



Invitation for Bids
IFB # WTS-0071A-12

Fluid Supply Transfer Line Upgrade

Mobile Transit Management d/b/a

The Wave Transit System
Mobile, Alabama

Bid Opening

Date

Tuesday, July 24, 2012, 2:00 p.m. Central Standard Time (CST)

1224 W. I-65 Service Road, South, Mobile, Alabama 36608

SUMMARY STATEMENT

Mobile Transit Management d/b/a The Wave Transit System (The Wave) is requesting bids from qualified bidders to install four (4) Fluid Supply Transfer Lines at The Wave Transit System's Beltline Office (Garage) located at 1224 West I-65 Service Road South, Mobile, Alabama 36609. Bidders will be responsible for providing all labor, materials, equipment and supervision necessary to successfully perform the job.

NOTE: All event and requirement times stated in this Invitation for Bids refer to local time in Mobile, Alabama, USA

Procuring Entity

Project Number:	WTS-0071A-12
Issue Date:	July 9, 2012
Procuring Entity:	The Wave Transit System 1224 W. I-65 Service Road, South Mobile, AL. 36608
Contact	Mr. Gerald E. Alfred, Director of Planning & Capital
Telephone No:	Office - (251) 338-0100, Cell-(251) 583-3104
Fax No:	(251) 344-6678
Email:	galfred@thewavetransit.com

PROPOSALS RECEIVED

The Wave Transit System is interested in receiving proposals from responsible individuals and / or firms to provide Fluid Supply Transfer Lines for The Wave Transits' Beltline Office (Garage) located at 1224 W. I-65 Service Road, South, Mobile, Alabama 36609.

Sealed proposals will be received by The Wave Transit System, 1224 W. I-65 Service Road, South Mobile, Alabama 36608, in accordance with the Statement of Work, instructions, and conditions until July 24, 2012, 1:55 P.M. at which time all proposals properly received and in proper form shall be publicly opened and read aloud.

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 Friday, July 20, 2012.

It is anticipated that eighty percent (80%) of the funding for this project is being provided by the Federal Transit Administration (FTA). Consequently, this project is subject to all applicable federal laws, standards, and regulations, which are elaborated upon throughout this IFB.



A pre-bid conference is scheduled for Tuesday, July 17, 2012, 2:00 P.M. at The Wave Transit System, 1224 W. I-65 Service Road, South, Mobile, Alabama 36608. The conference will be conducted by teleconference and onsite. Bidders are STRONGLY encouraged to attend.



PRE-BID CONFERENCE REGISTRATION GUIDELINES

Please contact Mr. Donnie Rowell, I.T. Manager at 251-344-6600, ext. 237 or drowell@thewavetransit.com by July 23, 2012, 5:00 P.M. to give the following:

1. The name of your company and conference call attendee(s)
2. The attendee's phone contact information.
3. Please indicate whether the attendee will be attending the meeting via onsite or conference call (VERY IMPORTANT). This process is required in order to be considered for this pre-bid conference.

*****CONFERENCE CALL PROCESS*****

The perspective bidder will be provided with a phone number and conference ID number prior to the Pre-bid Conference.

Perspective bidder may begin calling at 8:55AM

DURATION OF CONFERENCE CALL: 1 HOUR

4. The pre-bid conference call will be recorded. Any proposer requesting a copy of this pre-bid conference should contact Donnie Rowell at (251) 344-6600 ext. 237.
5. Any proposer having difficulty connecting to the conference call should call **(251) 344-6600, ext. 237 or press zero (0)** for Donnie Rowell to assist in resolving your situation.

The Wave Transit System will diligently work to the best of its ability in managing the conversation(s) during the meeting so that all proposers have sufficient opportunity to present their statement(s) concerning this bid solicitation. In addition, below are "common rules" that are being requested so that the meeting is an effective one:

COMMON RULES

1. Please refrain from using wireless devices throughout the conference call (e.g. cordless phones, cell phones, personal digital assistant (PDA), wireless notebooks.
2. Please insure that you are not talking in a noisy area.
3. The Wave Transit System will have a "roll call" on attendance before the meeting begins. (I.e. The Wave Transit System and proposers).
4. State your name and company name when asking a question or making a statement. Please keep your statements brief and to the point.
5. Please allow speakers to finish there statement(s) before speaking.
6. If you require additional explanations concerning this bid proposal after this pre-bid meeting, please address your written statements to Gerald E. Alfred, Senior Planner at galfred@thewavetransit.com.

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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.

SEALED PROPOSALS

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

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

Envelope should be identified in the lower left corner as follows:

Proposal Identification Number: IFB# WTS-0071A-12
Item(s) Enclosed: Three (3) proposals
Proposal Opening Date: July 24, 2012, 2:00 P.M.

Three (3) PROPOSALS ARE TO BE SUBMITTED.

PROJECT SCHEDULE

The following schedule will be adhered to with regard to the Invitation for Bids:

IFB Announcement	July 6, 2012
Bid Solicitation (available for pickup)	July 9, 2012
Pre-Bid Conference	July 17, 2012, 2:00 P.M.
Approved Equals/Clarification Request	July 20, 2012
IFB Opening	July 24, 2012, 2:00 P.M
Contract Execution/Notice to Proceed	August 3, 2012

APPROVED EQUALS

Note: Please use attached approved equals form.

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

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 System.

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 _____. Any request for an 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 System'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.

PROTEST PROCEDURES

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: Mr. Gerald E. Alfred, The Wave Transit System, 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.

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 System'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 System, the Contracting 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.

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 System. 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.

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 System; 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.

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;

- 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 4220.1F 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 System'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 System'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;
5. 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 System'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 System's submission no later than ten days after the protester's receipt of such material;

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 or the Federal Government. In the event that The Wave Transit 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.

ADDENDUM

Any changes in these instructions, the general conditions or scope of work, or other requirements will be indicated on the bid form addendum. 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.

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 Senior Planner 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.

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.

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 System. 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.

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.

CONTRACT SUBLETTING

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

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 IFB 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:

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

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

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.

INDEMNIFICATION

The contractor shall indemnify, save, defend and hold harmless The Wave Transit System, the City of Mobile, and McDonald Transit Associates 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.

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
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.

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.

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.

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.

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.

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.

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.

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 attention 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

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 System, 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. I-65 Service Road South
Mobile, AL 36609

McDonald Transit Associates

And

The 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

- 3) Excess and Umbrella Liability Insurance in excess of 1) (b), and 2) above of not less than \$3,000,000.00
- 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 The Wave 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.

CORRESPONDENCE

In cases where communication is required between proposers and The Wave Transit System, such as further information, furnishing of scope of work, or obtaining approval of proposed service, such communications from proposers shall be forwarded directly to Mr. 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 proposal number IFB # WTS-0071A-12 must be shown on all correspondences

**Mobile Transit Management d/b/a The Wave Transit System
Fluid Supply Transfer Lines Upgrade- IFB#WTS-0071A-12**

STATEMENT OF WORK

Mobile Transit Management d/b/a The Wave Transit System (The Wave) is requesting bids from qualified bidders to install four (4) Fluid Supply Transfer Lines at The Wave Transit System's Beltline Office (Garage) located at 1224 West I-65 Service Road South, Mobile, Alabama 36609. Bidders will be responsible for providing all labor, materials, equipment and supervision necessary to successfully perform the job.

All bidders must comply with the following Statement of Work:

- Install four (4) Fluid Supply Transfer Lines to run the entire length of the service garage. Each transfer line will have a maximum four (4) reels.
- The maximum number of reels: Sixteen (16)
- Remove oil tank and lines. Note: ALL underground lines must be capped-off.
- Remove crane beam from a designated area and install stops on the remaining crane beam,

Mandatory Engineering Services

- Install and configure above equipment in accordance to manufacturer specifications
- Install and configure all electrical equipment (if applicable) in accordance to manufacturer specifications
- Provide all labor, piping, fittings, scissor lifts and hook up to the pumps and reels.
- Install (4) new hose reels
- Service calls to be on-site next day after notification by Wave
- Repairs conducted within 24hrs after notification
- System must be totally operational when completed
- On-site training of users for 4 hrs on the system; with full documentation
- Minimum 12 month on-site warranty on installation and equipment; any component failure within the system replace or fixed at no cost to The Wave.
- Set up and maintain worksite safety as per Local, State and Federal OSHA requirements
- Install safety barricades to lessen fall hazards and remove after completion
- Detail and take ALL necessary safety precautions ensure safety of work crew personnel, employees, patrons and vendors at the facility to include and not be limited to utilization of sky light safety covers

Other

1. Bidder must provide line item pricing on all equipment, parts and services in bid package, with total.
2. All work will be in compliance with The City of Mobiles Urban Development Code Administration Department.
3. Bidder will submit a copy of its City of Mobile Business License
4. Bidder will submit service agreement and extended warranty options.
5. Bidder must submit a Performance Bond, Labor and Materials Bond and Insurance Certificate with proposal.

6. Bidder will scheduled ALL site visits prior to arrival through the Mr. Charles Sumrall, Director of Maintenance (csumrall@thewavetransit.com), 251-344-6600 or Mr. Vince McCarroll, Asst. Director of Maintenance, (vmccarroll@thewavetransit.com), 251344-6600.
7. Bidder must submit detailed timeline line depicting start time, duration, and completion per phase.

Federal Transit Administration (FTA)

Required Contract Clauses

Provided By

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

**This document complies with FTA Circular 4220.1F
Third Party Contracting Requirements
April 14, 2009**

FEDERAL TRANSIT ADMINISTRATION

Fly America Requirements
Buy America Requirements
Charter Bus and School Bus Requirements
Cargo Preference Requirements
Seismic Safety Requirements
Energy Conservation Requirements
Clean Water Requirements
Bus Testing
Pre-Award and Post Delivery Audit Requirements
Lobbying
Access to Records and Reports
Federal Changes
Bonding Requirements
Clean Air
Recycled Products
Davis-Bacon and Copeland Anti-Kickback Acts
Contract Work Hours and Safety Standards Act
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
Civil Rights Requirements
Breaches and Dispute Resolution
Patent and Rights in Data
Transit Employee Protective Agreements
Disadvantaged Business Enterprises (DBE)
Incorporation of Federal Transit Administration (FTA) Terms
Drug and Alcohol Testing
Immigration Verification Form

FLY AMERICA REQUIREMENTS

49 U.S.C. § 40118

41 CFR Part 301-10

Fly America Requirements

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

BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j)

49 CFR Part 661

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

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

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

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

Date _____

Signature _____

Company Name _____

Title _____

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

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

Date _____

Signature _____

Company Name _____

Title _____

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

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

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

Date _____

Signature _____

Company Name _____

Title _____

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

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

Date _____

Signature _____

Company Name _____

Title _____

CHARTER BUS REQUIREMENTS

49 U.S.C. 5323(d)

49 CFR Part 604

Charter Service Operations - The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

SCHOOL BUS REQUIREMENTS**49 U.S.C. 5323(F)****49 CFR Part 605**

School Bus Operations - Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

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

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

SEISMIC SAFETY REQUIREMENTS**42 U.S.C. 7701 et seq. 49****CFR Part 41**

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

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.

BUS TESTING

49 U.S.C. 5323(c)

49 CFR Part 665

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

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

CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS

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

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

Date: _____

Signature: _____

Company Name: _____

Title: _____

PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS

49 U.S.C. 5323

49 CFR Part 663

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

(1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

(3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

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

(To be submitted with a bid or offer exceeding the small purchase threshold for Federal assistance programs, currently set at \$100,000.)

Certificate of Compliance

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

Date: _____

Signature: _____

Company Name: _____

Title: _____

Certificate of Non-Compliance

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

Date: _____

Signature: _____

Company Name: _____

Title: _____

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

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

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

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

ACCESS TO RECORDS 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 this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$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 this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

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

Requirements for Access to Records and Reports by Types of Contract

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

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 18 CFR 18.36 (i)

FEDERAL CHANGES

49 CFR Part 18

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

BONDING REQUIREMENTS

Bid Bond Requirements (Construction)

(a) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to The Wave Transit and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

(b) Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by The Wave Transit to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of The Wave Transit.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of The Wave Transit, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by The Wave Transit as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense The Wave Transit for the damages occasioned by default, then the undersigned bidder agrees to indemnify The Wave Transit and pay over to The Wave Transit the difference between the bid security and (Recipient's) total damages, so as to make The Wave Transit whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless The Wave Transit determines that a lesser amount would be adequate for the protection of The Wave Transit.
2. The Wave Transit may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Wave Transit may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:
 - (i) Fifty percent of the contract price if the contract price is not more than \$1 million.
 - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (iii) Two and one half million if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, The Wave Transit may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

(a) The following situations may warrant a performance bond:

1. The Wave Transit property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and The Wave Transit, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless The Wave Transit determines that a lesser amount would be adequate for the protection of The Wave Transit.
2. The Wave Transit may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Wave Transit may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:

- (i) Fifty percent of the contract price if the contract price is not more than \$1 million;
- (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- (iii) Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The Wave Transit shall determine the amount of the advance payment bond necessary to protect The Wave Transit.

Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The Wave Transit shall determine the amount of the patent indemnity to protect The Wave Transit.

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to The Wave Transit, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by The Wave Transit, free from faults and defects and in conformance with the Contract Documents. All

work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

CLEAN AIR
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.

DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

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 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.

(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*** 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, 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* 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 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 subcontractor's 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 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.

(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.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Contract Work Hours and Safety Standards

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

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

(3) **Withholding for unpaid wages and liquidated damages** - The (*write in the name of the grantee*) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Obligation by the Federal Government.

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

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

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 this

contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

TERMINATION

49 U.S.C. Part 18

FTA Circular 4220.1E

a. Termination for Convenience (General Provision) The Wave Transit may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to The Wave Transit to be paid the Contractor. If the Contractor has any property in its possession belonging to The Wave Transit, the Contractor will account for the same, and dispose of it in the manner The Wave Transit 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 Wave Transit may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by The Wave Transit 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 Wave Transit, 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 Wave Transit 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 The Wave Transit's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from The Wave Transit setting forth the nature of said breach or default, The Wave Transit shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude The Wave Transit 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 The Wave Transit elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by The Wave

Transit shall not limit The Wave Transit's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) The Wave Transit, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, The Wave Transit may terminate this contract for default. The Wave Transit shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

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

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

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

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

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

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. the contractor, within [10] days from the beginning of any delay, notifies The Wave Transit in writing of the causes of delay. If in the judgment of The Wave Transit, the delay is excusable, the time for completing the work shall be extended. The judgment of The Wave Transit shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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

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

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

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

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

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

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

If, after serving a notice of termination for default, The Wave Transit 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 Wave Transit, 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)

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49

CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

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

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

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

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.

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.

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

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

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18

FTA Circular 4220.1E

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

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

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

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between The Wave Transit and the Contractor arising out of or relating to this agreement or its

breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which The Wave Transit is located.

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

PATENT AND RIGHTS IN DATA

37 CFR Part 401

49 CFR Parts 18 and 19

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:

(a) 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.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)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.

(c) 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 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 shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the 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 shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

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

(f) Data developed by the Purchaser or 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.

(g) 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.

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

(1) **General** - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and 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

Transit Employee Protective Provisions. (1) The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

(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 this 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 any applicable requirements in each subcontract involving transit financed in whole or in part with Federal assistance provided by FTA.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

Disadvantaged Business Enterprises

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is **6.7%**. A separate contract goal **has not** been established for this procurement.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as **The Wave Transit System** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

c. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from **The Wave Transit System**. In addition, the contractor may not hold retainage from its subcontractors.

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

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1E

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

Drug and Alcohol Testing

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 Alabama, or the City of Mobile, 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 15 to **The Wave Transit System, 1224 West I-65 Service Road South, Mobile, Alabama 36609, Attn: Director of Human Resources.** To certify compliance the contractor shall 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 Alabama, or the City of Mobile, 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 **The Wave Transit System, Attn: Director of Human Resources, 1224 W I-65 Service Rd S, Mobile AL 36609.** To certify compliance the contractor shall 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 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 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).

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

BUY AMERICA

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

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

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

Signature _____

Company Name _____

Title _____

Date _____

BUY AMERICA

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

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

Sign _____

Title _____

Subscribed and sworn to before me

This _____ day of _____, 20____

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 _____, 20____

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, _____, 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

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 by the Purchaser.

Signature and also Name Printed

Firm Name

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

My Commission expires

MUST BE SUBMITTED WITH BID PROPOSAL

LIST OF SIMILAR CONTRACTS/REFERENCES

1. _____

2. _____

3. _____

Company Name

Authorized Signature and also Name Printed

Telephone Number

Fax Number

MUST BE SUBMITTED WITH BID PROPOSAL

PRICE PROPOSAL FORM

The undersigned hereby agrees to furnish the requirements as outlined in the attached proposal in accordance to the Request for Proposals (Janitorial Service for Beltline Service Road Location). The price quoted is exclusive of all Federal, State, and Local taxes.

MATERIALS: \$ _____

LABOR: \$ _____

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

MUST BE SUBMITTED WITH BID PROPOSAL

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



The Wave Transit System-City of Mobile in compliance with the State of Alabama Immigration Laws is requiring all Contractors to register their company in E-Verify. E-Verify is an Internet-based system that allows businesses to determine the eligibility of their employees to work in the United States. Please go to <http://www.dhs.gov/e-verify> to sign up. Once you have registered your company, please provide a copy proof of registration to this office for our records.

In addition to enrollment in the E-Verify program and providing documentation of enrollment in the E-Verify program to the City of Mobile with their Proposals, the Authorized Representative of the Company doing business with The Wave Transit System shall also affirm the following:

By signing below, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the state of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

Name of Company

Authorized Company Representative

Date