



Request for Proposals
Project Number: WTS-08-12A-17-RE-BID

Internet and VOIP Services
Issued by Mobile Transit Management
Dba
The Wave Transit System
Mobile, Alabama

Bid Opening
September 21, 2017, 10:00a.m.

The Wave Transit System
1224 West I-65 Service Road, South
Mobile, Alabama 36602

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ATTACHMENTS (PHOTOS)

FTA CLAUSES:

FORMS AND CERTIFICATES

- Buy America Certificate of Compliance
- Certification of Contractor Debarment, Suspension, and other Responsible Matters
- Non-Collusion Affidavit
- Certification of Compliance with Restrictions on Lobbying
- Certification of Compliance for Drug Free Workplace
- Acknowledgement of Addenda
- Compliance with the Scope of Work
- List of Similar Contracts/References
- Price Proposal Form
- Request for Approved Equals
- DBE Approval Certification
- Procurement Information Request Form

SUMMARY STATEMENT

Mobile Transit Management d/b/a The Wave Transit System (The Wave) is the public transportation provider for the City of Mobile.

Mobile Transit Management d/b/a The Wave Transit System is accepting competitive proposals from qualified bidders for the selection of an Internet Service Provider (ISP) that can provide Voice, Data and Internet Services with sufficient speed and bandwidth for The Wave Transit System-Administrative Office and GM&O Transportation Center located in Mobile, Alabama

This will be a **three (3) year contract with two (2) one year options.**

VENDOR REGISTRATION

To be recommended for award, The Wave Transit System requires that proposers complete a “**Procurement Information Request**” form (Enclosed). The form must be returned to the Director of Planning & Capital Projects or his designee before the bid opening date of this bid solicitation.

In the event the form is not properly completed and returned within the specified time, The Wave Transit System will not consider your bid proposal and record proposal as being “non-responsive”.

If not already attach in this bid solicitation, the proposer is responsible for obtaining the “**Procurement Information Request**” form. Please contact Gerald E. Alfred at (251)338-0100 or galfred@thewavetransit.com to obtain this form. This form may also be obtained at www.thewavetransit.com, “**Procurements / Call for Bids**”.

DEADLINE FOR FORM: September 21, 2017

NOTE: All event and requirement times stated in this Request for Proposal refer to local time (CST) in Mobile, Alabama, USA

Procuring Entity

Project Number: WTS-08-12A-17-RE-BID
Issue Date: September 1, 2017
Procuring Entity: The Wave Transit System
110 Beauregard St. Suite 104
Mobile, Alabama, 36602

Procurement Specialist: Gerald E. Alfred
Telephone No: (251)338-0100
Fax No: (251)344-6678
Email: galfred@thewavetransit.com

1.0 PROPOSALS RECEIVED

Sealed proposals will be received by The Wave Transit, GM&O Transportation Center, 110 Beauregard Street, Suite 104, Mobile, AL. 36602, in accordance with the scope of work, instructions, and conditions until **September 21, 2017, 9:55 a.m.** at which time all proposals properly received and in proper form shall be publicly opened and read aloud. Attendance is not required.

Proposals received prior to the advertised hour of opening will be kept securely sealed. Any proposals received after the time to which reference is made will not be considered. Proposers must submit request for approved equals/clarifications of scope of work or proposal documents by August 30, 2017, 5:00p.m. (CST).

It is anticipated that 80 percent of the funding for this project is being provided by the federal Transit Administration (FTA) and the City of Mobile. Consequently, this project is subject to all applicable federal laws, standards, and regulations, which are elaborated upon throughout this Request for Proposals. These require, among other things, that purchases be made between The Wave Transit System and the successful proposer.



The Wave Transit System has prepared and attached to these instructions the required forms to be submitted with the proposal. The proposal and all other accompanying documents or materials submitted by the proposer will constitute part of the proposal package.

2.0 SEALED PROPOSALS

Envelopes containing the proposals package must be sealed and addressed as follows:

Gerald E. Alfred, Director of Planning and Capital Projects
The Wave Transit System
GM&O Transportation Center
110 Beaugard Street, Suite 104
Mobile, AL 36602

All Bids shall be in a sealed envelope approximately 9"x12" or larger and be marked on the outside in the lower left corner with Name of Project, the Bid Opening Date, the Contractor's Name , Address and Receipt of any Addenda's.

FIVE ORIGINAL PROPOSALS ARE TO BE SUBMITTED.

Proposals shall indicate *Original RFP* on price sheet.

Although not required, The Wave Transit System encourages the bidder to submit an **electronic copy** of their bid proposal. The format can be in Microsoft Word or Portable Document Format (PDF File). This electronic proposal will be counted as one of your five copies to be submitted with this bid proposal. Please send the electronic proposal to Gerald E. Alfred at galfred@thewavetransit.com. Please indicate this submission on your four "hard copy" proposals.

2.1 Bid Security

Submit will all Bids over \$7,500.00 a Cashier's Check, Certified Check or Bid Bond for 5% of the Bid and in no event more than \$10,000.00.

2.2 Irregularities and Rejections

The Wave Transit System reserves the right to waive irregularities in the Bid and in Bidding, and to reject any or all Bids.

2.3 Bidder Qualifications

A. If the bidder is a corporation organized in a state other than Alabama, it shall furnish a certificate from the Secretary of State showing that it is qualified to transact business in Alabama and shall be registered with Alabama Department of Revenue.

2.4 PROJECT SCHEDULE

The following schedule will be adhered to with regard to the Request for Proposals:

Announcement (RE-BID)	September 1, 2017
Bid Solicitation (Available for Pickup)	September 1, 2017
Approved Equals / Clarification Response	September 14, 2017
Bid Opening	September 21, 2017 10:00a.m. (CST)

PRE-BID CONFERENCE

There will not be a Pre-bid Conference for the Re-bid of Project No. WTS-08-12A-17 and the MANDATORY ATTENDANCE requirement referenced in the Original Solicitation is waived.

3.0 AUTHORIZATION OF PROPOSAL

If an individual doing business under an assumed name make the proposal, the proposals shall so state. If the proposal is made by a partnership, the full name and addresses of each member and the address of the partnership shall be given and one member shall sign the proposal thereof. If a corporation makes the proposal, an authorized officer shall sign it in the corporate name. If the proposals are made by a joint venture, the full name and address of each member of the joint venture shall be given and each venture shall sign the proposals. The forms are included and they are to be filled out and submitted with the proposal.

3.1 AUTHORIZED SIGNATURE

The authorized signature block found on any document in connection with this procurement and/or its resulting contract must always be signed on the bidder's or contractor's behalf by an individual who is authorized to bind the bidder or contractor to all statements, services and prices contained therein.

4.0 PROPOSAL FORMAT

The proposers shall specify in their proposal the section(s) they are responding to and if they are meeting the stated technical scope of work. It is required that all proposers follow the proposals format and include the following specific information.

4.1 PROPOSAL FORMS

Your proposal must be submitted on a price form. The price form shall include all elements of cost for providing the proposed service(s). If needed, please provide additional price documentation on a separate sheet.

The following documents are to be completed by the proposer and must be submitted with the proposal: **(SOME FORMS PROVIDED)**

- Cover Letter
- Qualifications of Assigned Staff

(FORMS PROVIDED-BEGIN)

- FTA Procurement Compliance Forms as Directed:
 - ◆ Buy America Certificate of Compliance
 - ◆ Certification of Contractor Debarment, Suspension and other Responsibility Matters
 - ◆ Non-Collusion Affidavit
 - ◆ Certification of Compliance with Restrictions on Lobbying
 - ◆ Certification of Compliance for Drug Free Workplace
 - ◆ Acknowledgment of Addenda
 - ◆ Compliance with Scope of Work
 - ◆ List of Similar Contracts/References
 - ◆ Price Form
(If needed, please provide additional price documentation on separate sheet)
 - ◆ Request for Approved Equals
 - ◆ DBE Approval Certification
 - ◆ E-Verify
 - ◆ Procurement Information Request Form

(FORMS PROVIDED-END)

- Schedule of Deliverables

All names on the proposal shall be typed or printed below the signatures. Proposals must include the required forms provided. Proposals submitted on any other form may be considered non-responsive and may be rejected. Any erasures, corrections or other changes appearing on the proposal form must be initialed and dated by the person signing the proposal.

All documents to be submitted with the proposal must be properly signed and notarized where specified.

5.0 APPROVED EQUALS

Note: Please use attached approved equals form at end of this bid solicitation.

5.1 BRAND NAMES

Wherever brand, manufacturer or service names are used, they are included only for the purpose of establishing a description of minimum quality of the service. This inclusion is not to be construed as advocating or prescribing the use of any particular brand or item or service. Wherever such names appear approved equals or better will be accepted. Proposer must request, in writing from The Wave Transit System an approved equal of their service being proposed if different from that being specified.

5.2 APPROVED EQUALS

If a potential proposer(s) feel(s) that his/her service is an equal to the service specified, he/she must submit a written request to The Wave Transit.

Request for approved equals, clarification of scope of work, and protest of scope of work must be received by The Wave Transit System in writing by September 14, 2017. Any request for an

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approved equal or protest of the scope of work must be fully supported with technical data, test results, or other pertinent information as evidence that the substitute offered is equal to or better than the scope of work requirement. The proposer(s) must demonstrate the equality of the substitute service to The Wave Transit System and must furnish sufficient information to enable The Wave Transit System to determine whether the proposer(s) service is or is not equal to the specified. The Wave Transit's replies to such request will be postmarked at least five (5) days before the date scheduled for the proposal opening. A notice of approved equals shall be furnished to all parties receiving a scope of work so those proposers may submit their proposal accordingly.

6.0 PROTEST PROCEDURES

6.1 GENERAL

Protest may be made by prospective bidders or proposers whose direct economic interest would be affected by the award of a contract or by failure to award a contract. The Wave Transit System will consider all protest requested in a timely manner regarding the award of a contract, whether submitted before or after an award. All protest are to be submitted in writing to: Gerald E. Alfred, The Wave Transit, GM&O Transportation Center, 110 Beauregard Street, Suite 104, Mobile, AL 36602. Protest submissions should be concise, logically arranged, and clearly state the grounds for protest. Protest must include the following information:

- A. Name, address, and telephone number of protestor,
- B. Identification of contract solicitation number,
- C. A detailed statement of the legal and factual grounds of the protest, including copies of relevant documents, and
- D. A statement as to what relief is requested.

Protest must be submitted to The Wave Transit System in accordance with these procedures and time requirements must be complete and contain all issues that the protestor believes relevant.

In the procedure outline below, the General Manager is considered to be the Contracting Officer.

6.2 PROTESTS BEFORE OPENING

Bid protest alleging restrictive specifications or improprieties which are apparent prior to the bid opening or receipt of proposals must be submitted in writing to the Contracting Officer at the address above and must be received at least seven (7) days prior to the bid opening or closing date for receipt of bid proposals. If the written protest is not received by the time specified bids or proposals may be received and award made in the normal manner unless the Contracting Officer determines that remedial action is required. Oral protest not followed up by a written protest will be disregarded. The Contracting Officer may request additional information from the appealing party and information or responses from other bidders, which shall be submitted to the Contracting Officer not less than ten (10) days after the date of The Wave Transit's request. So far as practical, appeals will be decided based on the written appeal, information and written responses submitted by the appealing party and other bidders. In failure of any party to timely respond to a request form information, it may be deemed by The Wave Transit System that such party does not desire to participate in the proceeding, does not contest the matter, or does not desire to submit a response, and in such case, the protest will proceed and will not be delayed due to the lack of response. Upon receipt and review of written submissions and any independent evaluation deemed appropriate by The Wave Transit, the Contracting

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Officer, shall either (a) render a decision, or (b) at the sole election of the Contracting Officer, conduct an informal hearing at which the interested parties will be afforded the opportunity to present their respective positions and facts, documents, justification, and technical information in support thereof. Parties may, but are not required to, be represented by counsel at the informal hearing, which will not be subject to formal rules of evidence or procedures. Following the informal hearing, if one is held, the Contracting Officer will render a decision, which shall be final, and notify all interested parties thereof in writing but no later than ten (10) days from the date of the informal hearing.

6.3 PROTEST AFTER OPENING/PRIOR TO AWARD

Bid protests against the making of an award by The Wave Transit System must be submitted in writing to the Contracting Officer and received within seven (7) days of the award by The Wave Transit. Notice of the protest and the basis thereto will be given to all bidders or proposers. In addition, when a protest against the making of an award by The Wave Transit System is received and it is determined to withhold the award pending disposition of the protest, the bidders or proposers whose bids or proposals might become eligible for award shall be requested before the expiration of the time for acceptance, to extend or to withdraw the bid. Where a written protest against the making of an award is received in the time period specified, award will not be made prior to seven (7) days after resolution of the protest unless The Wave Transit System determines that:

- a) The items to be purchased are urgently required
- b) Delivery or performance will be unduly delayed by failure to make an award promptly,
or
- c) Failure to make an award will otherwise cause undue harm to The Wave Transit System or the federal government.

6.4 PROTESTS AFTER AWARD

In instances where the award has been made, the Contractor shall be furnished with the notice of protest and the basis thereof. If the contractor has not executed the contract as of the date of the protest is received by The Wave Transit; the execution of the contract will not be made prior to seven (7) days after resolution of the protest unless The Wave Transit System determines that:

- a) The items to be purchased are urgently required
- b) Delivery or performance will be unduly delayed by failure to make an award promptly,
or
- c) Failure to make an award will otherwise cause undue harm to The Wave Transit System or the federal government.

6.5 FTA PROTEST REVIEW PROCEDURES

Circumstances under which FTA will accept and review protests are limited to the following:

- a) The alleged failure of The Wave Transit System to have written protest procedures;
- b) The alleged failure of The Wave Transit System to follow such procedures;

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- c) The alleged violation by The Wave Transit System of a specific federal requirement; which provides an applicable complaint procedure.

In the instance of (c) above, the applicable complaint procedure shall be submitted and processed in accordance with pertinent federal regulations (e.g., 49 CFR Part 661, Section 661.15 for Buy America, or 49 CFR Part 23.73 for Minority Business Enterprise participation). Should protest be filed with the FTA under either (a) or (b) above, FTA pursuant to Circular 4220.1D will use the following process:

1. Parties shall file protest with FTA not later than five days after the General Manager as provided herein renders a final decision. In instances where the protester alleges that The Wave Transit System failed to make a final determination on the protest, protesters shall file a protest with FTA not later than five days after the protester knew or should have known of The Wave Transit's failure to render a final determination on the protest;
2. The Wave Transit System shall not award a contract for five days following its decision on bid protest except in accordance with the provisions and limitations of item 9 of this section. After five days, The Wave Transit System shall confirm with FTA that FTA has not received a protest on the contract in question;
3. Protests shall be filed with the FTA Region IV office with a concurrent copy to The Wave Transit;
4. The protest filed with FTA shall:
 - a) Include the name and address of the protester;
 - b) Identify the grantee, project number, and the number, if any, of the contract solicitation;
 - c) Contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to follow protest procedures or the alleged failure to have procedures, and should be supported by documentation to the extent possible;
 - d) Include a copy of the local protest filed with The Wave Transit System along with a copy of The Wave Transit's decision, if any.
5. FTA shall notify The Wave Transit System in a timely manner of the receipt of a protest. FTA shall instruct The Wave Transit System to notify the Contractor of the protest if award has been made or, if no award has been made, to notify all interested parties. The Wave Transit System shall instruct all who receive such notice that they may communicate further directly with FTA;
6. The Wave Transit System shall submit the following information to FTA not later than ten days after receipt of notification by FTA of the protest:
 - a) A copy of The Wave Transit's protest procedures;
 - b) A description of the process followed concerning the protest, and;
 - c) Any supporting documentation.
7. The Wave Transit System shall provide the protester with a copy of the above submission;
8. The protester may provide any comments on The Wave Transit's submission no later than ten days after the protester's receipt of such material;

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9. When a protest has been filed in a timely fashion with The Wave Transit System before award, The Wave Transit System shall not make an award prior to five days after the resolution of the protest, or if a protest has been filed with FTA, during the period in which the protest is pending, unless The Wave Transit System determines that:
 - a) The items to be procured are urgently required;
 - b) Delivery or performance will be unduly delayed by failure to make the award promptly, or;
 - c) Failure to make prompt award will otherwise cause undue harm to The Wave Transit System or the Federal Government. In the event that The Wave Transit System determines that the award is to be made during the five-day period following the local protest decision or the period in which the protest is pending, The Wave Transit System shall notify FTA prior to making such award;
10. Upon receipt of the material described herein, FTA will either request further information or a conference among parties, or will render a decision on the protest.

7.0 ADDENDUM

Any changes in these instructions, the general conditions or scope of work, or other requirements will be accomplished by an addendum in writing, sent to all prospective proposers. All such addenda shall become a part of the contract. Each prospective proposer is required to acknowledge receipt of all addenda in writing. Failure to acknowledge receipt of all addenda may cause the proposals to be considered non-responsive, and therefore, rejected.

8.0 PROPOSALS WITHDRAWAL

Each and every proposer who submits their proposal specifically waives any right to withdraw it except as hereinafter provided. Proposers will be given permission to withdraw any proposals after it has been deposited with The Wave Transit System provided proposer makes his request by telephone, facsimile or in writing, twenty-four (24) hours before the due time. Request pertaining to withdrawal by telephone or facsimile must be confirmed in writing by the proposer and must reach the office of the Director of Planning & Capital Projects of The Wave Transit System not later than one (1) hour prior to the time fixed for submission of proposals.

No proposers may withdraw their proposal within sixty (60) days after the date fixed for proposals opening.

9.0 PROPOSAL REJECTION

The Wave Transit System reserves the right to waive any minor proposals informalities or irregularities received which do not go to the heart of the proposals or prejudice other proposers, or to reject, for good and compelling reason, any and all proposals submitted. Conditional proposals, or those which take exception to the general conditions, scope of work, or to other contract requirements may be rejected. When a proposal shows evidence of unbalanced proposal (i.e., some of the items represent nominal prices while others are grossly inflated) such proposals may be deemed non-responsive.

10.0 PROPOSAL EVALUATION/QUALIFICATION FOR AWARD

- a) Proposals will be awarded to the responsive and responsible proposers.
- b) Consideration will be given to Proposer's previous experience, price, financial responsibility of proposers, responsiveness to this scope of work, including level of participation for DBE's.
- c) Proposers may be required to submit statements of their financial responsibility, qualifications and performance records before contract can be awarded to them. The Wave Transit System shall have the right to conduct a pre-award survey of each proposer.
- d) Have the necessary facilities and financial resources, or has the capability to obtain such facilities and resources, to complete the contract in a satisfactory manner within the time required.
- e) The Wave Transit System reserves the right to conduct a price analysis for any purchase. The Wave Transit System may be required to perform a price analysis when competition is lacking for any purchase. Sole source procurement or procurement which results in a single proposal being received will be subjected to a cost or price analysis which will include the appropriate verification of cost data, the evaluation of specific elements of cost and the projection of the data to determine the effect on proposal prices.
- f) The Wave Transit System may require a pre-award audit and potential contractors shall be prepared to submit data relevant to the proposal work which will allow The Wave Transit System to sufficiently determine that the proposal price is fair, reasonable and in accordance with federal, state and local regulations.
- g) Procurement resulting in a single proposal will be treated as a negotiated procurement and The Wave Transit System reserves the right to negotiate with a single proposer to achieve a fair and reasonable price. If both parties cannot agree upon a negotiated price, The Wave Transit System reserves the right to reject the single proposal.

11.0 PROPOSAL AWARD

In order for a proposer to be eligible to be awarded the contract, the proposal must be responsive to the solicitation and The Wave Transit System must be able to determine that the proposers are responsible to perform the contract satisfactorily.

The Wave Transit System prefers to award a **single** contract for all items listed to the lowest responsive and responsible proposers whose proposal meets the requirements and criteria set forth in the Request for Proposals. However, separate awards may be made if it is in the best interest of The Wave Transit System to do so. Members of the selection committee will independently review and rate each proposer based on, but not limited to, the following factors: **(suggested proposal format)**

1. Qualifications & Experience of Management Personnel	15 Points
2. Background & Experience in Similar Projects	15 Points
3. Commitment & ability to meet proposed schedule	15 Points
4. Overall impression of proposal. Understanding the Problem & method of approach	25 Points
5. Disadvantage Business Enterprise Participation	5 Points
6. Proposal price for service and Project Management	25 Points

100 Points

Proposal must remain in effect ninety (90) days from the proposal opening. Conditional proposals, or those which take exception to the general conditions, scope of work, or to other contract requirements may be rejected.

The Wave Transit System reserves the right to withdraw this request at any time without prior notice or to postpone the proposal opening for its own convenience. The Wave Transit System makes no representations that any agreement will be awarded to any proposer responding to this request. The Wave Transit System reserves the right to reject any and all proposals responding to this invitation without indicating any reason for such rejections. The Wave Transit System reserves the rights nevertheless, to accept the proposal other than the lowest, if it determines that The Wave Transit's interest will be best served by doing so, or to reject all proposals or parts of proposals received.

Proposals, which contain prices on services neither specified nor granted approved equal status, will be rejected.

12.0 PROPOSALS ACCEPTED

Each proposal will be submitted with the understanding that the acceptance in writing by The Wave Transit System of the offer to furnish any or all items described therein, shall constitute a contract between the proposers and The Wave Transit. This shall bind the proposers on his/her part to furnish and deliver at their proposal price, and in accordance with conditions of said accepted proposals, the scope of work.

13.0 REMEDIES/SANCTIONS FOR BREACH OF CONTRACT

Without limiting in any manner other remedies or damages to which The Wave Transit System may be entitled in law or in equity and/or under this contract in the event of a breach by the contractor or failure by the contractor to satisfactorily complete the work it contracts to do herein, The Wave Transit System shall be entitled to recover the full amount of its cost which are related in any manner to soliciting a new proposal or proposals, which include all or any portion of the work the contractor has agreed to perform under this contract. Should contractor fail to substantially complete the work covered by this contract within the time specified, and unless such delay is caused by actions entirely beyond the control of the contractor, contractor shall likewise be liable to The Wave Transit System for all expenses and damages, direct and consequential, resulting from such delays.

14.0 CONTRACT SUBLETTING

No contract may be assigned, sublet or transferred without the express written consent of The Wave Transit.

15.0 CONTRACT DOCUMENTS

The successful bidder shall execute a contract with The Wave in a form satisfactory to The Wave that will incorporate the terms and condition set forth in this Request for Proposal and the documents included therein. The contract may also contain such other terms and conditions as The Wave may require, such as, but not necessarily limited to, the following:

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- First – General Terms and Conditions (attached) and applicable FTA regulations
- Second – Bid Solicitation Document
- Third – Addenda Issued by The Wave Transit System
- Fourth – Bidder's Accepted Response

Upon acceptance of a bid, The Wave will provide the successful bidder with a contract for execution.

15.1 CONTRACT CHANGES

Any changes in this contract shall be submitted to The Wave Transit System for its approval and The Wave Transit System will make the change by written contract modifications. The Wave Transit System by written order and without notice to the sureties may make changes within the general scope of the contract. If any such change causes an increase or decrease in the cost of or the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. The contractor of the notification of change must assert any claim by the contractor for adjustment under this clause within thirty (30) days from the date of receipt. If The Wave Transit System decided that the facts justify such action, it may receive and act upon any such claim asserted at any time prior to final payment under this contract. The contractor shall be liable for all costs resulting from, and/or for satisfactorily correcting, any contractor-initiated specification change not properly ordered by written modification to the contract and signed by The Wave.

16.0 INDEMNIFICATION

The contractor shall indemnify, save, defend and hold harmless The Wave Transit, the City of Mobile, and First Transit, Inc., their officers, agents and employees free of all losses, damages, claims and expenses in any wise arising or resulting from the actions and omissions of the Contractor, its employees, agents or contractors in the performance of its services hereunder.

17.0 PROPRIETARY RIGHTS/RIGHTS IN DATA

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

The procuring agency reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, the following subject data for its purposes.

1. Any subject data, required to be developed and first produced in the performance of the contract and specifically paid for as such under the contract, whether or not a copyright has been obtained; and

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2. Any rights of copyright to which the contractor, subcontractor or supplier purchase ownership for the purpose of performance of the contract and specifically paid for as such under the contract.

The contractor agrees to include the requirements of this clause, modified as necessary to identify the affected parties, in each subcontract and supply order placed under the contract.

18.0 APPLICABLE LAW

The contract shall be construed and governed in accordance with the law of the State of Alabama. All actions whether sounding in contract or tort relating to the validity, construction, interpretation and enforcement of the contract shall be instituted and litigated in the Courts of the State of Alabama, located in Mobile County, and in no other. In accordance therewith, the parties to this contract submit to the jurisdiction of the Courts of the State of Alabama located in Mobile County.

18.1 NON-DISCRIMINATION

The contractor who is the recipient of The Wave funds, or who proposes to perform any work or furnish any goods under this agreement shall not discriminate against any worker, employee or applicant, or any member of the public because of religion, race, sex, age, physical or mental disability, or perceived disability. Discriminatory practices based upon the foregoing are declared to be contrary to the public policy. The bidder agrees to fully comply with the federal mandates of the Americans with Disabilities Act. The bidder further agrees that this article will be incorporated by the bidder in all contracts entered into with suppliers of materials, services, subcontractors and all labor organizations, furnishing skilled, unskilled and craft union connection with this contract.

19.0 TAX EXEMPTION

Purchaser is exempt from payment of all Federal, State and local taxes in connection with the project. Said taxes must not be included in proposal prices. Purchaser will provide necessary tax exemption certificates to manufacturer upon request.

20.0 USE OF THE WAVE TRANSIT'S NAME IN ADVERTISING AND PUBLIC RELATIONS

The Wave Transit System reserves the right to review and approve The Wave Transit System related copy prior to publication. The contractor shall not proceed with The Wave Transit System related copy to be published in the contractor's advertisement or public relations program until submitting The Wave Transit System related copy and receiving prior written approval from The Wave Transit. The contractor shall agree that material published about or referring to The Wave Transit System and its equipment shall be factual and in no way imply that The Wave Transit System encourages the contractor's firm or service.

21.0 PROPOSERS RESPONSIBILITY

It is the intent of these scope of work to provide for goods and services of first quality, and the workmanship must be the best obtainable in the various trades.

The proposer's shall assume responsibility for all materials used in the proposals item whether the vendor manufactures the same or purchased ready-made from a source outside the Proposer's company.

22.0 COMPLIANCE WITH SCOPE OF WORK

The successful proposer shall certify that the services furnished under the contract shall fully comply with the scope of work attached hereto.

In the event any materials or services furnished by the proposers do not fulfill the intention of these scope of work or do not comply with the specification conditions and requirements as accepted by the proposer, said materials or services shall not be considered as being delivered and the assessment for liquidated damages set forth shall apply and be enforced.

All construction, electrical, landscaping and maintenance work performed by the contractor will be inspected by The Wave's Project Coordinator and/or designee in a timely fashion. Items requiring corrections or not meeting specification shall be noted and submitted to the contractor. The contractor shall correct any deficiencies noted within seven (7) calendar days. Bus shelters shall not display any advertisement.

23.0 PRICING

The price in any proposal submitted shall include all labor, materials, equipment, and other cost necessary to fully complete any or the entire proposal.

24.0 TERMS OF PAYMENT

Unless other payment arrangements are agreed upon, payment shall be net thirty (30) days after completion and acceptance of the project. Proposers should note any discounts for payment before thirty (30) days. Invoices should be sent to the attentions of The Wave Transit System Finance Department.

Proposer's invoice for services shall reflect:

- Purchase order number
- Delivery date of service
- Description of work performed
- Total invoice amount

25.0 INSURANCE **IMPORTANT**

****Insurance Requirements: \$1,000,000.00 (One Million Dollars) ****

If requested by The Wave Transit System the proposers shall furnish satisfactory proof of insurance that may be required. On each policy of insurance required hereunder, The Wave Transit, the City of Mobile, and First Transit, Inc., shall be named as additional insured.

In addition, the proposers shall maintain in effect at all times during the performance of work under this contract workmen's compensation insurance as required by state law.

****Insurance Requirements: \$1,000,000.00 (One Million Dollars) ****

Unless specific requirements are listed below, the bidder shall obtain and thereafter maintain and pay the premiums for insurance of the types and the limits that it deems sufficient for its protection.

Additional insurers required by contract should be automatically included in all of the Bidder's insurance programs:

The Wave Transit System Employee unit
1224 W. ME-65 Service Road South.
Mobile, AL 36609

McDonald Transit Associates.
3800 Sandshell Drive
Fort Worth, Texas 76137

City of Mobile
P. O. Box 1827
Mobile, AL 36633

In any event, the bidder shall maintain and pay the premiums for insurance of the types and in the limits of not less than the following:

- 1)
 - a) Worker's Compensation of not less than \$1,000,000.
 - b) Employer's Liability Insurance endorsed with a Broad Form All States Coverage, which shall cover all the Bidder's employees engaged in the performance of the works. This coverage should not be less than 1,000,000.
- 2) Comprehensive. General Liability Insurance Coverage with limits not less than required
Umbrella Liability Insurance below and covering at least:
 - a) Operations – Premises Liability
 - b) Independent Contractor's Liability
 - c) Broad Form Contractual Liability covering the bidder's obligations.
 - d) Completed Operations Liability
 - e) Personal Injury Liability including claims arising from employees of the Bidder.
 - f) Broad Form Property Damage Liability

Internet and VOIP Services

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- 3) Excess and Umbrella Liability Insurance in excess of 1) (b), and 2) above of not less than **\$1,000.000.00**
- 4) All such insurance as indicated above shall be provided by insurance companies having a Best's rating of not less than A: VI, as shown in the current issue of Best Key Rating Guide Property-Casualty.
- 5) Proof that such insurance coverage exists shall be furnished to WTS before the Bidder commences any of the parts of the work of the Contract. The Bidder agreed that if any policy of insurance is in effect in such manner as to affect the insurance called for herein, 30 days notice in writing shall be given to WTS prior to any such change or cancellation.
- 6) The Bidder shall be responsible for compliance with all safety rules and regulations of the Federal Occupational Safety and Health Act of 1970 and those of all applicable State Acts, Laws or Regulations during the conduct of and the Bidder's performance of this Contract. The Bidder shall indemnify WTS for fines, penalties and corrective measures that result from the acts of commission or omission of the Bidder, its subcontractors, if any, agents, employees and assigns and their failure to comply with such safety rules and regulations.
- 7) The Wave will give to the Bidder prompt notice in writing of the institution of any suit or proceeding and permit the Bidder to defend same, and will give all needed information, assistance, and authority to enable the Bidder to do so. The Bidder shall similarly give WTS immediate notice of any suit or action filed or prompt notice of any claim arising out of the performance of the Contract. The Bidder shall furnish immediately to WTS copies of all pertinent papers received by the Bidder.
- 8) The Bidder shall require its subcontractors, if any, to obtain an amount of insurance coverage, which is deemed adequate by the Bidder. The Bidder shall be liable to the extent that the subcontractor insurance coverage is inadequate. The subcontractors, prior to commencing any of the work, shall submit certificates evidencing such insurance coverage to the Bidder.
- 9) The Wave reserves the right to inspect in person, prior to commencement of the work, all of the Bidder's insurance policies in regard to insurance required herein.

26.0 CORRESPONDENCE

In cases where communication is required between proposers and The Wave Transit, such as further information, furnishing of scope of work, or obtaining approval of proposed service, such communications from proposers shall be forwarded directly to Gerald E. Alfred, Director of Planning & Capital Projects, GM&O Transportation Center, 110 Beauregard Street, Suite 104, Mobile, AL 36602. Telephone Number: (251) 344-6600 ext. 225, Fax Number: (251) 344-6678, or Email: galfred@thewavetransit.com.

Note: The Project Number: WTS-08-21A-17 must be shown on all correspondences.

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Scope of Work

Mobile Transit Management d/b/a The Wave Transit System is accepting proposals from qualified bidders for the selection of an Internet Service Provider (ISP) that can provide Voice, Data and Internet Services with sufficient speed and bandwidth for the following locations:

The Wave Transit System-Administrative Office
1224 West I-65 Service Road, South
Mobile, Alabama 36609

and

GM&O Transportation Center
110 Beauregard Street, Suite 104
Mobile, Alabama 36602

DESCRIPTION OF SERVICES

- ✓ All work referenced in this Request for Proposals is dependent on Federal Transit Administration (FTA) funding.
- ✓ It is the intent of this RFP for the Wave Transit System to enter into a contract for a minimum period of 3 years with two (2) one year options.
- ✓ Providers should have the ability to deliver:
 - Internet service directly connected to Tier 1 with a 128 subnet providing five (5) available public IP addresses
 - Private VLAN tagged Metro Ethernet circuits
 - CIPA Compliance
 - Local Central Office at both locations with an Emergency Operations Plan
- ✓ Providers must be prepared to provide all necessary equipment, IP addresses, connections & connectivity for a single-mode LC fiber optic hand off at each location.
- ✓ The Wave Transit System would prefer to have the least amount of equipment connecting from the fiber optic links to our equipment. This is so that we may simplify complexity and thus simplify troubleshooting, reduce potential failures, and reduce power consumption.

Internet and VOIP Services

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- ✓ Providers will be responsible for all service and maintenance of all internet connections.
- ✓ Providers must provide 24 hour support for troubleshooting any reported problems or outages and administrative support during normal business hours.
- ✓ Refunds must be provided for periods of service outage lasting more than (4) hours and where service level agreements are not met.

Minimum Requirements

GM&O Transportation Center

NLAN – Enterprise Switched	25 Mbps
Realtime Bandwidth	25 Mbps
Port Bandwidth	100Mbps

Beltline- Administrative Office

NLAN – Enterprise Switched	25 Mbps
Realtime Bandwidth	25 Mbps
Port Bandwidth	100Mbps
Interactive Bandwidth	100Mbps

Voice-Internet 50Mbps

Internet 50Mbps

SPECIFICATIONS –TELECOMMUNICATIONS SERVICES

Local Telephone Service

(17) Lines Servicing The Wave Transit System

VOIP Services for dial tone -Quantity up to (17) lines for 2 buildings

Long Distance Telephone Service

(17) Lines Servicing The Wave Transit System

Internet Services

VOIP Services

2 locations interconnected VOIP services; Quantity up to 40 total phones at a minimum of 50 mbps or greater bandwidth. Point to point 25 min.

Unbundled Internet

1 - Gigabit Fiber Line

Provide Gigabit level unbundled Internet access services. Components of Internet access are limited to data transmission, address translation, protocol conversion, and billing management.

Data Transport Services Between Buildings

1 - Copper (or similar), 10mbps (100mbps preferred) (or equivalent or faster) - Data

END SCOPE OF WORK

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Internet and VOIP Services
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Federal Transit Administration (FTA)
Required Contract Clauses

Service Contracts

Provided by

Mobile Transit Management dba The Wave Transit System
1224 West I-65 Service Road South
Mobile, Alabama 36609
(251) 344-6600

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The document complies with FTA Circular 4220.1D
"Third Party Contracting Requirements,"
Dated
April 15, 1996

FEDERAL TRANSIT ADMINISTRATION

TABLE OF CONTENTS (Governing Documents- Product/Service Contracts)
Federally Required and Other Model Contract Clauses

Federally Required and Other Model Contract Clauses

Energy Conservation Requirements
Clean Water Requirements
Lobbying
Access to Records and Reports
Buy America Requirements
Federal Changes
Clean Air
Recycled Products
No Government Obligation to Third Parties
Program Fraud and False or Fraudulent Statements and Related Acts
Termination
Government-Wide Debarment and Suspension (Nonprocurement)
Privacy Act Requirements
Civil Rights Requirements
Breaches of Contract and Dispute Resolution
Patent and Rights in Data, and Copyrights
Transit Employee Protective Agreements
Disadvantaged Business Enterprises (DBE)
State and Local Law Disclaimer
Incorporation of Federal Transit Administration (FTA) Terms
Drug and Alcohol Testing
Explanation of Model Contract Clause
Davis-Bacon and Copeland Anti-Kickback Acts
Certifications and Forms
 Buy America Certificate of Compliance
 Certification of Contractor Debarment, Suspension, and other Responsible Matters
 Non-Collusion Affidavit
 Certification of Compliance with Restrictions on Lobbying
 Certification of Compliance for Drug Free Workplace
 Acknowledgement of Addenda
 Compliance with the Scope of Work
 List of Similar Contracts/References
 Price Proposal Form
 Request for Approved Equals
 DBE Approval Certification

Other- E-Verification

ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq. 49 CFR Part 18

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.

CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

LOBBYING

31 U.S.C. 1352

49 CFR Part 19

49 CFR Part 20

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more will 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 will 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.

ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

18 CFR 18.36 (i)

49 CFR 633.17

Access to Records - The following access to records requirements apply to The Contract:

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

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

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to The contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor will make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under The contract for a period of not less than three years after the date of termination or expiration of The contract, except in the event of litigation or settlement of claims arising from the performance of The contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
7. FTA does not require the inclusion of these requirements in subcontracts.

Requirements for Access to Records and Reports by Types of Contract

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

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 18 CFR 18.36 (i)

FTA's Buy America Certification Requirements

CFR 49 Part 661

The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA-funded contracts, but does not specify the language to be used. The following language has been developed by FTA.

Buy America - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

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

FEDERAL CHANGES

49 CFR Part 18

Federal Changes - Contractor will at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (6) dated October, 1999) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to so comply will constitute a material breach of the contract.

CLEAN AIR

42 U.S.C. 7401 et seq

40 CFR 15.61

49 CFR Part 18

Clean Air

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

RECYCLED PRODUCTS

42 U.S.C. 6962
40 CFR Part 247
Executive Order 12873

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

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Obligation by the Federal Government.

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

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS

AND RELATED ACTS

31 U.S.C. 3801 et seq.
49 CFR Part 31 18 U.S.C. 1001
49 U.S.C. 5307

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 or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which the 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 cause 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 will not be modified, except to identify the subcontractor who will be subject to the provisions.

TERMINATION

49 U.S.C. Part 18 FTA Circular 4220.1D

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

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

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

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

- d. **Waiver of Remedies for any Breach** In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of The contract, such waiver by (Recipient) will not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of The contract.
- e. **Termination for Convenience (Professional or Transit Service Contracts)** The (Recipient), by written notice, may terminate The contract, in whole or in part, when it is in the

Internet and VOIP Services

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Government's interest. If the contract is terminated, the Recipient will be liable only for payment under the payment provisions of The 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 The contract or any extension or if the Contractor fails to comply with any other provisions of The contract, the (Recipient) may terminate The contract for default. The (Recipient) will 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 the 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 will 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 The contract or any extension or if the Contractor fails to comply with any other provisions of The contract, the (Recipient) may terminate The contract for default. The (Recipient) will 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 the contract.

If the contract is terminated while the Contractor has possession of Recipient goods, the Contractor will, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) will 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 will be the same as if the termination had been issued for the convenience of the (Recipient).

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

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

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

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

**49 CFR Part 29
Executive Order 12549**

Instructions for Certification

1. **By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.**
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, (Recipient) may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant will provide immediate written notice to (Recipient) if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact (Recipient) for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it will not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by (Recipient).
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing will be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, (Recipient) may pursue available remedies including suspension and/or debarment.

"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction"

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- (1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant will attach an explanation to this proposal.

PRIVACY ACT

5 U.S.C. 552

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

1. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

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

24. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.

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

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
 1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,"

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- 41 C.F.R. Parts 60 et seq ., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action will include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18 FTA Circular 4220.1D

Disputes - Disputes arising in the performance of The Contract which are not resolved by agreement of the parties will be decided in writing by the authorized representative of The Wave Transit, Robert A. Williams, General Manager. This decision will 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 Robert A. Williams, General Manager. In connection with any such appeal, the Contractor will be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the General Manager will be binding upon the Contractor and the Contractor will abide by the decision.

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

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

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

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

26. PATENT AND RIGHTS IN DATA

37 CFR Part 401
49 CFR Parts 18 and 19

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

- A. **Rights in Data** - This following requirements apply to each contract involving experimental, developmental or research work:
1. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
 2. The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:
 - i. Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
 - ii. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
 2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.
 - iii. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor

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performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract will become subject data as defined in subsection (a) of this clause and will be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

- iv. Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor will be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
 - v. Nothing contained in this clause on rights in data will imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
 - vi. Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.
 - vii. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
3. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e. , a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
 4. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- a) **Patent Rights** - This following requirements apply to each contract involving experimental, developmental, or research work:

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- (1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
- (2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
- (3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

49 U.S.C. § 5310, § 5311, and § 5333 29 CFR Part 215

- a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under the contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.
- b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.

§ 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.

§ 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

2. The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

This section is being developed to reflect the new rule in 49 CFR Part 26.

Disadvantaged Business Enterprise Provision 1. The Federal Fiscal Year goal has been set by the Mobile Transit Authority in an attempt to match projected procurements with available qualified disadvantaged businesses. The Wave Transit System goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established by The Wave Transit System as set forth by the Department of Transportation Regulations 49 C.F.R. Part 23, March 31, 1980, and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and are considered pertinent to any contract resulting from this request for proposal.

If a specific DBE goal is assigned to the contract, it will be clearly stated in the Special Specifications, and if the Contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBE's in the work provided, The Wave Transit System may declare the Contractor noncompliant and in breach of the contract. If a goal is not stated in the Special Specifications, it will be understood that no specific goal is assigned to the contract.

a) Policy _ It is the policy of the Department of Transportation and the Mobile Transit Authority that Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, and as amended in Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, will have the maximum opportunity to participate in the performance of Contract financed in whole or in part with federal funds under the agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Section 106(c) of the STURAA of 1987, apply to the contract.

The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 23 and Section 106(c) of the STURAA of 1987, have the maximum opportunity to participate in the whole or in part with federal funds provided under the agreement. In this regard, the Contractor will take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Contractor will not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts.

It is further the policy of The Wave Transit System to promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of The Wave Transit System procurement activities is encouraged.

b) DBE obligation _ The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors will take all necessary and reasonable steps

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in accordance with 49 CFR Part 23 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

- c) Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, The Wave Transit System may declare the Contractor noncompliant and in breach of contract.
- d) The Contractor will keep records and documents for a reasonable time following performance of The Contract to indicate compliance with the Mobile Transit Authority DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of The Wave Transit System and will be submitted to The Wave Transit System upon request.
- e) The Wave Transit System will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:
 - * Identification of qualified DBE
 - * Available listing of Minority Assistance Agencies
 - * Holding bid conferences to emphasize requirements

2. DBE Program Definitions, as used in the contract:

- (a) Disadvantaged business "means a small business concern":
 - I. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
 - II. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Or

- III. Which is at least 51 percent owned by one or more women individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women individuals; and
- IV. Whose management and daily business operations are controlled by
 - (a) One or more women individuals who own it.
 - (b) "Small business concern" means a small business as defined by Section 3 of the Small Business Act and Appendix B _ (Section 106(c)) Determinations of Business Size.
 - (c) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, Native Americans, Asian_Pacific Americans, Asian_Indian Americans, or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

- i. "Black Americans", which includes persons having origins in any of the Black racial groups of Africa;
- ii. "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuba, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- iii. "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- iv. "Asian_Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of Pacific, and the Northern Marianas;
- v. "Asian_Indian Americans", which includes persons whose origins are from India, Pakistan, and Bangladesh.

STATE AND LOCAL LAW DISCLAIMER

State and Local Law Disclaimer - The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the grantees procurement documents, the grantees should consult with their local attorney.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1D

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 4220.1D, dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms will be deemed to control in the event of a conflict with other provisions contained in the agreement. The Contractor will not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

DRUG AND ALCOHOL TESTING

49 U.S.C. §5331
49 CFR Parts 653 and 654

Introduction

FTA's drug and alcohol rules, 49 CFR 653 and 654, respectively, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with Parts 653 and 654. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the Contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the Contractor, and the

financial resources available to the recipient to oversee the Contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

Therefore, FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

Explanation of Model Contract Clauses

Under Option 1, the recipient ensures the Contractor's compliance with the rules by requiring the Contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 CFR 653 and 654. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option only for those recipients which have a testing program for their employees, and can add the Contractor's safety-sensitive employees to that program.

Under Option 2, the recipient relies on the Contractor to implement a drug and alcohol testing program that complies with 49 CFR 653 and 654, but retains the ability to monitor the Contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the Contractor complies with the program. The disadvantage of Option 2 is that without adequate monitoring of the Contractor's program, the recipient may find itself out of compliance with the rules.

Under option 3, the recipient specifies some or all of the specific features of a contractor's drug and alcohol compliance program. Thus, it requires the recipient to decide what it wants to do and how it wants to do it. The advantage of this option is that the recipient has more control over the Contractor's drug and alcohol testing program, yet it is not actually administering the testing program. The disadvantage is that the recipient has to specify and understand clearly what it wants to do and why.

Drug and Alcohol Testing

Option 1

The Contractor agrees to:

- a) *participate in (grantee's or recipient's) drug and alcohol program established in compliance with 49 CFR 653 and 654.*

Drug and Alcohol Testing

Option 2

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of the State of Alabama, or The Wave Transit, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The Contractor agrees further to certify annually its compliance with Parts 653 and 654 before March 15th and to submit the Management Information System (MIS) reports before March 15th to Mr. Bruce Rockstad, The Wave Transit System Transit, 1224 West I-65 Service Road South., Mobile, AL 36609. To certify compliance, the Contractor will use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

**Drug and Alcohol Testing
Option 3**

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The Contractor agrees further to certify annually its compliance with Parts 653 and 654 before March 15th and to submit the Management Information System (MIS) reports before March 15th to Mr. Bruce Rockstad, The Wave Transit, 1224 West I-65 Service Road South., Mobile, AL 36609. To certify compliance the Contractor will use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before (insert date or upon request) a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt (insert title of the Policy Statement the recipient wishes the Contractor to use) as its policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval before (insert date or upon request) a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the Contractor agrees to: (to be determined by The Wave Transit, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

Davis-Bacon and Copeland Anti-Kickback Acts

1. Minimum wages –

- i. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

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

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determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

1. Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
4. With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

- iii. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

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- iv. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
 - v. (A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
 1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 2. The classification is utilized in the area by the construction industry; and
 3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
 - (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 - (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 - (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
2. **Withholding** - The Wave Transit System shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics,

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

3. Payrolls and basic records –

i. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

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

- 1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
- 2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that

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no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

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

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

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

- iii. The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees –

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

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

- ii. **Trainees** - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
 - iii. **Equal employment opportunity** - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
5. **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
6. **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
7. **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

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8. **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
9. **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
10. **Certification of eligibility** –
 - i. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - ii. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - iii. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001

BUY AMERICA

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

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

Signature _____

Title _____

Company Name _____

Date _____

BUY AMERICA

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

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

Signature _____

Company Name _____

Title _____

Date _____

MUST BE SUBMITTED WITH BID PROPOSAL

**CERTIFICATION OF CONTRACTOR
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

The potential contractor for The Wave Transit System, (primary participant),
_____ certifies to the best of its knowledge and
belief, that it and its principals:

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

(If the primary participant is unable to certify to any of the statements in this certification, the participant will attach an explanation to this certification)

THE PRIMARY PARTICIPANT,

_____ CERTIFIES OR AFFIRMS THE
TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED
ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS ON 31
U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Signature & Title of Authorized Official

MUST BE SUBMITTED WITH BID OR PROPOSAL

NON-COLLUSION AFFIDAVIT

State of _____, County of _____, being first duly sworn, deposes and says that:

- (1) He is _____ (Owner, Partner, Officer, Representative, or Agent) of _____. The respondent that has submitted the attached Response;
- (2) He is fully informed respecting the preparation and contents of the attached Response and of all pertinent circumstances respecting such Response;
- (3) Such Response is genuine and is not a collusion or sham;
- (4) Neither the said Respondent nor any of its officers, partners, owners, agents, representative, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Respondent, firm or person to submit a collusive or sham proposal in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Respondent, firm or person, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against of any person interested in the proposed Contract.

Signed _____

Title _____

Subscribed and sworn to before me

This _____ day of _____, 2017

Title

My commission expires _____

MUST BE SUBMITTED WITH BID PROPOSAL

**CERTIFICATION OF COMPLIANCE
WITH
RESTRICTIONS ON LOBBYING**

I, _____, do hereby certify on behalf of 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 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 will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) All subcontractors and subrecipients will certify and disclose accordingly.

This certification is a material representation of fact upon which reliance will be placed or if this transaction is made or entered into. Submission of this certification is 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 will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ day of _____, 2017

BY: _____
Signature of Authorized Official

Title of Authorized Official

MUST BE SUBMITTED WITH BID PROPOSAL

**CERTIFICATION OF COMPLIANCE
FOR DRUG FREE WORK PLACE**

The Federal Transit Administration, (FTA) in response to passage of the Omnibus Transportation Employee Testing Act of 1991, has published two regulations prohibiting drug use and alcohol misuse by transit employees and requiring transit agencies to test for prohibited drug use and alcohol misuse. These regulations are 49CFR part 653, "Prevention of Prohibited Drug Use in Transit Operations". In addition, the Department of Transportation (DOT) has issued 49CFR part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs", which prescribes testing methods to be followed.

The Federal Highway Administration (FHWA) and the FTA have agreed that transit agencies with safety-sensitive employees holding Commercial Driver's Licenses (CDL's) are covered by the FTA drug and alcohol regulations. However, these regulations are not limited to holders of CDL's and affect all employees who perform safety-sensitive functions, including those who are employed by a contractor hired by the transit agency to provide transit services.

The FTA has determined that "safety-sensitive" functions are performed by those employees who operate revenue service vehicles that require drivers to hold CDLs, dispatch or control revenue service vehicles and maintain revenue service vehicles or equipment used in revenue service. These categories include supervisors who perform these functions. The types of drug and alcohol tests required by the FTA regulations are pre-employment, reasonable suspicion, post-accident, random, return to duty and follow-up.

The Potential Contractor for The Wave Transit System, _____, certifies the Company and its sub-contractors (if applicable) affirm a Drug Free Workplace Policy has been established and agrees to comply with requirements of the Omnibus Transportation Employee Testing Act of 1991.

Signature & Title of Authorized Official

Date: _____

MUST BE SUBMITTED WITH BID PROPOSAL

ACKNOWLEDGEMENT OF ADDENDA

The undersigned acknowledges receipt of the following addenda to the documents.
(Give number and date of each).

Addenda No. _____ Dated: _____

Addenda No. _____ Dated: _____

Addenda No. _____ Dated: _____

Addenda No. _____ Dated: _____

Addenda No. _____ Dated: _____

Failure to acknowledge receipt of all addenda may cause the bid to be considered non responsive to the invitation, which would require rejection of the bid. The outside of the envelope carrying the bid shall be marked to show amendments and addendums received.

Date: _____

Signature: _____

Company Name: _____

Title: _____

MUST BE SUBMITTED WITH BID PROPOSAL

Internet and VOIP Services
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COMPLIANCE WITH THE SCOPE OF WORK

The proposers hereby state that they will comply with the scope of work in all areas except those approved equals that were granted.

Signature and also Name Printed

Firm Name

Subscribed and sworn to before me this _____ day of _____, 2017.

Notary Public

My commission expires

MUST BE SUBMITTED WITH BID PROPOSAL

LIST OF SIMILAR CONTRACTS and / or REFERENCES

Company: _____

Address: _____

Contact Person: _____

Title: _____

Phone: _____

Company: _____

Address: _____

Contact Person: _____

Title: _____

Phone: _____

Company: _____

Address: _____

Contact Person: _____

Title: _____

Phone: _____

MUST BE SUBMITTED WITH BID PROPOSAL

Internet and VOIP Services
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PRICE PROPOSAL FORM

The undersigned hereby agrees to furnish the requirements as outlined in the attached proposal in accordance to the Request for Bids for Internet and Voice Service, Project Number: WTS-08-12A-17-RE-BID. The price quoted is exclusive of all Federal, State, and Local taxes.

Installation, Labor and Materials

\$ _____

Annual Service Agreement Total

\$ _____

Total Amount of Bid: _____

OTHER- Select One

Bid Bond \$ _____

Cashier's Check \$ _____

Certified Check \$ _____

If additional space is needed, please list on a plain sheet and attach to this Price Proposal Form.

Name of Individual, Partner, Joint Venture, Corporation

Street Address

City, State, Zip Code

Telephone Number and Contact Person Regarding Proposals

Authorized Signature and also Name Printed

Title

REQUEST FOR CLARIFICATION OR APPROVED EQUALS

The Wave Transit System, Project Number: WTS-08-12A-17-RE-BID

Internet and VOIP Services

This form must be used for requested clarifications, changes, substitutes or approval of items equal to items specified with a brand name, and must be submitted by _____ . Each request shall constitute a separate page. Any supporting information and documentation shall **only** be submitted under a separate cover.

Request Number: _____

Bidder: _____

Solicitation Reference: _____ Page: _____ Section: _____

Questions / Clarification or Approved Equal

The Wave Transit System

Approved _____

Rejected _____

Comments:

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DBE APPROVAL CERTIFICATION

I hereby certify that the bidder has complied with the requirements of 49 CFR 23.67, Participation by Disadvantaged Business Enterprises in DOT Programs, and that our goals have not been disapproved by the Federal Transit Administration.

Signature of the Bidder's Authorized Official

Name and Title of the Bidder's Authorized Official

Date:

MUST BE SUBMITTED WITH BID PROPOSAL

Mobile Transit Management d/b/a The Wave Transit System

Procurement Information Request Form

Project Title: _____ Project Number: _____

Customer Contact Information

Agency: _____

Address: _____

Contact Person

Name: _____

Phone: _____

Fax: _____

Email: _____

Web Site: _____

State License / Permits

Disadvantaged Business Enterprise (DBE) Certification

State: _____

Certification No: _____

E-Verify

Registration Number

State

Project Summary

Narrative / Description of Project

Description of Goods and /or Services

END DOCUMENT