perform required internal audits based on revenue sources and support annual single audit requirements.
- Continue to provide annual basic professional services.

The ideal CONTRACTOR will have demonstrated experience working with local governments, public transit providers, or similar public-sector entities, and a strong understanding of state and federal transportation funding compliance.

As outlined below in **Section 5, Submittal & Project Dates**, submittals shall illustrate how the CONTRACTOR's approach aligns with each of these project goals and how the CONTRACTOR's team has successfully delivered results to similar clients.

4 Agency Rights

OTTER EXPRESS reserves the right to cancel this RFQ or delay the date or time of milestones found in **Table A**, below.

OTTER EXPRESS specifically reserves the right to:

1. Reject any or all submittals, without limitation, due to nonconforming, nonresponsive submitters or due to results from a background check;



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2. Reject any provisions identified in a submittal;
3. Waive any informalities or non-material deviations in a submittal; or
4. Obtain new submittals.

By submitting a quotes packet, the CONTRACTOR agrees to provide additional information upon request. If the CONTRACTOR refuses to provide the information upon request, the CONTRACTOR may be disqualified from further consideration. The responsibility and outcome evaluation of the submittal will be based on the criteria listed below (a – e). The submitted quotes shall address the criteria listed below, (a – e).

- a) Qualified financial resources to perform the identified services.
- b) Ability to meet the services requested.
- c) A satisfactory performance record for providing similar services to other public/government agencies. This will be determined by reference checks for work performed for agencies with similar services.
- d) The necessary organization, experience, and understanding to provide the services requested.
- e) Compliance knowledge and understanding of applicable local, state, and federal licensing, tax laws, payroll requirements and regulations.

5 Submittal & Project Dates

Submittals are due by October 10, 2025, at 2:00 PM Central Daylight Time (CDT). OTTER EXPRESS anticipates the following schedule, TABLE A, for selecting a CONTRACTOR and awarding a contract. It is the intent of OTTER EXPRESS to have the notice to proceed for the new CONTRACTOR no later than October 31, 2025.

TABLE A: SCHEDULE

Milestone	Date (2025)
RFQ Released	September 8
Last day to submit questions	September 19, 2pm CDT
Responses to questions posted	September 26, 2pm CDT
Submittal due date	October 10, 2pm CDT
Interviews	October 13 through 17
Final Selection (Two Step process: quotes & interview)	October 20 through 22
JPB approval of selected CONTRACTOR	October 23
Contract execution and notice to proceed	Anticipated October 31
Start date (Official Notice to Proceed)	October 31



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6 Submittal

A CONTRACTOR's submittal will only be accepted as files attached to an email to the RFQ Administrator. The subject line on the email shall be **[Name of CONTRACTOR] – SUBMITTAL**. All required documents shall be submitted to the RFQ Administrator.

The RFQ Administrator is:

Kayla Sullivan

Phone Number: 218-998-3002

Email: kaylas@productivemn.org

Submittals by mail, courier, or other means **will not be accepted**.

It is the CONTRACTOR's sole responsibility to validate that the submittal, including all required documents, are received by the specified time. Time received will be based on the time stamp on the email received by the RFQ Administrator. Any submittals received after that time will not be reviewed. The CONTRACTOR may withdraw their submittal by notifying the RFQ Administrator within 3 calendar days after the submittal due date and time.

7 Signature

The submittal shall be signed by an officer with authority to sign the submittal. Electronic signatures are acceptable. The CONTRACTOR's address and state of incorporation shall be shown below the signature. A submittal from an individual, company, firm, or partnership shall be executed by the individual or by an authorized representative, member, or officer whose capacity shall be stated.

8 Questions Related to the RFQ

Questions are due as noted in **TABLE A**. Questions must be emailed to the RFQ Administrator by the due date. Questions may not be submitted through other methods of communication or sent to anyone outside of the RFQ Administrator.

The subject line shall be **QUESTION – RFQ [NAME OF RFQ]**. No questions will be accepted beyond the date and time noted. The RFQ Administrator will not acknowledge the receipt of the question(s); however, they will be presented in an addendum posted on the OTTER EXPRESS website.

CONTRACTORS are advised that the exact wording of their questions will publicly be posted in the addendum.

CONTRACTOR may be disqualified if any unsolicited contact related to this RFQ is made with an employee or representative of OTTER EXPRESS during the RFQ solicitation process. If any CONTRACTOR contemplating submitting a quote is in doubt as to the true meaning of any part of this RFQ or finds discrepancies in or omissions from the requirements or specifications, the person shall submit a question by the date identified.

9 Response to Questions

Responses to questions will be posted on the OTTER EXPRESS website, as illustrated in **TABLE A**.



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10 Addendum

Any corrections or changes to this RFQ will be made by written addendum only, duly numbered, dated, issued, and posted on the OTTER EXPRESS website.

Any prior oral and other representations or clarifications by employees or representatives of OTTER EXPRESS associated to this RFQ are not binding or legally effective except as described in this RFQ or any written addendums.

Should an addendum be posted on the website, ***the CONTRACTOR must acknowledge, in the Cover Letter of the submittal, that each addendum has been received and read.***

11 Interviews

OTTER EXPRESS requires an on-site interview with the top three (3) CONTRACTOR identified by the quote review. These interviews will be held in OTTER EXPRESS, Fergus Falls office, 1225 North Tower Road.

12 Notice of Award

It is anticipated that the award of the contract will occur on or before the date note in **TABLE A**. The contracted CONTRACTOR shall not begin work until an official Notice to Proceed (NTP) letter has been received, which is tentatively scheduled per **TABLE A**. The award of the contract requires approval by the JPB.

13 Terms of the Contract

The contract end date will be one (1) year after NTP with options to extend additional years, at the discretion of OTTER EXPRESS and JPB, and based on performance. The maximum contract duration is one-year (1) plus four (4), optional year extensions, for a total of five (5) years. The year starts on the NTP date.

The charges for service may be increased by up to 3.0 percent each year subject to the approval of OTTER EXPRESS.

14 Contract End Date

The duration of the contract is one (1) year after the NTP date. OTTER EXPRESS will notify the CONTRACTOR 30 days prior to the end of each term if it wishes to exercise the option year.

15 Submittal Requirements

The quotes shall be submitted as noted below. There are no page limitations to the submittal packet.

1. Submittal

Submit as a single combined PDF. The order is as follows:

1. Cover Letter
2. Company Overview
3. Team Member Project Roles, Responsibilities, and Experience
4. Project Approach
5. Risk Analysis and Mitigation



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6. Past Performance
7. References

The required content for each of these sections is detailed in the Submittal Details, Section 16, of this RFQ. The submittal narrative and any associated documents within the narrative may NOT discuss cost. The costs should only be identified in the cost estimate spreadsheet, refer to details illustrated in this RFQ.

2. Required Forms

Submit as separate PDFs for each form. Completed and signed required forms including:

- a) **Attachment C:** Responder Declarations
- b) **Attachment D:** Certification Regarding Debarment, Suspension, Ineligibility & Voluntary Exclusion
- c) **Attachment E:** Conflict of Interest Checklist & Disclosure Form
- d) **Attachment F:** Cost Estimate Template
- e) **Attachment G:** Affidavit of Non collusion
- f) **Attachment H:** Certification Regarding Lobbying
- g) **Attachment I:** Federal Contract Clauses
- h) **Attachment J:** Disadvantaged Business Enterprise (DBE) Special Provisions

3. Cost Estimate

Submit as a single document by using the template provided within the solicitation of this RFQ.

CONTRACTORS **must** identify all estimated costs using the cost estimate template spreadsheet as shown in **Attachment F** and include the following:

- An itemized estimate of direct labor costs by task, including the job title, labor rate, and estimated hours for each position.
- An estimate for anticipated expenses by category, if any.
- Estimated costs for all five (5) years

This ***contract will not permit any expenses for mileage, lodging, parking, meals, or airfare associated with the delivery of work.***

OTTER EXPRESS expects that the contract may include an estimated number of onsite visits of one (1) per month.

16 Submittal Details

Section 1: Cover Letter

Include the company name, address, and the name, email address, and phone number of the primary contact. Cover letters must include a statement agreeing to comply with the contract/purchase order terms and conditions if the submittal is accepted. Cover letter shall also identify addendums (if applicable).

Sections 2 & 3: Company Overview & Team Member Project Roles, Responsibilities & Experience



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Include an organizational chart, identifying key personnel and their role(s) on the project. Clearly name the primary contact for the project and their qualifications. The overview must identify a project manager/client manager who will be the individual responsible for managing the project's scope, schedule, and budget and the primary liaison to OTTER EXPRESS.

The company overview must identify staff supporting each task associated with the responder's approach. Include the qualifications and technical skills of each team member on the project.

If the CONTRACTOR team includes other third-party vendors, include other third-party vendors in the organizational chart, if applicable, and include the company name, key personnel and roles, and a description of the work they will perform.

Section 4: Project Approach

Outline your approach to identified services identified in this RFQ. Include how your approach aligns with the project's goals and the requirements outlined in this RFQ.

Section 5: Risk Analysis and Mitigation

List any risks and/or challenges associated with the project and your plan to mitigate them.

Section 6: Past Performance

Describe your work on at least three (3) similar projects, including the client, project duration, key personnel, overall project cost, and include a summary of how the past performance projects align with the needs for OTTER EXPRESS.

Section 7: References

Provide at least three (3) professional references, including company name, contact name, email, and phone number, and a brief description of the services provided.

17 Items Required Prior to Award of Contract

- Certificates of Insurance, based on requirements identified in **Attachment B, Contract/Purchase Order Terms & Conditions**.
- "Bidders List - Non-DBE and DBE Quotes Submitted" completed with the CONTRACTOR's company profile and the "DBE Total Payment Affidavit" completed for all/any subcontractors (forms are included in **Attachment J, Disadvantaged Business Enterprise (DBE) Special Provisions**).

18 Items Required After Award of Contract

Copies of third-party vendor agreements (if applicable)

19 Evaluation of Submittal

As noted in this RFQ, OTTER EXPRESS requires an in-person interview for those firms that are shortlisted (Maximum of 3).

OTTER EXPRESS reserves the right to negotiate with a CONTRACTOR who submits quotes that meets or exceeds the requirements identified in the RFQ, provides a competitive price, and has the



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qualifications, knowledge, and experience to perform the work based on the submittal evaluation criteria including the interview.

The CONTRACTOR shall submit any additional information requested by OTTER EXPRESS to advance the review and selection. Such information shall be submitted within two working days of receipt of OTTER EXPRESS's request. Failure of the CONTRACTOR to provide the requested information may result in the CONTRACTOR's submittal being rejected and the initiation of dialogue with another CONTRACTOR.

OTTER EXPRESS shall consider all responsive submittals received. OTTER EXPRESS intends to award the project to the CONTRACTOR who is the most responsive based on the evaluation criteria outlined in **TABLE B** below.

The submittal will be evaluated by a committee, including RFQ Administrator and others representing the JPB. Along with what is noted in the RFQ, submittals will be evaluated based on the criteria noted in **TABLE B**.

TABLE B - Evaluation Criteria

1	Project Approach	30%
	• Demonstrated experience and knowledge to deliver the project's scope of work. • CONTRACTOR's approach is aligned with the needs and requirements identified in this RFQ.	15% 15%
2	Qualifications & Experience	30%
	• Experience in performing the work identified in this RFQ for similar public agencies. • Skills and competencies of key personnel to perform the work, including compliance to federally funded projects for accounting practices, audits and daily operations. • Soft Skills to provide positive, proactive customer service • Demonstrated ability to deliver services identified in this RFQ	10% 10% 5% 5%
3	Record of Past Performance and References	20%
	• Proven record of expert performance on past projects. • Past performance of key personnel on similar projects. • Positive feedback from references provided.	10% 5% 5%
4	Cost	20%
	• Competitive and reasonable cost estimate. • Detailed pricing, including labor and expenses associated with the project.	15% 5%

20 Other Requirements

Taxes: The cost estimate shall be prepared exclusive of applicable taxes.

OTTER EXPRESS may request additional information related to the CONTRACTOR's cost estimate during the contract negotiations.

21 Protests

The following bid protest procedures apply to this project.



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Interested parties must adhere to the following procedures. A protest will be processed in the time frame and structure specified below.

Prior to the Submittal Date

Protests concerning a procurement by the CONTRACTOR or an adversely affected third-party vendor must be in writing and received by OTTER EXPRESS not less than five (5) working days before submittal due date.

Upon receipt of that protest, the RFQ Administrator will determine if the submittal due date should be postponed. If the submittal due date is postponed, OTTER EXPRESS will illustrate on their website that a protest has been filed, and that submittal due date is postponed until OTTER EXPRESS has issued its decision. Appropriate addenda will be issued rescheduling the submittal due date.

Any protest to OTTER EXPRESS may be withdrawn at any time before OTTER EXPRESS has issued its decision.

OTTER EXPRESS will respond within three (3) working days of receiving the protest, at least generally, to each issue raised in the Protest. If the matter requires further evaluation, the RFQ Administrator will notify the protesting party in writing (by email with return receipt of opening email) of the extended review period. The RFQ Administrator's decision on any protest will be in writing and is final.

After Submittal Is Received, During Selection Process

Protests received after receipt of the submittal on the due date will be considered only if it concerns an issue, procedure, or other matter that could not have been protested by the CONTRACTOR prior to the due date. The protest must be in writing and be received by OTTER EXPRESS at least three (3) working days before the award of a contract by OTTER EXPRESS.

Upon receipt of the protest, the RFQ Administrator will immediately determine if the award of the contract should be postponed. If it is postponed, OTTER EXPRESS will notify all vendors who provided a submittal that a protest has been filed and that the award of the contract is postponed until OTTER EXPRESS has issued its decision.

A protest to OTTER EXPRESS may be withdrawn at any time before OTTER EXPRESS has issued its decision.

OTTER EXPRESS will respond within three (3) working days of receiving the protest, at least generally, to each material issue raised in the Protest. If the matter requires further evaluation, the RFQ Administrator will notify the protesting party in writing (by email) of the extended review period. The RFQ Administrator's decision on any protest will be in writing and is final.

After Award

Protests received after an award has been made will be considered only if the concern, an issue, procedure or other matter could not have been protested by the CONTRACTOR after the submittal due date or during the time period of the selection process. The protest must be in writing and received by OTTER EXPRESS three (3) working days before the execution of the resulting contract.



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Upon receipt of the protest, the RFQ Administrator will immediately determine if the execution of the contract should be postponed. If it is postponed, OTTER EXPRESS will notify all vendors who submitted a submittal that a protest has been filed, and that execution of the contract is postponed until OTTER EXPRESS has issued its decision.

A protest to OTTER EXPRESS may be withdrawn at any time before OTTER EXPRESS has issued its decision.

OTTER EXPRESS will respond within three (3) working days of receiving the protest, at least generally, to each material issue raised in the Protest. If the matter requires further evaluation, the RFQ Administrator will notify the protesting party in writing (by email) of the extended review period. The RFQ Administrator's decision on any protest will be in writing and is final.

Appeals

Except as provided above, there are no further administrative appeals available.

In certain circumstances judicial remedies may be available to aggrieved parties.

OTTER EXPRESS will consider all written protests made within the timelines stated in this policy. Protest submissions should be concise, logically arranged, clearly state the grounds for the protest, and must include at least the following information:

- Name, address, and telephone number of the protester
- Name of the RFQ
- A detailed statement of the legal and factual grounds for the protest, including copies of all relevant documents or information
- A statement of relief requested

CONTRACTORS who wish to file a protest regarding the selection or RFQ process shall identify their concern in an email. The subject line of the email shall be (CONTRACTOR NAME) PROTEST – CPA SERVICES. The email shall be sent to the RFQ Administrator.

Validation or confirmation of the receipt of the email shall be done by the protestor.

22 Data Practices Act / Trade Secret Information

The Minnesota Government Data Practices Act provides that the name of a CONTRACTOR and the dollar amount of the final contract become public once the contract is executed with full signature. With the exclusion of trade secret information as defined in Minnesota Statutes, Ch. 13-13C, Section 13.37, all other information submitted by a CONTRACTOR becomes public at the time specified and is then available to any person upon request.

Trade secret information is defined in Section 13.37 as data, including a formula, pattern, compilation, program, device, method, technique, or process, (1) that was supplied by the CONTRACTOR; (2) that is the subject of efforts by the CONTRACTOR that are reasonable under the circumstances to maintain its secrecy; and (3) that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. Any information in its response to this RFQ for which



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the CONTRACTOR claims protection as trade secret information in accordance with the above provisions must be limited and set apart in the submittal on separate pages, with a heading that identifies the information as trade secret information. OTTER EXPRESS will make the ultimate determination whether the information meets the applicable definition. Any information submitted in response to this RFQ which does not meet the legal definition will be considered public information, regardless of the CONTRACTOR's identification of it as trade secret information. Blanket-type identification by designating whole pages or sections as containing trade secret information will not assure protection — the specific information for which the CONTRACTOR claims trade secret protection must be clearly identified as such.

Submitted estimated costs for labor and expenses shall not be copyrighted. A statement by the CONTRACTOR that submitted information is copyrighted or otherwise protected does not prevent public access to the information.

23 Example Contract

OTTER EXPRESS's standard contract terms and conditions are provided in **Attachment B, Contract/Purchase Order Terms & Conditions**.

The terms and conditions outlined in **Attachment B** illustrate various legal and administrative duties and responsibilities assumed by persons or organizations contracting with OTTER EXPRESS. CONTRACTOR are strongly advised to review the contracted standard terms and conditions carefully and are responsible for taking the requirements into account when preparing their submittals and estimates.

As part of the submittal, the CONTRACTOR's cover letter shall certify that, if the submittal is accepted, the CONTRACTOR agrees to comply with these terms and conditions. For the purposes of this document, the terms "contract" and "purchase order" are interchangeable.

The cover letter shall identify any condition or exception to the submittal package including **Attachment B**. OTTER EXPRESS will assess if the condition or exception is acceptable or not.

24 Subcontracting

The CONTRACTOR may subcontract for functions to fulfill the obligations of their submittal. The CONTRACTOR **shall** identify within their submittal the name and role that a third-party vendor will provide for the project as well as a description of the work they will perform. All third-party vendor agreements must be reviewed and approved by OTTER EXPRESS prior to initiation.

25. Project Kick Off

After the selected CONTRACTOR receives the notice to proceed, the CONTRACTOR will coordinate a kick-off meeting with OTTER EXPRESS's RFQ Administrator. The kick-off meeting will be held at the OTTER EXPRESS's Office located in Fergus Falls, Mn.

The agenda will be including the following:

- Introduction to OTTER EXPRESS's staff and the CONTRACTOR's team.
- Sharing contact information between OTTER EXPRESS staff and CONTRACTOR's Team. (for emergency needs and after-hour calls)



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- Clarifying any items not covered within the interview process and the negotiation between OTTER EXPRESS and the CONTRACTOR.
- Clarifying expectations
- Providing templates and expectations for invoicing.
- Providing additional detailed content from OTTER EXPRESS for financial management and planning including confidential information for payroll services.

26. Invoicing/Payment

Invoices shall be submitted monthly and emailed to the RFQ Administrator.

The email subject line shall be CONTRACTOR Name Invoice Number. The invoice shall provide a description of the work performed, invoice number, date, amount and be addressed to OTTER EXPRESS.

Payment for the invoice is expected to be paid within 30 working days after the submittal of the invoice.

Attachment A: Scope of Work

OTTER EXPRESS is seeking a CONTRACTOR to provide the following requirements associated with each task. These are tasks to support OTTER EXPRESS, additional activities that support the general tasks shall be illustrated in the CONTRACTOR's approach within the submittal.

Task 1 - General Accounting, Oversight & Audit Supportive Services

- a) Assist with setting up the agency's accounting system in compliance with state and federal grant requirements - GAAP, Uniform Guidance (2 CFR Part 200, specifically Subpart E), FTA C 9040.1g, and MnDOT State Transit Management Plan.
- b) Provide oversight for agency bank accounts, cash handling, and financial reporting procedures.
- c) Assist with general ledger setup and monthly reconciliations.
- d) Review and advise on financial policies, procedures, and internal controls.
- e) Support reserve fund reporting and monitoring.
- f) Provide reporting support.
- g) Provide supportive services for audits, including audit preparation.
- h) Assume that services in response to this RFQ is based on modified accrual.
- i) Assume that agency has 4 or less financial bank accounts.
- j) Agency does not have petty cash.
- k) Agency has daily fareboxes requiring process for fare counting (by Staff) and deposits into bank account.

Task 2 - Ongoing Financial Services

- a) Prepare monthly financial statements and budget-to-actual reports for the following:
 - General ledger entries
 - Cash distribution / payment based on invoicing
 - Cash receipts (Farebox)
 - Payroll register
 - Project / Grant costs
 - Direct / indirect labor reports
 - Rental space for facility
 - Local match to grants
 - Payments for services to the agency
 - Monthly reconciliations (Shall occur 30 days after each month's end)
- b) Provide oversight including payroll services, benefits reconciliation, based on state, federal payroll, employer requirements.
 - Payroll shall be completed every two weeks.
 - Provide a system to support daily entry for hours worked.
 - Time sheets are approved by the supervisor.
 - Overtime (future) shall be included in the payroll services
 - Differential pay shall be included (later) in the payroll services for transit services beyond 6:00 PM.
 - All employees are paid electronically.
- c) Provide invoicing and receivable monitoring and payments.
- d) Assistance with required reporting, forms for year-end closing and audit review preparation.
- e) Maintain documentation to support compliance with MnDOT and FTA funding requirements.

Task 3 - Grant Management and Reporting

- a) Assist with setup and documentation of grant tracking systems.
- b) Support preparation of financial components, including but not limited to quarterly reporting, of MnDOT operating and capital grants.
- c) Provide financial data, ledgers, and/or itemization details, as needed, for MnDOT's lifecycle grant reporting system.

Task 4 - Budget Development

- a) Support the agency with annual operating and capital replacement/expansion estimated budgets. This will be based on a standard template provided by OTTER EXPRESS. For initial coding refer to the reference document.
- b) Provide analysis of financial and service trends and cash flow projections.
- c) Advise the agency on financial projections and financial planning.

Task 5 - Audit and Compliance

- a) Assist in preparation for the agency's annual audit provided by an independent auditor.
- b) Support completion of the federally required Single Audit (See 2 CFR 200.501).
- c) Prepare documentation for FTA or MnDOT compliance reviews.

Attachment B: Contract Terms & Conditions

These standard Terms and Conditions, including other documents listed herein, along with all written modifications thereto shall collectively constitute the Contract. The Contract will be between OTTER EXPRESS and the CONTRACTOR.

Billings and Payment: CONTRACTOR shall submit an itemized invoice to OTTER EXPRESS, who shall review and approve or disapprove payment within ten days.

Inspection and Acceptance of Goods (As Applicable): OTTER EXPRESS retains the right to examine and inspect all goods for conformance with specifications and to notify CONTRACTOR of rejection within a reasonable time.

Unallowable expenses: OTTER EXPRESS does not permit any expenses for mileage, lodging, parking, meals, or airfare associated with the delivery of the identified work. The CONTRACTOR may not invoice OTTER EXPRESS for labor costs incurred while traveling to and from the OTTER EXPRESS offices.

Prompt Payment to Subcontracted or vendor services: The CONTRACTOR shall pay any Firm providing goods or services under this contract within ten days of the CONTRACTOR's receipt of payment from OTTER EXPRESS for undisputed services provided by the Firm. Failure to timely pay the Firm will subject CONTRACTOR to pay interest of 1-1/2 percent per month or any part of a month to the Firm on any undisputed amount not paid on time to the Firm.

Records and Data: CONTRACTOR shall maintain the books, records, documents and accounting procedures related to this contract for a period of six years after the furnishing of goods, supplies or services hereunder, and upon written request shall make such records available for inspection or audit by OTTER EXPRESS, the State Auditor, or other duly authorized representative of either. CONTRACTOR is subject to the Minnesota Government Data Practices Act, Minn. Stat. Chapter 13.

Compliance with Laws: CONTRACTOR must comply with all laws, rules and regulations enacted by the federal, state, or local government which relate to the CONTRACTOR's performance of the provisions of this contract. CONTRACTOR is responsible for obtaining and paying for any licenses, permits or approvals needed.

Insurance and Indemnification: CONTRACTOR will defend and indemnify OTTER EXPRESS, its officers, agents, and employees from all claims or causes of action or suits of any character for alleged injuries or damages received by any person or property resulting from the negligence of CONTRACTOR, its agents or employees while carrying out the provisions of this contract.

When the CONTRACTOR is on OTTER EXPRESS properties to perform any portion of this contract, CONTRACTOR shall obtain and keep in full force and effect while performing the work insurance policies in the type and amounts set forth:

1) General or business liability: \$1,500,000.00 per occurrence and \$2,000,000.00 aggregate per project and \$2,000,000.00 products/completed operations total limit, and \$1,500,000.00 personal injury and advertising.

2) Auto Insurance if commercial vehicles are used: \$750,000.00 per person and \$1,000,000.00 per accident for bodily injury and a minimum of \$50,000.00 per accident for property damage.

3) Auto Insurance if personal vehicles are used: \$30,000.00 per person and \$60,000.00 per accident for bodily injury and a minimum of \$20,000.00 per accident for property damage.

4) Workers Compensation and Employer's Liability: Workers Compensation per Minnesota Statutes. Employer's Liability - minimum limits of \$500,000.00 per accident; \$500,000.00 per employee; \$500,000.00 per disease policy

limit. CONTRACTOR with 10 or fewer employees who do not have Worker's Compensation coverage are required to provide the city with a copy of Minnesota MN LIC 04 Certificate of Compliance.

Termination: OTTER EXPRESS reserves the right to terminate this contract if the CONTRACTOR fails to comply with any of its terms or does not fulfill its obligations hereunder in a timely and effective manner, or if OTTER EXPRESS fails to appropriate sufficient funds to continue performance on the contract / project.

Interpretation of Agreement and Venue: This contract is subject to the laws of the State of Minnesota. Any litigation related to this Agreement will be located in Fergus Falls, Minnesota, 7th Judicial District, State of Minnesota.

Non-Discrimination: CONTRACTOR will not discriminate against any employee or applicant for employment for work performed under this Agreement because of race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status, or status with regard to public assistance, and will take affirmative steps to ensure that all applicants are hired and all employees are treated during employment without such discrimination.

Prevailing Wage: If this contract involves labor for construction, remodeling, demolition, repair or renovation of a public building, roads or other public work, CONTRACTOR must pay prevailing wages pursuant to State Statutes. **(Not Applicable).**

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352): For all contracts or sub grants of \$100,000 or more, the CONTRACTOR shall provide to OTTER EXPRESS a certification that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.

Debarment and Suspension (E.O.s 12549 and 12689): For all contracts in excess of the small purchase threshold fixed at 41 U.S.C. 403(11), OTTER EXPRESS shall obtain from the CONTRACTOR completed **Attachments D and I** completed – illustrating that neither the CONTRACTOR nor any of its principal employees are listed on the General Services Administration's *List of Parties Excluded from Federal Procurement or Nonprocurement Programs*.

Attachment C: Responder Declarations

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

- A. **Response Contents.** The information provided is true, correct, and reliable for purposes of evaluation for potential contract award. The submission of inaccurate or misleading information may be grounds for disqualification from the award as well as subject the Responder to suspension or debarment proceedings as well as other remedies available by law.
- B. **Authorized Signature.** This Declaration is signed by the appropriate person(s), with the authority to contractually bind the Responder, as required by applicable articles, bylaws, resolutions, minutes, and ordinances.
- C. **Non-Collusion Certification.**
 - 1. The Submittal has been arrived at by the Responder independently and has been submitted without collusion and without any agreement, understanding or planned common course of action with any other vendor designed to limit fair or open competition; and
 - 2. The contents of the Response have not been communicated by the Responder or its employees or agents to any person not an employee or agent of the Responder and will not be communicated to any other individual prior to the due date and time of this Solicitation. Any evidence of collusion among Responders in any form designed to defeat competitive responses will be reported to the Minnesota Attorney General for investigation and appropriate action.
- D. **Copyrighted Material Waiver.** By signing its Response, the Responder certifies that it has obtained all necessary approvals for the reproduction and distribution of the contents of its response.
- E. **Diverse Spend Reporting.** The Sample Contract contains a clause for Diverse Spend Reporting. When this clause applies, the CONTRACTOR will be required to register in a free portal to report diverse spend. Please see [Diverse Spend Reporting Frequently Asked Questions](#) for additional information.
- F. **Certification Regarding Lobbying.** For State of Minnesota Contracts and Grants over \$100,000, 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 any 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 must complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying in accordance with its instructions.
 - 3. The undersigned must 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 sub-recipients must certify and disclose accordingly.

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

By signing this form, Responder acknowledges and certifies compliance with all applicable requirements indicated above.

Authorized Signature

Responder's firm name: _____

Printed name: _____

Title: _____

Email: _____

Telephone: _____

Authorized signature: _____

Date (mm/dd/yyyy): _____

Attachment D: Debarment, Suspension, Ineligibility & Voluntary Exclusion Certification

The CONTRACTOR shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180.

These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the CONTRACTOR shall verify that its principals, affiliates, and sub CONTRACTOR are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in a federally assisted Award.

By signing and submitting its bid or submittal, the bidder or CONTRACTOR certifies as follows:

The certification in this clause is a material representation of fact relied upon by the [TRANSIT SYSTEM LEGAL NAME]. If it is later determined by the [TRANSIT SYSTEM LEGAL NAME] that the bidder or CONTRACTOR knowingly rendered an erroneous certification, in addition to remedies available to the [TRANSIT SYSTEM LEGAL NAME], the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or CONTRACTOR agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or CONTRACTOR further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Signature and Title of Authorized Official

Date

Attachment E: Conflict of Interest Checklist and Disclosure Form

Purpose of this Checklist. This checklist is provided to assist CONTRACTOR in screening for potential organizational conflicts of interest. The checklist is for the internal use of CONTRACTOR and does not need to be submitted to OTTER EXPRESS, however, the Disclosure of Potential Conflict of Interest form should be submitted in a separate envelope along with your submittal.

Definition of “CONTRACTOR”. As used herein, the word “CONTRACTOR” includes both the prime CONTRACTOR and all proposed SubCONTRACTOR Firms or vendors.

Checklist is not Exclusive. Please note that this checklist serves as a guide only, and that there may be additional potential conflict situations not covered by this checklist. If a CONTRACTOR determines a potential conflict of interest exists that is not covered by this checklist, that potential conflict must still be disclosed.

Use of the Disclosure Form. CONTRACTOR must complete the attached disclosure form and submit it with their Submittal (or separately as directed by OTTER EXPRESS for projects not awarded through a competitive solicitation). If the CONTRACTOR determines a potential conflict of interest exists, it must disclose the potential conflict to OTTER EXPRESS; however, such a disclosure will not necessarily disqualify a CONTRACTOR from being awarded a Contract. To avoid any unfair “taint” of the selection process, the disclosure form should be provided separate from the bound submittal, and it will not be provided to selection committee members. OTTER EXPRESS personnel will review the disclosure and the appropriateness of the proposed mitigation measures to determine if the CONTRACTOR may be awarded the Contract notwithstanding the potential conflict. OTTER EXPRESS personnel may consult with OTTER EXPRESS’s Project Manager. By statute, resolution of conflict-of-interest issues is ultimately at the sole discretion of the OTTER EXPRESS.

Material Representation. CONTRACTOR is required to submit the attached disclosure form either declaring, to the best of its knowledge and belief, either that no potential conflict exists, or identifying potential conflicts and proposing remedial measures to ameliorate such conflict. The CONTRACTOR must also update conflict information if such information changes after the submission of the submittal. Information provided on the form will constitute a material representation as to the award of this Contract. OTTER EXPRESS reserves the right to cancel or amend the resulting Contract if the successful CONTRACTOR failed to disclose a potential conflict, which it knew or should have known about, or if the CONTRACTOR provided information on the disclosure form that is materially false or misleading.

Approach to Reviewing Potential Conflicts. OTTER EXPRESS recognizes that CONTRACTOR must maintain business relations with other public and private sector entities in order to continue as viable businesses. OTTER EXPRESS will take this reality into account as it evaluates the appropriateness of proposed measures to mitigate potential conflicts. It is not OTTER EXPRESS’s intent to disqualify CONTRACTOR based merely on the existence of a business relationship with another entity, but rather only when such relationship causes a conflict that potentially impairs the CONTRACTOR’s ability to provide objective advice to OTTER EXPRESS. OTTER EXPRESS would seek to disqualify CONTRACTOR only in those cases where a potential conflict cannot be adequately mitigated. Nevertheless, OTTER EXPRESS must follow statutory guidance on Organizational Conflicts of Interest.

Statutory Guidance. Minnesota Statutes §16C.02, subdivision 10(a) places limits on OTTER EXPRESS’s ability to Contract with entities having an “Organizational Conflict of Interest”. For purposes of this checklist and disclosure requirement, the term “Vendor” includes “CONTRACTOR” as defined above. Pursuant to such statute, “Organizational Conflict of Interest” means that because of existing or planned activities or because of relationships with other persons: (1) the vendor is unable or potentially unable to render impartial assistance or advice to the state; (2) the vendor’s objectivity in performing the contract work is or might otherwise be impaired; or (3) the vendor has an unfair advantage.

An organizational conflict of interest may exist in any of the following cases:

- ❑ The CONTRACTOR, or its principals, own real property in a location where there may be a positive or adverse impact on the value of such property based on the recommendations, designs, appraisals, or other deliverables required by this Contract.
- ❑ The CONTRACTOR is providing services to another governmental or private entity and the CONTRACTOR knows or has reason to believe, that entity's interests are, or may be, adverse to the state's interests with respect to the specific project covered by this Contract. **Comment:** the mere existence of a business relationship with another entity would not ordinarily need to be disclosed. Rather, this focuses on the nature of services commissioned by the other entity. For example, it would not be appropriate to propose on a OTTER EXPRESS project if a local government has also retained the CONTRACTOR for the purpose of persuading OTTER EXPRESS to stop or alter the project plans.
- ❑ The Contract is for right-of-way acquisition services or related services (e.g. geotechnical exploration) and the CONTRACTOR has an existing business relationship with a governmental or private entity that owns property to be acquired pursuant to the Contract.
- ❑ The CONTRACTOR is providing real estate or design services to a private entity, including but not limited to developers, whom the CONTRACTOR knows or has good reason to believe, own or are planning to purchase property affected by the project covered by this Contract, when the value or potential uses of such property may be affected by the CONTRACTOR's performance of work pursuant to this Contract. "Property affected by the project" includes property that is in, adjacent to, or in reasonable proximity to current or potential right-of-way for the project. The value or potential uses of the private entity's property may be affected by the CONTRACTOR's work pursuant to the Contract when such work involves providing recommendations for right-of-way acquisition, access control and the design or location of frontage roads and interchanges. **Comment:** this provision does not presume CONTRACTOR know nor have a duty to inquire as to all of the business objectives of their clients. Rather, it seeks the disclosure of information regarding cases where the CONTRACTOR has reason to believe that its performance of work under this contract may materially affect the value or viability of a project it is performing for the other entity.
- ❑ The CONTRACTOR has a business arrangement with a current OTTER EXPRESS employee or immediate family member of such employee, including promised future employment of such person, or a subcontracting arrangement with such person, when such arrangement is contingent on the CONTRACTOR being awarded this Contract. This item does not apply to pre-existing employment of current or former OTTER EXPRESS employees, or their immediate family members. **Comment:** this provision is not intended to supersede any OTTER EXPRESS policies applicable to its own employees accepting outside employment. This provision is intended to focus on identifying situations where promises of employment have been made contingent on the outcome of this particular procurement. It is intended to avoid a situation where a CONTRACTOR may have unfair access to "inside" information.
- ❑ The CONTRACTOR has, in previous work for the state, been given access to "data" relevant to this procurement or this project that is classified as "private" or "nonpublic" under the Minnesota Government Data Practices Act, and such data potentially provides the CONTRACTOR with an unfair advantage in preparing a submittal for this project. **Comment:** this provision will not, for example, necessarily disqualify a CONTRACTOR who performed some preliminary work from obtaining a final design Contract, especially when the results of such previous work are public data available to all other CONTRACTOR. Rather, it attempts to avoid an "unfair advantage" when such information cannot be provided to other potential CONTRACTOR. Definitions of "government data", "public data", "non-public data" and "private data" can be found in Minnesota Statutes Chapter 13.
- ❑ The CONTRACTOR has, in previous work for the state, helped create the "ground rules" for this solicitation by performing work such as: writing this solicitation, or preparing evaluation criteria or evaluation guides for this solicitation.

- ☐ The CONTRACTOR, or any of its principals, because of any current or planned business arrangement, investment interest, or ownership interest in any other business, may be unable to provide objective advice to the state.

DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST

Having had the opportunity to review the Organizational Conflict of Interest Checklist, the CONTRACTOR hereby indicates that it has, to the best of its knowledge and belief:

- ☐ Determined that no potential organizational conflict of interest exists.
- ☐ Determined a potential organizational conflict of interest as follows:

Describe nature of potential conflict:

Describe measures proposed to mitigate the potential conflict:

Signature

Date

If a potential conflict has been identified, please provide the name and phone number for a contact person authorized to discuss this disclosure form with OTTER EXPRESS contract personnel.

Name

Phone

Attachment F: Cost Estimate Template

Include a detailed cost estimate for **all five (5) years** inclusive of all hourly rates, anticipated travel, and other incidental costs and charges. Consider including up to a 3.0 percent cost increase the optional year cost estimates. The following template must be used to outline the cost for completing all work identified in Attachment A (Scope of Work).

CONTRACTOR may provide a more detailed breakdown of hours by task as they see fit.

Expenses are reimbursed on actuals with receipts and must be included with monthly invoices to be reimbursed.

YEAR 1				
JOB CLASSIFICATION	RATE	IDENTIFIED EST. HOURS (FOR ONE [1] YEAR OF SERVICES)	TOTAL (RATE * IDENTIFIED HOURS)	FURTHER INFORMATION RELATED TO THE JOB CLASSIFICATION
Project Manager (Primary Client Liaison)	\$	Hours	\$	
List / Identify the Job Classification / Title	\$	Hours	\$	
List / Identify the Job Classification / Title	\$	Hours	\$	
List / Identify the Job Classification / Title	\$	Hours	\$	
List / Identify the Job Classification / Title	\$	Hours	\$	
TOTAL			\$	

EXPENSE	COST	ADDITIONAL INFORMATION ASSOCIATED WITH THE EXPENSE
Describe the Expense	\$	
Describe the Expense	\$	
TOTAL	\$	

Company Name: _____

Authorized Signature: _____

Name: _____

Title: _____

OPTIONAL EXTENSION 1 (YEAR 2)				
JOB CLASSIFICATION	RATE	IDENTIFIED EST. HOURS (FOR ONE [1] YEAR OF SERVICES)	TOTAL (RATE * IDENTIFIED HOURS)	FURTHER INFORMATION RELATED TO THE JOB CLASSIFICATION
Project Manager (Primary Client Liaison)	\$	Hours	\$	
List / Identify the Job Classification / Title	\$	Hours	\$	
List / Identify the Job Classification / Title	\$	Hours	\$	
List / Identify the Job Classification / Title	\$	Hours	\$	
List / Identify the Job Classification / Title	\$	Hours	\$	
TOTAL			\$	

EXPENSE	COST	ADDITIONAL INFORMATION ASSOCIATED WITH THE EXPENSE
Describe the Expense	\$	
Describe the Expense	\$	
TOTAL	\$	

Company Name: _____

Authorized Signature: _____

Name: _____

Title: _____

OPTIONAL EXTENSION 2 (YEAR 3)				
JOB CLASSIFICATION	RATE	IDENTIFIED EST. HOURS (FOR ONE [1] YEAR OF SERVICES)	TOTAL (RATE * IDENTIFIED HOURS)	FURTHER INFORMATION RELATED TO THE JOB CLASSIFICATION
Project Manager (Primary Client Liaison)	\$	Hours	\$	
List / Identify the Job Classification / Title	\$	Hours	\$	
List / Identify the Job Classification / Title	\$	Hours	\$	
List / Identify the Job Classification / Title	\$	Hours	\$	
List / Identify the Job Classification / Title	\$	Hours	\$	
TOTAL			\$	

EXPENSE	COST	ADDITIONAL INFORMATION ASSOCIATED WITH THE EXPENSE
Describe the Expense	\$	
Describe the Expense	\$	
TOTAL	\$	

Company Name: _____

Authorized Signature: _____

Name: _____

Title: _____

OPTIONAL EXTENSION 3 (YEAR 4)				
JOB CLASSIFICATION	RATE	IDENTIFIED EST. HOURS (FOR ONE [1] YEAR OF SERVICES)	TOTAL (RATE * IDENTIFIED HOURS)	FURTHER INFORMATION RELATED TO THE JOB CLASSIFICATION
Project Manager (Primary Client Liaison)	\$	Hours	\$	
List / Identify the Job Classification / Title	\$	Hours	\$	
List / Identify the Job Classification / Title	\$	Hours	\$	
List / Identify the Job Classification / Title	\$	Hours	\$	
List / Identify the Job Classification / Title	\$	Hours	\$	
TOTAL			\$	

EXPENSE	COST	ADDITIONAL INFORMATION ASSOCIATED WITH THE EXPENSE
Describe the Expense	\$	
Describe the Expense	\$	
TOTAL	\$	

Company Name: _____

Authorized Signature: _____

Name: _____

Title: _____

OPTIONAL EXTENSION 4 (YEAR 5)				
JOB CLASSIFICATION	RATE	IDENTIFIED EST. HOURS (FOR ONE [1] YEAR OF SERVICES)	TOTAL (RATE * IDENTIFIED HOURS)	FURTHER INFORMATION RELATED TO THE JOB CLASSIFICATION
Project Manager (Primary Client Liaison)	\$	Hours	\$	
List / Identify the Job Classification / Title	\$	Hours	\$	
List / Identify the Job Classification / Title	\$	Hours	\$	
List / Identify the Job Classification / Title	\$	Hours	\$	
List / Identify the Job Classification / Title	\$	Hours	\$	
TOTAL			\$	

EXPENSE	COST	ADDITIONAL INFORMATION ASSOCIATED WITH THE EXPENSE
Describe the Expense	\$	
Describe the Expense	\$	
TOTAL	\$	

Company Name: _____

Authorized Signature: _____

Name: _____

Title: _____

Attachment G: Affidavit of Noncollusion

I hereby swear (name of CONTRACTOR) under penalty of perjury:

That I am the bidder (if the bidder is an individual), a partner of the bidder (if the bidder is a partnership), or an officer or employee of the bidding corporation, have authority to sign on its behalf (if the bidder is a corporation);

That the attached bid or bids have been arrived at by the bidder independently, and have been submitted without collusion with, and without any agreement, understanding or planned common course of action with any other vendor of materials, supplies, equipment, or services described in the invitation to bid, designed to limit independent bidding or competition;

That the contents of the bid or bids have not been communicated by the bidder or its employees or agents to any person not an employee or agent of the bidder or its surety on any bond furnished with the bid or bids, and will not be communicated to any such person prior to the official opening of the bid or bids; and

That I have fully informed myself regarding the accuracy of the statements made in this affidavit.

Additionally;

The _____ hereby certifies it is /is not (circle one)

Company Name

included on the United States Comptroller General's consolidated list of persons or CONTRACTOR currently debarred for violations of various public contracts incorporating labor standards provisions.

Signature

Date

Attachment H: Certification Regarding Lobbying

LOBBYING RESTRICTIONS

**31 U.S.C. § 1352; 2 C.F.R. § 200.450; 2 C.F.R. part 200 appendix II (J); 49
C.F.R. part 20**

Applicability to Contracts

The lobbying requirements apply to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant. 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 agreement, the payor must complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Flow Down

The lobbying requirements mandate the maximum flow down pursuant to Byrd Anti Lobbying Amendment, 31 U.S.C. § 1352(b)(5).

Model Clause/Language

49 C.F.R. part 20, Appendices A and B provide specific language for inclusion in

FTA funded third party contracts as follows:

Lobbying Restrictions

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 subawards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 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 and Title of CONTRACTOR's Authorized Official

Date

Attachment I: Federal Contract Clauses

Cargo Preference Requirements

46 U.S.C. 1241

46 CFR Part 381

Applicability to Contracts

Whenever transporting equipment, materials, or commodities by ocean vessel, must use U.S.-flag vessels for at least 51% of cargo.

Flow Down

The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

Model Clause/Language

The CONTRACTOR agrees:

- a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the CONTRACTOR in the case of a sub CONTRACTOR's bill-of-lading.); and
- c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

Energy Conservation Requirements
42 U.S.C. § 6201; 49 C.F.R. § 622; 26;
Best Practices Manual A-41

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Flow Down

The Energy Conservation requirements extend to all third-party CONTRACTOR and their contracts at every tier and subrecipients and their sub agreements at every tier.

Model Clause/Language

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA.

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 (EPCA) (42 U.S.C. § 6201).

The primary goals of EPCA are to increase energy production and supply, reduce energy demand, provide energy efficiency, and give the executive branch additional powers to respond to disruptions in energy supply. Part B of Title III of the EPCA established the Energy Conservation Program, which gives the Department of Energy the "authority to develop, revise, and implement minimum energy conservation standards for appliances and equipment.

Lobbying
31 U.S.C. 1352
2 C.F.R. 200.450
49 CFR Part 20

Applicability to Contracts

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 agreement, the payor must complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Flow Down

The lobbying requirements apply to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant.

Mandatory Clause/Language

- Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

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

- Lobbying Certification and Disclosure of Lobbying Activities for third party CONTRACTOR are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)
- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that CONTRACTOR file the certification required by 49 CFR Part 20, Appendix A.

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

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

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

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer

or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq .)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
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 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

The CONTRACTOR, _____, certifies or affirms the truthfulness and accuracy of each statement
Name

of its certification and disclosure, if any. In addition, the CONTRACTOR understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

_____	Signature of CONTRACTOR's Authorized Official
_____	Name and Title of CONTRACTOR's Authorized Official
_____	Date

Access to Third Party Contract Records
49 U.S.C. s 5325(g);
2 C.F.R. s 200.334 & 200.337;
49 C.F.R. part 633; Best Practices Manual A-3

Applicability to Contracts

Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

Flow Down

FTA does not require the inclusion of these requirements in subcontracts.

Model Clause/Language

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

1. **Record Retention.** The CONTRACTOR will retain and will require its sub CONTRACTOR 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 C.F.R. § 200.334. The CONTRACTOR shall maintain all books, records, accounts and reports required under this Contract for a period of at 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 CONTRACTOR to inspect and audit records and information related to performance of this contract in accordance with 2 CFR 200.337.
4. **Access to the Sites of Performance.** The CONTRACTOR agrees to permit FTA and its CONTRACTOR's access to the sites of performance under this contract in accordance with 2 CFR 200.337.

FTA does not require the inclusion of these requirements in subcontracts.

Requirements for Access to Records and Reports by Types of Contract

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

<u>Grantees</u>						
a. Contracts below SAT (\$100,000)	Yes ₃	Those imposed on non-state Grantee pass thru to CONTRACTOR	Yes	Yes	Yes	Yes
b. Contracts above \$100,000/ Capital Projects	Yes ₃		Yes	Yes	Yes	Yes

Sources of Authority

- 1. 49 USC 5325 (a)
- 2. 49 CFR 633.17
- 3. 18 CFR 18.36 (i)

Changes to Federal Requirements
49 CFR Part 18

Applicability to Contracts

The Federal Changes requirement applies to all contracts.

Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Model Clause/Language

Notice to Third Party Participants. The Recipient agrees to include notice in each Third Party Agreement that: (i) Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and (ii) Applicable changes to those federal requirements will apply to each Third Party Agreement and parties thereto at any tier.

No Federal Government Obligations to Third Parties (Use of Disclaimer)
Master Agreements 3(1)
Best Practices Manual A-49

Applicability to Contracts

Applicable to all contracts.

Flow Down

Not required by statute or regulation for either primary CONTRACTOR or sub CONTRACTOR, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

Model Clause/Language

While no specific language is required, FTA has developed the following language.

No Obligation by the Federal Government.

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

Notice of FTA and US DOT inspector General of waste, fraud, abuse
49 U.S.C. 2 5323(I); 31 U.S.C. s 3801-3812;
18 U.S.C. s 1001; 49 C.F.R. 31;
Best Practices Manual A-54; Master Agreements 4.e

Applicability to Contracts

These requirements are applicable to all contracts.

Flow Down

The Program Fraud clause extends to all third-party CONTRACTOR and their contracts at every tier and subrecipients and their subcontracts at every tier. These requirements flow down to CONTRACTOR and sub CONTRACTOR who make, present, or submit covered claims and statements.

Model Clause/Language

These requirements have no specified language, so FTA proffers the following language.

Program Fraud and False or Fraudulent Statements or Related Acts.

1. The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the CONTRACTOR certifies the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONTRACTOR to the extent the Federal Government deems appropriate.
2. The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the CONTRACTOR, to the extent the Federal Government deems appropriate.
3. The CONTRACTOR agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the sub CONTRACTOR who will be subject to the provisions.

Termination
2 C.F.R. § 200.339 and Appendix II (B);
FTA 4220.1F - Best Practices Manual A-69

Applicability to Contracts

Recipients must include provisions in their contracts and subcontracts that allow for termination for cause and for convenience by the recipient, including the manner by which it will be affected and the basis for settlement.

Flow Down

The termination requirements flow down to all contracts in excess of \$10,000.

Model Clause/Language

FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

- a. **Termination for Convenience (General Provision)** OTTER EXPRESS may terminate this contract, in whole or in part, at any time by written notice to the CONTRACTOR when it is in the Government's best interest. The CONTRACTOR shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The CONTRACTOR shall promptly submit its termination claim to OTTER EXPRESS to be paid the CONTRACTOR. If the CONTRACTOR has any property in its possession belonging to OTTER EXPRESS, the CONTRACTOR will account for the same and dispose of it in the manner OTTER EXPRESS directs.
- b. **Termination for Default [Breach or Cause] (General Provision)** If the CONTRACTOR does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the CONTRACTOR fails to perform in the manner called for in the contract, or if the CONTRACTOR fails to comply with any other provisions of the contract, the OTTER EXPRESS may terminate this contract for default. Termination shall be effected by serving a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR is in default. The CONTRACTOR will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the OTTER EXPRESS that the CONTRACTOR had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the CONTRACTOR, the OTTER EXPRESS, after setting up a new delivery or performance schedule, may allow the CONTRACTOR to continue work, or treat the termination as a termination for convenience.

- c. **Opportunity to Cure (General Provision)** The OTTER EXPRESS in its sole discretion may, in the case of a termination for breach or default, allow the CONTRACTOR [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If CONTRACTOR fails to remedy to OTTER EXPRESS's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by CONTRACTOR of written notice from OTTER EXPRESS setting forth the nature of said breach or default, OTTER EXPRESS shall have the right to terminate the Contract without any further obligation to CONTRACTOR. Any such termination for default shall not in any way operate to preclude OTTER EXPRESS from also pursuing all available remedies against CONTRACTOR and its sureties for said breach or default.

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

- e. **Termination for Convenience (Professional or Transit Service Contracts)** The OTTER EXPRESS, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- f. **Termination for Default (Supplies and Service)** If the CONTRACTOR fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the CONTRACTOR fails to comply with any other provisions of this contract, the OTTER EXPRESS may terminate this contract for default. The OTTER EXPRESS shall terminate by delivering to the CONTRACTOR a Notice of Termination specifying the nature of the default. The CONTRACTOR will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

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

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

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

- h. **Termination for Default (Construction)** If the CONTRACTOR refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the CONTRACTOR fails to comply with any other provisions of this contract, the OTTER EXPRESS may terminate this contract for default. The OTTER EXPRESS shall terminate by delivering to the CONTRACTOR a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The CONTRACTOR and its sureties shall be liable for any damage to the Recipient resulting from the CONTRACTOR's refusal or failure to complete the work within specified time, whether or not the CONTRACTOR's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

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

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR. Examples of such causes include: acts of God, acts of the Recipient, acts of another CONTRACTOR in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the CONTRACTOR, within [10] days from the beginning of any delay, notifies the OTTER EXPRESS in writing of the causes of delay. If in the judgment of the OTTER EXPRESS, the delay is excusable, the time for completing the work shall be extended. The judgment of the OTTER EXPRESS shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the CONTRACTOR's right to proceed, it is determined that the CONTRACTOR was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

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

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

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

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

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

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

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

Government-Wide Debarment and Suspension (Nonprocurement)
2 C.F.R. § 200.214; 2 C.F.R. § 180; 2 C.F.R. § 1200;
E.O. 12549; E.O. 12689; Best Practices Manual A-45

Background and Applicability

The regulations in [2 CFR part 180](#) restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

Applies to any contract, regardless of tier, that is awarded by a CONTRACTOR, sub CONTRACTOR, supplier, CONTRACTOR, or its agent or representative in any transaction, if the contract is to be funded or provided by the Department of Transportation under a covered nonprocurement transaction and the amount of the contract is expected to equal or exceed \$25,000.

Flow Down

Recipients, CONTRACTOR, and sub CONTRACTOR (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified.

Model Clause/Language

The CONTRACTOR shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the CONTRACTOR shall verify that its principals, affiliates, and sub CONTRACTOR are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or submittal, the bidder or CONTRACTOR certifies as follows:

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or CONTRACTOR knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or CONTRACTOR agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or CONTRACTOR further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Civil Rights Laws and Regulations
52 U.S.C 2000d; 49 C.F.R Part 21

Applicability to Contracts

The following Federal Civil Rights laws and regulations apply to all contracts.

Flow Down

The Civil Rights requirements flow down to all third party CONTRACTOR and their contracts at every tier.

Model Clause/Language

The CONTRACTOR and any sub CONTRACTOR agree to comply with all the requirements prohibiting discrimination on the basis of race, color, or national origin of the Title VI of the Civil Rights Act of 1964, as amended 52 U.S.C. 2000d, and U.S. DOT regulation "Nondiscrimination in Federal-Assisted Programs of the Department of Transportation - Effectuation of the Title VI of the Civil Rights Act, "49 C.F.R. Part 21 and any implementing requirement FTA may issue.

Federal Equal Employment Opportunity (EEO) Requirements
49 U.S.C. § 5332;
Title VII of the Civil Rights Act of 1964;
Best Practices Manual A-24

Applicability to Contracts

The EEO Requirements apply to all contracts.

Model Clause/Language

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shortened the lengthy text.

Federal Equal Employment Opportunity (EEO) Requirements.

OTTER EXPRESS is an Equal Opportunity Employer. As such, OTTER EXPRESS agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, OTTER EXPRESS agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the CONTRACTOR shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. Federal Equal Employment Opportunity (EEO) Requirements. This include, but are not limited to:
 - a. Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. §5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
 - b. Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.
2. Nondiscrimination on the Basis of Age. The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 1601 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.
3. Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party CONTRACTOR must comply with their responsibilities under Title I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

Resolution of Disputes, Breaches, or Other Litigation
2 C.F.R. 200.326 and Appendix II (A);
Best Practices Manual A-75

Applicability to Contracts

All contracts shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where CONTRACTOR violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down

The Breaches and Dispute Resolutions requirements flow down to all tiers.

Model Clauses/Language

FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

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

Performance During Dispute - Unless otherwise directed by OTTER EXPRESS, CONTRACTOR shall continue performance under this Contract while matters in dispute are being resolved.

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

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

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the OTTER EXPRESS, (Architect) or CONTRACTOR shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Disadvantaged Business Enterprises (DBEs)
49 CFR Part 26

Background and Applicability

The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE sub CONTRACTOR.

Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all sub CONTRACTOR regardless of whether they are DBE CONTRACTOR or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (see section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

Clause Language

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all sub CONTRACTOR based in Part 26 as well as those related only to DBE sub CONTRACTOR. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

Disadvantaged Business Enterprises

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

- a. The CONTRACTOR is required to pay its sub CONTRACTOR performing work related to this contract for satisfactory performance of that work no later than 30 days after the CONTRACTOR's receipt of payment for that work from OTTER EXPRESS. In addition, the CONTRACTOR may not hold retainage from its sub CONTRACTOR.
- b. The CONTRACTOR must promptly notify OTTER EXPRESS, whenever a DBE sub CONTRACTOR performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE sub CONTRACTOR to perform at least the same amount of work. The CONTRACTOR may not terminate any DBE sub CONTRACTOR and perform that work through its own forces or those of an affiliate without prior written consent of OTTER EXPRESS.

**Incorporation of Federal Transit Administration (FTA) Terms
FTA Circular 4220.1F**

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Flow Down

The incorporation of FTA terms has unlimited flow down.

Model Clause/Language

FTA has developed the following incorporation of terms language:

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any requests which would cause a violation of the FTA terms and conditions.

Prompt Payment
49 CFR 26.29

Applicability to Contracts

Ensures that vendors performing work for satisfactory performance are paid no later than 30 days after work is provided.

Flow Down

Applies to subrecipient, CONTRACTOR and sub-CONTRACTOR at all tiers.

Model Clause/Language

The CONTRACTOR is required to pay its sub CONTRACTOR performing work related to this contract for satisfactory performance of that work not later than 30 days after the CONTRACTOR's receipt of payment for that work. In addition, the CONTRACTOR is required to return any retainage payments to those sub CONTRACTOR within 30 days after the sub CONTRACTOR's work related to this contract is satisfactorily completed.

The CONTRACTOR must promptly notify the Agency, whenever a DBE sub CONTRACTOR performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE sub CONTRACTOR to perform at least the same amount of work. The CONTRACTOR may not terminate any DBE sub CONTRACTOR and perform that work through its own forces or those of an affiliate without prior written consent by the Agency.

Prohibition on Certain Telecommunications Equipment
Public Law 115-232
2 CFR part 200.216

Applicability to Contracts

CONTRACTOR are prohibited from using grant dollars to purchase specified telecommunications equipment or services.

Flow Down

Applies to subrecipient, CONTRACTOR and sub-CONTRACTOR at all tiers.

Clause Language:

- a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
 - 1) procure or obtain;
 - 2) extend or renew a contract to procure or obtain; or
 - 3) enter into a contract (or extend or renew a contract) to procure or obtain covered telecommunications equipment or services.
- b) As described in section 889 of Public Law 115-232, “covered telecommunications equipment or services” means any of the following:
 - 1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate or such entities).
 - 2) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporations, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - 3) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - 4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- c) For the purposes of this section, “covered telecommunications equipment or services” also include systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.
- d) In implementing the prohibition under section 889 of Public Law 115-232, heads of executive agencies administering loan, grant, or subsidy programs must prioritize available funding and technical support to assist affected businesses, institutions, and organizations as is reasonably necessary for those affected entities to transition from covered telecommunications equipment or services, to procure replacement equipment or services, and to ensure that communications service to users and customers is sustained.
- e) When the recipient or subrecipient accepts a loan or grant, it is certifying that it will comply with the prohibition on covered telecommunications equipment and services in this section. The recipient or subrecipient is not required to certify that funds will not be expended on covered telecommunications equipment or services beyond

the certification provided upon accepting the loan or grant and those provided upon submitting payment requests and financial reports.

- f) For additional information, see section 889 of Public Law 115-232 and section 200.471.

Safe Operating of Motor Vehicles - Seat Belt Use and Distracted Driving
M.A. Section 34 (a) and (b)
E.O. 13043 and 130513

Applicability to Contracts

Requires that CONTRACTOR's drivers wear seat belts and refrain from texting while driving and include a "Seat Belt Use" provision in each third-party agreement related to the Award with the Special Provision of Distracted Driving, including text messaging while driving, in each third-party sub agreement at each tier supported with federal assistance.

Flow Down

Applies to subrecipient, CONTRACTOR and sub-CONTRACTOR at all tiers.

Clause Language:

Seat Belt Use. The Recipient agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by: (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles; and 93 (2) Including a "Seat Belt Use" provision in each third party agreement related to the Award.

Distracted Driving, Including Text Messaging While Driving. The Recipient agrees to comply with: (1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225); (2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009; and (3) The following U.S. DOT Special Provision pertaining to Distracted Driving: (i) Safety. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award; Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving; and (iii) Extension of Provision. The Recipient agrees to include the preceding Special Provision of section 34(b)(3)(i) – (ii) of this Master Agreement in its third party agreements and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party sub agreement at each tier supported with federal assistance.

Federal Tax Liability and Recent Felony Convictions
M.A. Section 4 (g)

Applicability to Contracts

Prior to entering into any Third-Party Agreement with any private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association, the Recipient will obtain from the prospective Third-Party Participant a certification attesting from third-party that they do not have outstanding federal tax liabilities and have not been convicted of a felony crime in the last 24 months.

Flow Down

The Recipient agrees to require the CONTRACTOR to flow this requirement down to participants at all lower tiers, without regard to the value of any sub agreement.

Clause Language:

(1) The CONTRACTOR certifies that it:

(a) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(b) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

If the CONTRACTOR cannot so certify, the Recipient will refer the matter to FTA and not enter into any Third-Party Agreement with the Third-Party Participant without FTA's written approval.

(2) Flow-Down. The Recipient agrees to require the CONTRACTOR to flow this requirement down to participants at all lower tiers, without regard to the value of any sub agreement.

The CONTRACTOR, _____, certifies the truthfulness and accuracy of each

Name

statement of its certification and disclosure, if any. In addition, the CONTRACTOR understands and agrees that the provisions that apply to this certification and disclosure, if any.

_____ Signature of CONTRACTOR's Authorized Official

_____ Name and Title of CONTRACTOR's Authorized Official

_____ Date

Attachment J: Disadvantaged Business Enterprise (DBE) Special Provisions



Minnesota Department of Transportation Office of Civil Rights

DISADVANTAGED BUSINESS ENTERPRISE (DBE) SPECIAL PROVISIONS

Federal Transit Administration (FTA)

Goods and Services

RACE/GENDER NEUTRAL GOAL

Project Information	
MnDOT Grant Agreement Number:	This contract uses the following project delivery method: ☐ For the procurement of Goods ☐ For the procurement of Services ☐ For the procurement of Third-Party Operations/Services OR ☒ For the procurement of Professional Services
This contract will be solicited and administered by: ☒ A subrecipient of Federal FTA Funds (governments or non-profit agency)	

Introduction

Federal Regulations Govern. Some or all of the funds for this contract will come from the U.S. Department of Transportation (USDOT). Therefore, the federal Disadvantaged Business Enterprise (DBE) program described at Title 49, Part 26 of the Code of Federal Regulations (CFR) applies to this contract. The responder is responsible for understanding and following the requirements of 49 CFR Part 26.

Purpose. These special provisions (1) outline the responder's obligations under the federal DBE program, (2) explain the process MnDOT Office of Civil Rights (OCR) will follow to evaluate the responder's compliance with DBE program requirements, and (3) identify sanctions for failing to comply with DBE program requirements. These provisions apply *in addition to* any other requirements applicable to award of this contract.

Policy Statement. MnDOT must ensure nondiscrimination in the award and administration of contracts funded in whole or in parts with federal funds. The DBE program seeks to:

- Create a level playing field on which DBEs can compete fairly for federally funded projects,
- Ensure that the DBE program is narrowly tailored,
- Ensure that only eligible CONTRACTOR are permitted to participate as DBEs,
- Help remove barriers to the participation of DBEs in federally funded projects, and
- Provide flexibility in establishing and providing opportunities for DBEs.

Contract Assurance. The USDOT requires MnDOT, as a recipient of federal funds, to include the following paragraph in contracts for federally funded projects. It applies to the responder, and the responder must also include it in subcontracts the responder executes for this project.

The CONTRACTOR, sub recipient or sub CONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONTRACTOR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CONTRACTOR to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to, (1) withholding monthly progress payments, (2) assessing sanctions, (3) liquidated damages, and/or (4) disqualifying the CONTRACTOR from future bidding as non-responsible.

Application and Interpretation. Terms must be interpreted as follows:

- “Responder” refers to the bidder, apparent low bidder, CONTRACTOR, or apparent successful CONTRACTOR.
- “Submittal” includes a bid, submittal or price submittal.

RACE/GENDER NEUTRAL GOAL

If the DBE goal is Race/Gender Neutral (RGN), all responders are encouraged to include their anticipated DBE utilization for the contract in their submittals. **Each responder will still be required to submit a bidders list (Part D) of all sub CONTRACTOR and suppliers (both DBE and non-DBE) on projects with an RGN goal.** While DBE participation is encouraged on submittals with an RGN goal, responders who are able to meet DBE participation are to **complete and submit the CONTRACTOR Payment Form and DBE Total Payment Affidavit).**

ADDITIONAL SUB CONTRACTOR, SUPPLIERS AND SERVICE PROVIDERS

Whenever an additional sub CONTRACTOR, supplier or service provider is selected, and this information has not been previously reported to the MnDOT Office of Civil Rights, the CONTRACTOR or its designated OCR Officer shall promptly provide MnDOT OCR with the following information regarding the subcontract:

- a) The name of the sub CONTRACTOR; supplier or service provider;
- b) The total dollar amount of the subcontract;
- c) The specific work items covered by the subcontract;
- d) Estimated quantities of each work item; and
- e) Individual unit prices (if applicable).

SUBMITTAL OF DOCUMENTATION

Upon award of the contract, the CONTRACTOR shall submit on the attached Bidders List, a complete list of all sub CONTRACTOR, service providers, suppliers and CONTRACTOR that submitted bids, and shall indicate the successful quotes that will be used on the contract.

Additionally, during the life of the contract, the CONTRACTOR shall submit progress payment reports on the attached CONTRACTOR Payment Form regarding the payments made to its sub CONTRACTOR, suppliers, service providers and sub-CONTRACTOR. In accordance with federal regulations and Minnesota’s Prompt Payment law, CONTRACTOR are required to pay their sub CONTRACTOR within ten

(10) days of receiving progress payments from MnDOT. CONTRACTOR are also required to submit to the Project Engineer and the MnDOT OCR the CONTRACTOR Payment Forms no later than ten (10) days after receiving payment from MnDOT.

PROMPT PAYMENT

The prime CONTRACTOR agrees to pay each sub CONTRACTOR under this prime contract within ten days of the prime CONTRACTOR’s receipt of payment from the state for undisputed services provided by the sub CONTRACTOR. The prime CONTRACTOR must pay interest of 1-1/2 percent per month or any part of a month to the sub CONTRACTOR on any undisputed amount not paid on time to the sub CONTRACTOR. The prime CONTRACTOR agrees further to return retainage payments to each sub CONTRACTOR within ten days after the sub CONTRACTOR’s work is satisfactorily completed. This clause applies to both DBE and non-DBE sub CONTRACTOR. Any CONTRACTOR making payments to sub CONTRACTOR must complete and submit the attached CONTRACTOR Payment form.

FINAL PAYMENT AFFIDAVIT

Pursuant to MnDOT Standard Specifications for Construction Sec. 1908, “Unless a CONTRACTOR has presented an Affidavit showing the total dollar amounts of works performed by disadvantaged business enterprise (DBE), final payment

may be withheld.” The DBE Total Payment Affidavit shall be executed by the Prime CONTRACTOR after all work has been performed by DBE(s) on the project.

This Race/Gender Neutral Goal Language is an addendum to the MnDOT DBE Special Provisions.

PART D – BIDDERS LIST – NON-DBE and DBE QUOTES SUBMITTED

CONTRACTOR:

DBE COMMITMENTS

List all DBE CONTRACTOR who provided quotes or bid submittals. Indicate whether the quotes were accepted. Please include a copy of their quote(s).

DBE CONTRACTOR Information

	DBE CONTRACTOR Information			DBE Goal Submitted? Description of Work	Dollar Amount of Bid/Submittal	Will CONTR ACTOR BeUsed?
1.	DBE CONTRACTOR Name					Yes
	Contact Name.					☐
	Address					No
	Federal Tax #	E-mail				☐
	Phone	Fax:				
2.	DBE CONTRACTOR Name					Yes
	Contact Name					☐
	Address					No
	Federal Tax #	E-mail				☐
	Phone	Fax				
3.	DBE CONTRACTOR Name					Yes
	Contact Name					☐
	Address					No
	Federal Tax #	E-mail				☐
	Phone	Fax				
4.	DBE CONTRACTOR Name					Yes
	Contact Name					☐
	Address:					No
	Federal Tax #	E-mail				☐
	Phone	Fax				

Minnesota Department of Transportation Office of Civil Rights CONTRACTOR Payment Form

State Project Number: _____ Prime CONTRACTOR _____ 1st Tier Sub-CONTRACTOR _____

Payment Reporting Period: From: _____ To: _____

Instructions: All CONTRACTOR making payments to CONTRACTOR/Sub CONTRACTOR/Suppliers/Service Providers, regardless of their tier or DBE status, are required to complete and submit this form to the MnDOT Office of Civil Rights (OCR), each time payments are made to sub-CONTRACTOR until final payment is made. Failure to comply with this form and Minnesota's prompt payment law may cause progress payments to be withheld. Submit one copy of this form to the MnDOT OCR and one copy to the Project Engineer, no later than ten (10) days after receiving payment from MnDOT. Some projects require that payment information be entered into AASHTO are Project CRL. See Table C of the DBE Special Provisions for payment submission requirements.

CONTRACTOR Information		Original Contract Amount	Committed DBE %	Actual DBE % to Date
Name:				
Address:				
Phone:				
Name of Sub CONTRACTOR/Supplier	DBE? (Check if Yes)	Description of Work	Subcontract Amount	
1.	☐	1.	1.	
2.	☐	2.	2.	
3.	☐	3.	3.	
4.	☐	4.	4.	
5.	☐	5.	5.	
6.	☐	6.	6.	
Amount of Current Payment	Total Sub-CONTRACTOR Payment-To-Date	% Paid to date	Final Payment? Yes/No	
1.	1.	1.	1.	
2.	2.	2.	2.	
3.	3.	3.	3.	
4.	4.	4.	4.	
5.	5.	5.	5.	
6.	6.	6.	6.	
Company Official's Signature & Title		Date Signed	Name & Title of Individual Completing Report (Type or Print Clearly)	
Title:			Title:	
Phone:	Fax:	Phone:	Fax:	

DBE Total Payment Affidavit

Pursuant to MnDOT Standard Specifications for Construction, Section 1516.3, the following DBE Total Payment Affidavit shall be executed by the Prime CONTRACTOR after all work contracted to be performed by DBEs has been satisfactorily completed. This Affidavit is required prior to MnDOT Office of Civil Rights issuing final clearance on the project. Identify each DBE CONTRACTOR that worked on the project and the dollar amount of the subcontract. If the dollar value of a DBE CONTRACTOR's total work is less than the DBE's original subcontract, please attach an explanation.

State Project Number: _____
STATE OF MINNESOTA
COUNTY OF _____

I, _____, being first duly sworn, state as follows:
(Full Name)

1. I am the authorized representative of, _____
(Name of Individual, Company, Partnership or Corporation)

and I have the authority to make this affidavit for and on behalf of said Prime CONTRACTOR.

2. The following DBE Sub CONTRACTOR/Suppliers/Service Providers/Sub-CONTRACTOR have performed work on the above project with a total dollar value of:

	Name of DBE CONTRACTOR	Dollar Amount of Subcontract	Total Dollar Amount Paid
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

3. I have fully informed myself regarding the accuracy of the statements made in this Affidavit.

Signed: _____
(Prime CONTRACTOR or Authorized Representative)

Subscribed and sworn to before me
This _____ day of _____, 20_____

(Notary Public)
My commission expires _____, 20_____

Prepare affidavit in duplicate. Submit one affidavit to the Project Engineer, and one to:
MnDOT's Office of Civil Rights, 395 John Ireland Blvd., MS 170, St. Paul, MN 55155
or email completed form to: ocrformsubmissions.dot@state.mn.us

No. 1516.3 — Standard Specifications for Construction

Unless the contractor has provided an Affidavit showing the total dollar amounts of work performed by Disadvantaged Business Enterprises (DBEs), a final clearance letter will not be issued.