



State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES

25 Capitol Street – Room 100
Concord, New Hampshire 03301
(603) 271-3201 Office@das.nh.gov

105

MLC

Charles M. Arlinghaus
Commissioner

Catherine A. Keane
Deputy Commissioner

Sheri L. Rockburn
Assistant Commissioner

November 8, 2023

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Administrative Services to enter into a contract with Coach & Equipment Bus Sales, Inc. (VC # 447835), Penn Yan, NY in the amount up to and not to exceed \$4,619,795.00 for paratransit cutaway buses effective upon Governor and Executive Council approval through July 31, 2028.

Funding shall be provided through individual agency expenditures, none of which shall be permitted unless there are sufficient appropriated funds to cover the expenditure.

EXPLANATION

This contract, upon approval, for paratransit cutaway buses, will provide statewide access to an assortment of paratransit cutaway buses needed by agencies for the transportation of handicapped patients/citizens. The absence of this contract would result in both administrative and operational burdens related to the purchase of paratransit cutaway buses.

The Department of Administrative Services, through the Bureau of Purchase and Property, issued request for bid (RFB) 2751-23 on June 08, 2023 with responses due on July 06, 2023. This bid reached 114 vendors through the NIGP electronic sourcing platform with an additional 54 directly sourced. There were two compliant responses received with Coach & Equipment Bus Sales, Inc. being the lowest cost and compliant submission.

The purpose of this request is to obtain approval to enter into a contract with Coach & Equipment Bus Sales, Inc. for paratransit cutaway buses supporting all State agencies and transit provider needs to maintain their respective fleet vehicles. Upon approval of the Governor and Executive Council, Coach & Equipment Bus Sales, Inc. shall be awarded a new statewide contract with no expiring contract data to compare to. The estimated quantity of 35 buses is over the term of the five-year contract based on projections received from the end using agency stakeholders. It is important to note that the low bidder, Coach & Equipment Bus Sales, Inc. came in at a price \$731,790.00 lower than the second low bidder Model 1. This represents a 15.73% cost avoidance to the State.

The estimated annual spend is \$783,959.00 which accounts for the purchase of 7 buses each year over the term of the contract. Due to the myriad of available optional equipment for these buses the allowance for balance of product line is set at \$700,000.00. This takes into account approximately \$20,000.00 for the addition of optional equipment for each of the 35 buses. The specific optional equipment and associated cost added to each bus cannot be determined at this time. These buses will be used by independent transit providers which have unique needs requiring the equipment specifications be identified at the onset of each purchase.

| Contract Financials | |
|---|-----------------|
| Estimated annual spend | \$ 783,959.00 |
| Estimated term spend | \$ 3,919,795.00 |
| Add allowance for balance of product line | \$ 700,000.00 |
| Recommended price limitation | \$ 4,619,795.00 |

Based on the foregoing, I am respectfully recommending approval of the contract with Coach & Equipment Bus Sales, Inc.

Respectfully submitted,



Charles M. Arlinghaus
Commissioner



Division of Procurement Support Services
Bureau of Purchase Property

Gary S. Lunetta
Director
(603) 271-2201

RFB Bid Summary

| | | | |
|-----------------|--|--------------|----------------------|
| Bid Description | Paratransit Cutaway Buses, Class 1,2,3 | Agency | Statewide |
| RFB# | 2751-23 | Requisition# | N/A |
| Agent Name | Andrew Bennett | Bid Closing | 7/13/2023 @ 10:00 am |

| Qty. | UOM | Product Description | Coach & Equipment Mfg. Corp. | | Model 1 | |
|------------------|-----|---|------------------------------|-------------------------|--------------|-----------------------|
| | | | Unit Cost | Delivered Extended Cost | Unit Cost | Extended Cost |
| 13 | EA | New Current Model Year, Paratransit Class 1 Accessible Cutaway Chassis Vehicles as Per the Minimum D.O.T. Specifications Dated April 2023 | \$106,475.00 | \$1,384,175.00 | \$126,659.00 | \$1,646,567.00 |
| 14 | EA | New Current Model Year, Paratransit Class 2 Accessible Cutaway Chassis Vehicles as Per the Minimum D.O.T. Specifications Dated April 2023 | \$113,250.00 | \$1,585,500.00 | \$134,579.00 | \$1,884,106.00 |
| 8 | EA | New Current Model Year, Paratransit Class 3 Accessible Cutaway Chassis Vehicles as Per the Minimum D.O.T. Specifications Dated April 2023 | \$118,765.00 | \$950,120.00 | \$140,114.00 | \$1,120,912.00 |
| Sub Total | | | | \$3,919,795.00 | | \$4,651,585.00 |

| | |
|--|----------------|
| Estimated annual spend | \$783,959.00 |
| Estimated term spend | \$3,919,795.00 |
| Add allowance for balance of product line | \$700,000.00 |
| Recommended price limitation | \$4,619,795.00 |

Indicates Apparent Low Bidder

| Recommendation Summary | |
|------------------------------------|--|
| Statewide Contract or Amendment | Statewide Contract |
| Term of Contract | August 1, 2023 through July 31, 2028 |
| Price Limitation | \$4,619,795.00 |
| Number of Solicitations Received | 2 |
| Number of Sourced bidders | 54 |
| Number of NIGP Vendors Sourced | 114 |
| Number of non-responsive bidders | 166 |
| P-37 Checklist Complete | Yes |
| D&B Report Attached | Yes |
| Method of Payment (P-card/ACH) | ACH |
| FOB Delivered | Yes |
| Expiring Contract Price Limitation | New contract. No expiring contract data. |
| Total Cost Savings (\$/%) | \$731,790.00 15.73% Savings |



Division of Procurement Support Services
Bureau of Purchase Property

Gary S. Lunetta
Director
(603) 271-2201

RFB Bid Summary

Special Notes: This is a new statewide contract with no expiring contract data to compare to. The estimated quantity of 35 buses is over the term of the five year contract. Two compliant bid responses were received with Coach & Equipment Mfg. being the lowest cost to the state with a cost savings of 15.73% or \$731,790.00 over the next lowest bidder, Model 1.

Due to the myriad of available optional equipment for these buses the allowance for balance of product line should be set at \$700,000.00. This takes into account roughly \$20,000 of added optional equipment for each of the 35 buses which equals a total of \$700,000.00. The specific optional equipment and increased cost that will be added to each bus cannot be determined at this time as these buses will be used by independent bus lines which have not yet determined which optional equipment specifications will be required of each bus.

| Optional Equipment | | Coach & Equipment |
|---------------------------|--|-------------------|
| Option or Credit/Deletion | | Price / (Credit) |
| 1 | 34"-36" Freedman Foldaway Seat | \$1,938.00 |
| 2 | 17"-18" Freedman Foldaway Seat | \$1,300.00 |
| 3 | Freedman Child Restraint System/Integrated Child Seat (per seat) | \$1,238.00 |
| 4 | Transpec emergency escape/air vent roof hatch | \$752.00 |

| Optional Equipment | | Model 1 |
|---------------------------|---|------------------|
| Option or Credit/Deletion | | Price / (Credit) |
| 1 | 34"-36" Freedman Foldaway Seat | \$1,425.00 |
| 2 | 17"-18" Freedman Foldaway Seat | \$980.00 |
| 3 | Freedman Child | \$1,370.00 |
| 4 | Transpec emergency escape/air vent roof hatch | \$395.00 |
| 5 | Additional Mobility Aid positions (w/tie downs) | \$1,100.00 |



RFB Bid Summary

| | | |
|---|--|------------|
| 5 | Additional Mobility Aid positions (w/tie downs) | \$1,648.00 |
| 6 | Credit for seat deletion when standard seats are deleted | (\$594.00) |
| 7 | Delete rear door/emergency exit and add rear emergency exit window (4.43(a)) | \$250.00 |
| 8 | Transit Stripe (4.42(a)) | \$1,750.00 |
| 9 | Q'Straint One securement system (4.51) | \$5,372.00 |

| | | |
|----|--|-------------|
| 6a | Credit for seat deletion when standard seats are deleted - Double | (\$760.00) |
| 6b | Credit for seat deletion when standard seats are deleted - Single | (\$415.00) |
| 7 | Delete rear door/emergency exit and add rear emergency exit window (4.43(a)) | (\$570.00) |
| 8 | Transit Stripe (4.42(a)) ONE COLOR | \$2,010.00 |
| 9 | Q'Straint One securement system (4.51) | \$11,420.00 |



Division of Procurement Support Services
Bureau of Purchase Property

Gary S. Lunetta
Director
(603) 271-2201

RFB Bid Summary

| | | |
|----|---|------------|
| 10 | Diamond Manufacturing, Inc. fare box Model XV (4.54(j)) | \$2,489.00 |
| 11 | ADA required fixed-route vehicle requirements (4.54(k)) | \$2,551.00 |
| 12 | SportWorks or Byk Rak two-position bicycle rack (4.54(l)) | \$2,845.00 |
| 13 | MobiLite front and side route and destination signs (4.54(m)) | \$6,531.00 |
| 14 | Two-Way Radio Antenna Preparation Only (4.57 (b)). Ordering Agency would purchase radio separately. | \$344.00 |

| | | |
|-----|---|------------|
| 10 | Diamond Manufacturing, Inc. fare box Model XV (4.54(j)) | \$3,045.00 |
| 11 | ADA required fixed route vehicle requirements (4.54(k)) | \$1,365.00 |
| 12a | SportWorks or Byk Rak two-position bicycle rack (4.54(l)) - DL2 SST | \$3,980.00 |
| 12b | SportWorks or Byk Rak two-position bicycle rack (4.54(l)) - Apex Fat Tire | \$4,380.00 |
| 13 | MobiLite front and side route and destination signs (4.54(m)) | \$6,865.00 |



Division of Procurement Support Services
Bureau of Purchase Property

Gary S. Lunetta
Director
(603) 271-2201

RFB Bid Summary

| | | |
|----|--|------------|
| 15 | Motorola XPR-2500 mobile radio or approved equal (4.57(c)) | \$1,248.00 |
| 16 | Raised Floor | \$1,943.00 |
| 17 | Mor-RYD/LiquidSpring Suspension | \$1,662.00 |
| 18 | REI Buswatch 1 TB DVR System (4 Cameras) or equal (DVR will capable of supporting up to 6 cameras) | \$4,275.00 |
| 19 | Apollo 1 TB DVR w/ GPS (4 camera) or equal (DVR will be capable of supporting up to 6 cameras) | \$7,580.00 |
| | Roof mount/undermounted condenser for A/C listed (If standard is roof-mounted, what is price for conversion to undermount or vice versa?): | |

| | | |
|-----|--|-------------|
| 14 | Two-Way Radio Antenna Preparation Only (4.57(b)). Ordering Agency would purchase radio separately. | \$110.00 |
| 15 | Motorola XPR-2500 mobile radio or approved equal (4.57(c)) | \$3,245.00 |
| 16 | Raised Floor | \$665.00 |
| 17a | Mor-RYD | \$1,430.00 |
| 17b | LiquidSpring Suspension | \$14,665.00 |



Division of Procurement Support Services
Bureau of Purchase Property

Gary S. Lunetta
Director
(603) 271-2201

RFB Bid Summary

| | | |
|----|--|------------|
| 20 | Class 2 | \$1,400.00 |
| | Class 3 | \$1,400.00 |
| 21 | Front Crossover Mirror with chrome plated or stainless-steel mounting hardware | \$285.00 |
| 22 | Q' Straint Oxygen Cylinder Securement installed with L track | \$530.00 |
| 23 | Diamond Manufacturing, Inc. fare box Model XV | \$2,489.00 |

| | | |
|----|--|-------------|
| 18 | REI Buswatch 1 TB DVR System (4 Cameras) or equal | \$4,895.00 |
| 19 | Apollo 1 TB DVR w/ GPS (4 camera) or equal (REI SYSTEM) | \$5,330.00 |
| 20 | Roof mount/undermounted condenser for A/C listed (If standard is roof-mounted, what is price for | |
| | Class 2 | \$12,490.00 |
| | Class 3 | \$12,870.00 |
| 21 | Front Crossover Mirror with chrome plated or stainless-steel mounting hardware | \$165.00 |



Division of Procurement Support Services
Bureau of Purchase Property

Gary S. Lunetta
Director
(603) 271-2201

RFB Bid Summary

| | | |
|----|--|-------------------------|
| 24 | Onspot (or approved equal) automatic tire chains | \$11,499.00 |
| 25 | Anti-Theft Guard for catalytic converter | \$715.00 |
| 26 | Driver barrier (COVID barrier) | \$1,800.00 |
| 27 | Customized logo on back and driver/passenger doors | Custom quote per Agency |
| 28 | Extended Warranty (Ordering agency to select from available OEM options) | See Included Matrix |

| | | |
|-----|---|------------|
| 22a | Q'Straint Oxygen Cylinder Securement installed with L track | \$435.00 |
| 22b | Q'Straint Oxygen Cylinder Securement installed with L track | \$545.00 |
| 23 | Diamond Manufacturing, Inc. fare box Model XV | \$3,045.00 |

| | | |
|----|--|------------|
| 24 | Onspot (or approved equal) automatic tire chains | \$5,755.00 |
| 25 | Anti-Theft Guard for catalytic converter | \$870.00 |



Division of Procurement Support Services
Bureau of Purchase Property

Gary S. Lunetta
Director
(603) 271-2201

RFB Bid Summary

| | | |
|----|---|------------|
| 26 | Driver barrier (COVID barrier) | \$980.00 |
| 27 | Customized logo on back and driver/passen ger doors | \$275.00 |
| 28 | Extended Warranty (Ordering agency to select from available OEM options) See Attached Price Sheet- Price is what is listed + \$200.00 for handling. Price Example is | \$3,825.00 |

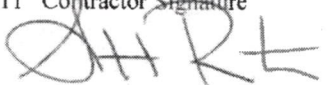

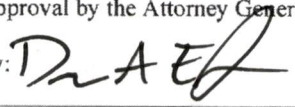
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

| | | | |
|---|---|--|--|
| 1.1 State Agency Name Department of Administrative Services Bureau of Purchase and Property | | 1.2 State Agency Address 25 Capitol Street, Room 102 Concord, NH 03301 | |
| 1.3 Contractor Name Coach & Equipment Bus Sales, Inc. | | 1.4 Contractor Address 1 Keuka Business Park Penn Yan, NY 14527 | |
| 1.5 Contractor Phone Number 585-455-7715 | 1.6 Account Unit and Class Various | 1.7 Completion Date July 31, 2028 | 1.8 Price Limitation \$4,619,795.00 |
| 1.9 Contracting Officer for State Agency Gary Lunetta | | 1.10 State Agency Telephone Number 603-271-3606 | |
| 1.11 Contractor Signature  Date: 9/25/23 | | 1.12 Name and Title of Contractor Signatory SCOTT RESTON, President | |
| 1.13 State Agency Signature  Date: 10/24/23 | | 1.14 Name and Title of State Agency Signatory Charles M. Arlinghaus, Commissioner | |
| 1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____ | | | |
| 1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By:  On: 10/30/23 | | | |
| 1.17 Approval by the Governor and Executive Council (if applicable) G&C Item number: _____ G&C Meeting Date: _____ | | | |

2. SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT B which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed.

3.3 Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds. In no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT C which is incorporated herein by reference.

5.2 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8. The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance

hereof, and shall be the only and the complete compensation to the Contractor for the Services.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 The State's liability under this Agreement shall be limited to monetary damages not to exceed the total fees paid. The Contractor agrees that it has an adequate remedy at law for any breach of this Agreement by the State and hereby waives any right to specific performance or other equitable remedies against the State.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal employment opportunity laws and the Governor's order on Respect and Civility in the Workplace, Executive order 2020-01. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of age, sex, sexual orientation, race, color, marital status, physical or mental disability, religious creed, national origin, gender identity, or gender expression, and will take affirmative action to prevent such discrimination, unless exempt by state or federal law. The Contractor shall ensure any subcontractors comply with these nondiscrimination requirements.

6.3 No payments or transfers of value by Contractor or its representatives in connection with this Agreement have or shall be made which have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business.

6.4 The Contractor agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with this Agreement and all rules, regulations and orders pertaining to the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 The Contracting Officer specified in block 1.9, or any successor, shall be the State's point of contact pertaining to this Agreement.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

- 8.1.1 failure to perform the Services satisfactorily or on schedule;
- 8.1.2 failure to submit any report required hereunder; and/or
- 8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) calendar days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) calendar days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 give the Contractor a written notice specifying the Event of Default and set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

9. TERMINATION.

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) calendar days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, deliver to the Contracting Officer, not later than fifteen (15) calendar days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. In addition, at the State's discretion, the Contractor shall, within fifteen (15) calendar days of notice of early termination, develop and submit to the State a transition plan for Services under the Agreement.

10. PROPERTY OWNERSHIP/DISCLOSURE.

10.1 As used in this Agreement, the word "Property" shall mean all data, information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

10.2 All data and any Property which has been received from the State, or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

10.3 Disclosure of data, information and other records shall be governed by N.H. RSA chapter 91-A and/or other applicable law. Disclosure requires prior written approval of the State.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

12.1 Contractor shall provide the State written notice at least fifteen (15) calendar days before any proposed assignment, delegation, or other transfer of any interest in this Agreement. No such assignment, delegation, or other transfer shall be effective without the written consent of the State.

12.2 For purposes of paragraph 12, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.3 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State.

12.4 The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

13. INDEMNIFICATION. The Contractor shall indemnify, defend, and hold harmless the State, its officers, and employees from and against all actions, claims, damages, demands, judgments, fines, liabilities, losses, and other expenses, including, without limitation, reasonable attorneys' fees, arising out of or relating to this Agreement directly or indirectly arising from death, personal injury, property damage, intellectual property infringement, or other claims asserted against the State, its officers, or employees caused by the acts or omissions of negligence, reckless or willful misconduct, or fraud by the Contractor, its employees, agents, or subcontractors. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the State's sovereign immunity, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate or excess; and

14.1.2 special cause of loss coverage form covering all Property subject to subparagraph 10.2 herein, in an amount not less than 80% of the whole replacement value of the Property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or any successor, a certificate(s) of insurance for all insurance required under this Agreement. At the request of the Contracting Officer, or any successor, the Contractor shall provide certificate(s) of insurance for all renewal(s) of insurance required under this Agreement. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A (*"Workers' Compensation"*).

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. The Contractor shall furnish the Contracting Officer identified in block 1.9, or any successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH. A State's failure to enforce its rights with respect to any single or continuing breach of this Agreement shall not act as a waiver of the right of the State to later enforce any such rights or to enforce any other or any subsequent breach.

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

19. CHOICE OF LAW AND FORUM.

19.1 This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire except where the Federal supremacy clause requires otherwise. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

19.2 Any actions arising out of this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be brought and maintained in the Merrimack County Superior Court of New Hampshire which shall have exclusive jurisdiction thereof.

20. CONFLICTING TERMS. In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and any other portion of this Agreement including any attachments thereto, the terms of the P-37 (as modified in EXHIBIT A) shall control.

21. THIRD PARTIES. This Agreement is being entered into for the sole benefit of the parties hereto, and nothing herein, express or implied, is intended to or will confer any legal or equitable right, benefit, or remedy of any nature upon any other person.

22. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

23. SPECIAL PROVISIONS. Additional or modifying provisions set forth in the attached EXHIBIT A are incorporated herein by reference.

24. FURTHER ASSURANCES. The Contractor, along with its agents and affiliates, shall, at its own cost and expense, execute any additional documents and take such further actions as may be reasonably required to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby.

25. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

26. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.

EXHIBIT A
SPECIAL PROVISIONS

The General Provisions of this Agreement, as set forth on page one (1) through four (4) of the Form P-37 (the "General Provisions") to which this Exhibit A is attached, are hereby modified as follows:

Paragraph 6 (Compliance by Contractor with Laws and Regulations/Equal Employment Opportunity) of the General Provisions is deleted in its entirety and replaced with the terms and conditions immediately set forth below as follows:

6. Compliance with Federal Laws and Regulations. Contractor shall comply with all applicable laws, rules, and regulations, including, without limitation, the following:

6.1. Access to Records and Reports.

6.1.1. Record Retention. The Contractor will retain and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, leases, subcontracts, arrangements, other third-party Contracts of any type, and supporting materials related to those records.

6.1.2. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.334. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

6.1.3. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract in accordance with 2 CFR § 200.337.

6.1.4. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractor's access to the sites of performance under this contract in accordance with 2 CFR § 200.337.

6.2. Americans with Disabilities Act (ADA). The Contractor agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the Contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

6.3. Bus Testing. The Contractor agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 C.F.R. part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the recipient.

6.4. Buy America Requirements.

6.4.1. The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR § 200.322 Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the 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.

6.4.2. Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

6.4.3. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11. Domestic preferences for procurements.

6.4.4. The Contractor shall maintain and comply with the submitted Buy America certification. For more information, please see the FTA's Buy America webpage at: <https://www.transit.dot.gov/buyamerica>.

6.5. Restrictions on Lobbying.

6.5.1. No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay 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 any of the following covered Federal actions: 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.

6.5.2. Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

6.5.3. Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form if such person has made or has agreed to make any payment using non appropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

6.5.4. Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, whether that person has made or has agreed to make any payment to influence or attempt 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 that loan insurance or guarantee.

6.5.5. Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form if that person has made or has agreed to make any payment to influence or attempt 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 that loan insurance or guarantee.

6.6. Certification and Disclosure.

6.6.1. Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

6.6.1.1. Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or

6.6.1.2. An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

6.6.2. Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

6.6.2.1. A Federal contract, grant, or cooperative agreement exceeding \$100,000; or

6.6.2.2. A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000, Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

6.6.3. Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs 6.6.1 or 6.6.2 of this section. An event that materially affects the accuracy of the information reported includes:

6.6.3.1. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action;

6.6.3.2. A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

6.6.3.3. A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

6.6.4. Any person who requests or receives from a person referred to in paragraphs 6.6.1 or 6.6.2 of this section:

6.6.4.1. A subcontract exceeding \$100,000 at any tier under a Federal contract;

6.6.4.2. A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;

6.6.4.3. A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or

6.6.4.4. A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement, shall file a certification, and a disclosure form, if required, to the next tier above.

6.6.5. All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs 6.6.1 or 6.6.2 of this section. That person shall forward all disclosure forms to the agency.

6.6.6. Any certification or disclosure form filed under paragraph 6.6.5 of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

6.6.7. For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

6.6.8. No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

6.7. Cargo Preference Requirements. The Contractor agrees:

6.7.1. 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;

6.7.2. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the

date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA Recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and

6.7.3. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

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

6.8.1. Federal Equal Employment Opportunity (EEO) Requirements. These include, but are not limited to:

6.8.1.1. Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.

6.8.1.2. Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

6.8.1.3. Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.

6.8.1.4. Nondiscrimination on the Basis of Age. The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

6.8.1.5. Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the

ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

6.8.2. Civil Rights and Equal Opportunity. The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

6.8.3. Nondiscrimination. In accordance with 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, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

6.8.4. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., 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. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. 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, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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.

6.8.5. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, 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.

6.8.6. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees

that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

6.8.7. Promoting Free Speech and Religious Liberty. The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

6.9. Clean Air Act and Federal Water Pollution Control Act. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to FTA and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

6.9.1. Clean Air Act.

6.9.1.1. 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.*

6.9.1.2. The Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

6.9.1.3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

6.9.2. Federal Water Pollution Control Act.

6.9.2.1. 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.*

6.9.2.2. The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

6.9.3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

6.10. Compliance with ITS National Architecture. Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards pursuant to 23 CFR § 940. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the

transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

6.11. Contract Work Hours and Safety Standards Act.

6.11.1. Applicability: This requirement applies to all FTA grant and cooperative agreement programs.

6.11.2. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.

6.11.3. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

6.11.4. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

6.11.5. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

6.11.6. Compliance with the Contract Work Hours and Safety Standards Act.

6.11.6.1. 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.

6.11.6.2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a) 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 (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 6.11.6.1 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 (a) of this section.

6.11.6.3. Withholding for unpaid wages and liquidated damages. The agency 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 6.11.6.2 of this section.

6.11.6.4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph 6.11.6.1 through 6.11.6.4 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 6.11.6.1 through 6.11.6.4 of this section.

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

6.12.1. Debarred from participation in any federally assisted Award;

6.12.2. Suspended from participation in any federally assisted Award;

6.12.3. Proposed for debarment from participation in any federally assisted Award;

6.12.4. Declared ineligible to participate in any federally assisted Award;

6.12.5. Voluntarily excluded from participation in any federally assisted Award; or

6.12.6. Disqualified from participation in any federally assisted Award.

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

6.13. Disadvantaged Business Enterprise. It is the policy of the Agency and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT assisted contracts. The Contractor or subcontractor 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 C.F.R. part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Agency deems appropriate, which may include, but is not limited to:

6.13.1. Withholding monthly progress payments;

6.13.2. Assessing sanctions;

6.13.3. Liquidated damages; and/or

6.13.4. Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, each FTA Recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency's written consent; and that, unless the Agency's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

6.14. 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 (42 U.S.C. § 6201).

6.15. Equal Employment Opportunity. During the performance of this contract, the contractor agrees as follows:

6.15.1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

6.15.2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

6.15.3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

6.15.4. The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

6.15.5. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

6.15.6. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6.15.7. In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

6.15.8. The contractor will include the provisions of paragraphs 6.15.1 through 6.15.8 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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

6.17. Fly America.

6.17.1. Definitions. As used in this paragraph 6.17, the term "international air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. 2) "United States" means the 50 States, the District of Columbia, and outlying areas. 3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

6.17.2. When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign flag air carrier if a U.S.-flag air carrier is available to provide such services.

6.17.3. If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

6.17.4. In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

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

6.17.5. Contractor shall include the substance of this clause, including this paragraph 6.17.4, in each subcontract or purchase under this contract that may involve international air transportation.

6.18. Federal Tax Liability and Recent Felony Convictions. The contractor certifies that it:

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

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

If the contractor cannot so certify, the Recipient will refer the matter to FTA and not enter into any Third-Party Agreement with the Third-Party Participant without FTA's written approval. The Recipient agrees to require the contractor to flow this requirement down to participants at all lower tiers, without regard to the value of any sub agreement.

6.19. Incorporation of Federal Transit Administration (FTA) Terms. The provisions within include, in part, certain Standard Terms and Conditions required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, detailed in 2 CFR § 200 or as amended by 2 CFR § 1201, or the most recent version of FTA Circular 4220.1 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

6.20. No Government Obligation to Third Parties. The Recipient 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 Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

6.21. Notification to FTA. If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third-Party Agreements and must require each Third-Party Participant to include an equivalent provision in its sub agreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

6.21.1. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

6.21.2. Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

6.21.3. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a

false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

6.22. Pre-Award and Post-Delivery Audits of Rolling Stock Purchases. The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

6.23. Program Fraud and False or Fraudulent Statements and Related Acts. 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.

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. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

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.

6.24. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.

6.24.1. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

6.24.1.1. Procure or obtain;

6.24.1.2. Extend or renew a contract to procure or obtain; or

6.24.1.3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

6.24.1.3.1. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

6.24.1.3.2. Telecommunications or video surveillance services provided by such entities or using such equipment.

6.24.1.3.3. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

6.24.2. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

6.24.3. See Public Law 115-232, section 889 for additional information.

6.24.4. See also § 200.471.

Contractor Initials *DR*
Date *9/25/23*
DR
9/25/23

EXHIBIT B
SCOPE OF SERVICES

1. INTRODUCTION

Coach & Equipment Bus Sales, Inc. (hereinafter referred to as the "Contractor") hereby agrees to provide the State of New Hampshire (hereinafter referred to as the "State"), Department of Administrative Services, with paratransit cutaway buses in accordance with the bid submission in response to State Request for Bid #2751-23 and as described herein.

2. CONTRACT DOCUMENTS

This Contract consists of the following documents ("Contract Documents"):

- a. State of New Hampshire Terms and Conditions, General Provisions Form P-37
- b. EXHIBIT A Special Provisions
- c. EXHIBIT B Scope of Services
- d. EXHIBIT C Method of Payment
- e. EXHIBIT D RFB 2751-23
- f. EXHIBIT E Contractor's Bid Response
- g. EXHIBIT F Contractor's Federal Certifications

In the event of any conflict among the terms or provisions of the documents listed above, the following order of priority shall indicate which documents control: (1), Form Number P-37 as modified by EXHIBIT A "Special Provisions, (2) EXHIBIT B "Scope of Services," (3) EXHIBIT C "Method of Payment," (4) EXHIBIT D "RFB 2751-23," (5) EXHIBIT E "Contractor's Bid Response," (6) EXHIBIT F "Contractor's Federal Certifications."

3. TERM OF CONTRACT

The term of the contract shall commence upon approval of the Governor and Executive Council, through July 31, 2028, a period of approximately five (5) years.

4. SCOPE OF WORK

Contractor shall supply and deliver paratransit cutaway buses as requested to directed locations.

See Exhibit C for pricing.

Contractor's product shall meet or exceed the required specifications as written, listed below in this scope of work section. The State of New Hampshire shall be the sole determining factor of what meets or exceeds the required specifications.

The Contractor shall provide all products strictly pursuant to, and in conformity with, the specifications described in State RFB #2751-23, as described herein, and under the terms of this Contract.

SAFE OPERATION OF MOTOR VEHICLES

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned vehicles, company rented vehicles, or personally operated vehicles. The terms "company owned" and "company leased" refer to vehicles owned or leased either by the Contractor or Agency.

Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

SPECIAL NOTIFICATION REQUIREMENTS FOR STATES

Applies to States –

- a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:
 1. The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
 2. The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
 3. The amount of federal assistance FTA has provided for a State Program or Project.
- b. Documents - The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

SIMPLIFIED ACQUISITION THRESHOLD

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327.

The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America's eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).

TRAFFICKING IN PERSONS

The contractor agrees that it and its employees that participate in the Recipient's Award, may not:

- a. Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect;
- b. Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or
- c. Use forced labor in the performance of the Recipient's Award or sub agreements thereunder.

WARRANTY REQUIREMENTS:

All OEM warranties shall apply, with extended OEM warranties made available. Other subsystems shall be warranted to be free from defects and related defects for the period and mileage shown below, whichever comes first, commencing on the date of acceptance of the vehicle from the Contractor:

| Item | Years | Mileage |
|------------------------|-------|-----------|
| Body Structure | 5 | 100,000 |
| Chassis | 3 | 36,000 |
| Engine | 5 | 60,000 |
| Transmission | 5 | 60,000 |
| Air Conditioner | 2 | Unlimited |
| Wheelchair Lift | 5 | Unlimited |
| Wheelchair Securements | 3 | Unlimited |
| Rust Proofing | 5 | 150,000 |
| Flooring | 12 | Unlimited |
| Corrosion | 5 | Unlimited |

Extension of Warranty

If, during the warranty period, repairs or modifications on any vehicle are made necessary by defective design, materials or workmanship but are not completed due to lack of material or inability to provide the proper repair within thirty (30) calendar days, the applicable warranty period shall be extended by the number of days equal to the delay period.

Voiding of Warranty

The warranty shall not apply to the failure of any part or component of the vehicle that directly results from misuse, negligence, accident, or repairs not conducted in accordance with the Contractor-provided maintenance manuals and with workmanship performed by adequately trained personnel in accordance with recognized standards of the industry. The warranty also shall be void if the Agency fails to conduct normal inspections and scheduled preventive maintenance procedures as recommended in the Contractor’s maintenance manuals and if that omission caused the part or component failure. The Agency shall maintain documentation, auditable by the Contractor, verifying service activities in conformance with the vehicle manufacturer’s maintenance manuals provided by the Contractor.

Exceptions and Additions to Warranty

The warranty shall not apply to the following items:

- Scheduled maintenance items
- Normal wear-out items
- Items furnished by the Agency

Should the Agency require the use of a specific product and has rejected the Contractor’s request for an alternate product, then the standard supplier warranty for that product shall be the only warranty provided to the Agency. This product shall not be eligible under “Fleet Defects,” below.

The Contractor shall not be required to provide warranty information for any warranty that is less than or equal to the warranty periods listed.

Pass-Through Warranty

Should the Contractor elect to not administer warranty claims on certain components and wish to transfer this responsibility to the sub-suppliers or to others, the Contractor shall request this waiver.

Contractor Initials DR
 Date 9/25/23

Contractor shall state in writing that the Agency's warranty reimbursements shall not be impacted. The Contractor also shall state in writing any exceptions and reimbursement including all costs incurred in transport of vehicles and/or components. At any time during the warranty period, the Contractor may request approval from the Agency to assign its warranty obligations to others, but only on a case-by-case basis approved in writing by the Agency. Otherwise, the Contractor shall be solely responsible for the administration of the warranty as specified. Warranty administration by others does not eliminate the warranty liability and responsibility of the Contractor.

Superior Warranty

The Contractor shall pass on to the Agency any warranty offered by a component supplier that is superior to that required herein. The Contractor shall provide a list to the Agency noting the conditions and limitations of the superior warranty not later than the start of production. The superior warranty shall not be administered by the Contractor.

Unless otherwise specified herein, all deliveries performed under this Contract shall be performed between the hours of 8:00 A.M. and 4:00 P.M. on State business days, unless other arrangements are made in advance with the State.

5. USAGE REPORTING

The Contractor shall submit a quarterly and annual usage report for analysis for each state agency or eligible participant. Reports are due no later than 30 days after the end of each calendar quarter to the Bureau of Purchase and Property, Fleet Administrator, Andrew Bennett and sent electronic to Andrew.J.Bennett@DAS.NH.Gov. At a minimum, the Report shall include:

- Contract Number
- Utilizing Agency and Eligible Participant
- Products Purchased (showing the manufacturer, item, part number, and the final cost.)
- Total Cost of all Products Purchased. Ability to sort by agency/eligible participant.
- Preferred in Excel format

6. OBLIGATIONS AND LIABILITY OF THE CONTRACTOR

It is the responsibility of the Contractor to maintain this contract and New Hampshire Vendor Registration with up-to-date contact information.

Contract specific contact information (Sales contact, Contractor contract manager, etc.) shall be sent to the State's Contracting Office listed in Box 1.9 of Form P-37.

Additionally, all updates i.e., telephone numbers, contact names, email addresses, W9, tax identification numbers are required to be current through a formal electronic submission to the Bureau of Purchase and Property at: [https://apps.das.nh.gov/vendorregistration/\(S\(2oc0qiiqh3rsxh3gyjddgky3\)\)/welcome.aspx](https://apps.das.nh.gov/vendorregistration/(S(2oc0qiiqh3rsxh3gyjddgky3))/welcome.aspx)

6. DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS

The Contractor certifies, by signature of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal Department or Agency.

**EXHIBIT C
METHOD OF PAYMENT**

1. CONTRACT PRICE

The Contractor hereby agrees to provide paratransit cutaway buses in complete compliance with the terms and conditions specified in Exhibit B for an amount up to and not to exceed a price of \$4,619,795.00; this figure shall not be considered a guaranteed or minimum figure; however, it shall be considered a maximum figure from the effective date through the expiration date as indicated in Form P-37 Block 1.7.

2. PRICING STRUCTURE

| UNIT | DESCRIPTION | UNIT COST |
|-------------|---|------------------|
| EA | New Current Model Year, Paratransit Class 1 Accessible Cutaway Chassis Vehicles as Per the Minimum D.O.T. Specifications Dated April 2023 | \$106,475.00 |
| EA | New Current Model Year, Paratransit Class 2 Accessible Cutaway Chassis Vehicles as Per the Minimum D.O.T. Specifications Dated April 2023 | \$113,250.00 |
| EA | New Current Model Year, Paratransit Class 3 Accessible Cutaway Chassis Vehicles as Per the Minimum D.O.T. Specifications Dated April 2023 | \$118,765.00 |

MFG/MAKE/MODEL: COACH & EQUIPMENT/FORD E SERIES/PHOENIX

OPTIONAL EQUIPMENT w/ PRICES

| Option or Credit/Deletion | | Price / (Credit) |
|----------------------------------|--|-------------------------|
| 1 | 34"-36" Freedman Foldaway Seat | \$1,938.00 |
| 2 | 17"-18" Freedman Foldaway Seat | \$1,300.00 |
| 3 | Freedman Child Restraint System/Integrated Child Seat (per seat) | \$1,238.00 |
| 4 | Transpec emergency escape/air vent roof hatch | \$752.00 |
| 5 | Additional Mobility Aid positions (w/tie downs) | \$1,648.00 |
| 6 | Credit for seat deletion when standard seats are deleted | (\$594.00) |
| 7 | Delete rear door/emergency exit and add rear emergency exit window (4.43(a)) | \$250.00 |

Contractor Initials DR
Date 9/25/23

| | | |
|----|--|-------------------------|
| 8 | Transit Stripe (4.42(a)) | \$1,750.00 |
| 9 | Q'Straint One securement system (4.51) | \$5,372.00 |
| 10 | Diamond Manufacturing, Inc. fare box Model XV (4.54(j)) | \$2,489.00 |
| 11 | ADA required fixed-route vehicle requirements (4.54(k)) | \$2,551.00 |
| 12 | SportWorks or Byk Rak two-position bicycle rack (4.54(l)) | \$2,845.00 |
| 13 | MobiLite front and side route and destination signs (4.54(m)) | \$6,531.00 |
| 14 | Two-Way Radio Antenna Preparation Only (4.57 (b)). Ordering Agency would purchase radio separately. | \$344.00 |
| 15 | Motorola XPR-2500 mobile radio or approved equal (4.57(c)) | \$1,248.00 |
| 16 | Raised Floor | \$1,943.00 |
| 17 | Mor-RYD/LiquidSpring Suspension | \$1,662.00 |
| 18 | REI Buswatch 1 TB DVR System (4 Cameras) or equal (DVR will be capable of supporting up to 6 cameras) | \$4,275.00 |
| 19 | Apollo 1 TB DVR w/ GPS (4 camera) or equal (DVR will be capable of supporting up to 6 cameras) | \$7,580.00 |
| 20 | Roof mount/undermounted condenser for A/C listed (If standard is roof-mounted, what is price for conversion to undermount or vice versa?): | |
| | Class 2 | \$1,400.00 |
| | Class 3 | \$1,400.00 |
| 21 | Front Crossover Mirror with chrome plated or stainless-steel mounting hardware | \$285.00 |
| 22 | Q'Straint Oxygen Cylinder Securement installed with L track | \$530.00 |
| 23 | Diamond Manufacturing, Inc. fare box Model XV | \$2,489.00 |
| 24 | Onspot (or approved equal) automatic tire chains | \$11,499.00 |
| 25 | Anti-Theft Guard for catalytic converter | \$715.00 |
| 26 | Driver barrier (COVID barrier) | \$1,800.00 |
| 27 | Customized logo on back and driver/passenger doors | Custom quote per Agency |
| 28 | Extended Warranty (Ordering agency to select from available OEM options) | See Included Matrix |

3. INVOICE

Itemized invoices shall be submitted to the individual agency after the completion and delivery of the vehicle and shall include a brief description of the vehicle specs.

Contractor shall be paid within 30 days after receipt of properly documented invoice and delivery and acceptance of vehicle to the State's satisfaction.

The invoice shall be sent to the address of the using agency under agreement.

4. PROMPT PAYMENT

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. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

The Contractor must promptly notify the Agency, 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 Agency.

4. PAYMENT

Payments may be made via ACH or P-Card. Use the following link to enroll with the State Treasury for ACH payments: <https://www.nh.gov/treasury>

EXHIBIT D

RFB #2751-23 is incorporated herein.

Contractor Initials 
Date 9/25/23

EXHIBIT E

Contractor's bid is incorporated herein.

Contractor Initials SR
Date 9/25/23

EXHIBIT F

Contractor's signed federal certifications attached below.

Contractor Initials 
Date 9/25/23

FEDERAL CERTIFICATIONS

CERTIFICATION AND RESTRICTIONS ON LOBBYING

I, DAVID DELFORTE/FLEET SALES REPRESENTATIVE hereby certify
(Name and title of official)

On behalf of COACH & EQUIPMENT BUS SALES, INC. that:
(Name of Bidder/Company Name)

- No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and 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.
- If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the 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.
- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, 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. 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.

Name of Bidder/Company Name: COACH & EQUIPMENT BUS SALES, INC.

Type or print name: DAVID DELFORTE

Signature of authorized representative:  Date 07 / 03 / 2023

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Recipients, contractors, and subcontractors that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract, or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person (found below); or (c) adding a clause or condition to the contract or subcontract.

Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

- (1) It will comply and facilitate compliance with U.S. DOT regulations, "Non procurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Non procurement)," 2 CFR part 180,
- (2) To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:
 - a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:
 1. Debarred,
 2. Suspended,
 3. Proposed for debarment,
 4. Declared ineligible,
 5. Voluntarily excluded, or
 6. Disqualified,
 - b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:
 1. 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,
 2. Violation of any Federal or State antitrust statute, or,
 3. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,
 - c. It is 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 listed in the preceding subsection 2.b of this Certification,
 - d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,
 - e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a – 2.d above, it will promptly provide that information to FTA,
 - f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:
 1. Equals or exceeds \$25,000,
 2. Is for audit services, or,
 3. Requires the consent of a Federal official, and

g. It will require that each covered lower tier contractor and subcontractor:

1. Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
2. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
 - a. Debarred from participation in its federally funded Project,
 - b. Suspended from participation in its federally funded Project,
 - c. Proposed for debarment from participation in its federally funded Project,
 - d. Declared ineligible to participate in its federally funded Project,
 - e. Voluntarily excluded from participation in its federally funded Project, or
 - f. Disqualified from participation in its federally funded Project, and

(3) It will provide a written explanation as indicated on a page attached in FTA's TrAMS platform or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third-Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

Certification

Contractor: COACH & EQUIPMENT BUS SALES, INC.

Signature of Authorized Official:  Date 07 / 03 / 2023

Name and Title of Contractor's Authorized Official: DAVID DELFORTE/FLEET SALES REPRESENTATIVE

BUS TESTING CERTIFICATION

The undersigned bidder [Contractor/Manufacturer] certifies that the vehicle model or vehicle models offered in this bid submission complies with 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 CFR Part 665.

A copy of the test report (for each bid ITEM) prepared by the Federal Transit Administration's (FTA) Altoona, Pennsylvania Bus Testing Center is attached to this certification and is a true and correct copy of the test report as prepared by the facility.

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 U.S. 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.

Name of Bidder/Company Name: COACH & EQUIPMENT BUS SALES, INC.

Type or print name: DAVID DELFORTE

Signature of authorized representative: 

Date of Signature: 07 / 03 / 2023

CERTIFICATE OF COMPLIANCE WITH BUY AMERICA ROLLING STOCK REQUIREMENTS

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j), and the applicable regulations in 49 CFR § 661.11 Date: 07.03.2023

Signature: 

Company: COACH & EQUIPMENT BUS SALES, INC.

Print Name: DAVID DELFORTE

Title: FLEET SALES REPRESENTATIVE

CERTIFICATE OF NON-COMPLIANCE WITH BUY AMERICA ROLLING STOCK REQUIREMENTS

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

Date: _____

Signature: _____

Company: _____

Print Name: _____

Title: _____

TRANSIT VEHICLE MANUFACTURER (TVM) DBE CERTIFICATION

Pursuant to the provisions of Section 105(f) of the Surface Transportation Assistance Act of 1982, each bidder for this contract must certify that it has complied with the requirements of 49 CFR Part 26.49, regarding the participation of Disadvantaged Business Enterprises (DBE) in FTA assisted procurements of transit vehicles. Absent this certification, properly completed and signed, a bid shall be deemed non-responsive.

Certification:

I hereby certify, for the bidder named below, that it has complied with the provisions of 49 CFR Part 26.49 and that I am duly authorized by said bidder to make this certification.

BIDDER/COMPANY

Name of Bidder/Company COACH & EQUIPMENT BUS SALES, INC.

Signature of Representative 

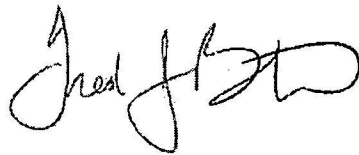
Type or Print Name DAVID DELFORTE

Title FLEET SALES REPRESENTATIVE Date 07 / 03 /2023

PRE-AWARD BUY AMERICA COMPLIANCE CERTIFICATION

As required by 49 CFR Part 663 – Subpart B, **NHDOT-Rail & Transit** is satisfied that the vehicles to be purchased, **Coach & Equipment Phoenix Bus Ford E-350/E-450 Cutaways – Classes 1, 2, 3**, meet the requirements of 49 U.S.C. 5323(j), as amended. **NHDOT-Rail & Transit** has reviewed documentation provided by the manufacturer, which lists (1) the proposed component and subcomponent parts of the buses identified by manufacturer, country of origin, and cost; and (2) the proposed location of the final assembly point for the buses, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

Date: 9/15/23



Authorized Signature: _____

Print Name: Fred Butler

Title: Public Transportation Administrator

PRE-AWARD PURCHASER'S REQUIREMENTS CERTIFICATION

As required by 49 CFR Part 663 – Subpart B, **NHDOT-Rail & Transit** certifies that the vehicles to be purchased, **Coach & Equipment Phoenix Bus Ford E-350/E-450 Cutaway Classes 1, 2, 3**, are the same product described in the recipient's solicitation specification and that the proposed manufacturer is a responsible manufacturer with the capability to produce vehicles that meets the specifications set forth in the solicitation.

Date: 9/15/23



Authorized Signature: _____

Print Name: Fred Butler

Title: Public Transportation Administrator

State of New Hampshire

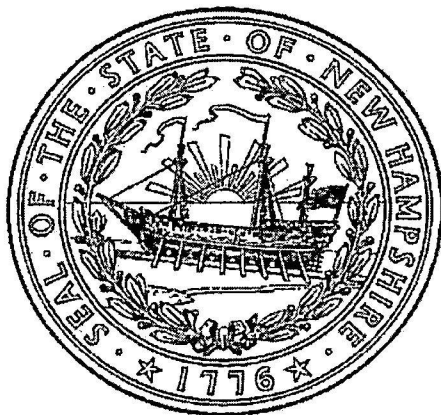
Department of State

CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that COACH & EQUIPMENT BUS SALES, INC. is a Maryland Profit Corporation registered to transact business in New Hampshire on September 19, 2023. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: **942479**

Certificate Number : **0006327593**



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this **19th** day of **September** A.D. **2023**.

A handwritten signature in black ink, appearing to read "David M. Scanlan".

David M. Scanlan
Secretary of State

Certificate of Authority # 1

(Corporation, Non-Profit Corporation)

Corporate Resolution

I, Jim McMiller, hereby certify that I am duly elected Clerk/Secretary/Officer of
(Name)

Coach's Equipment Bus Sales. I hereby certify the following is a true copy of a vote taken at
(Name of Corporation)

a meeting of the Board of Directors/shareholders, duly called and held on March 31, 2023
at which a quorum of the Directors/shareholders were present and voting.

VOTED: That Scott Reston (may list more than one person) is
(Name and Title)

duly authorized to enter into contracts or agreements on behalf of

Coach's Equipment Bus Sales with the State of New Hampshire and any of
(Name of Corporation)

its agencies or departments and further is authorized to execute any documents

which may in his/her judgment be desirable or necessary to effect the purpose of
this vote.

I hereby certify that said vote has not been amended or repealed and remains in full force
and effect as of the date of the contract to which this certificate is attached. This authority
remains valid for thirty (30) days from the date of this Corporate Resolution. I further certify
that it is understood that the State of New Hampshire will rely on this certificate as evidence that
the person(s) listed above currently occupy the position(s) indicated and that they have full
authority to bind the corporation. To the extent that there are any limits on the authority of any
listed individual to bind the corporation in contracts with the State of New Hampshire, all such
limitations are expressly stated herein.

DATED: October 27 2023

ATTEST:

Jim McMiller
(Name & Title)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
9/20/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).


| | | | |
|---|---|--------------------------------------|---------------|
| PRODUCER License # 1009544 Lawley, LLC 361 Delaware Avenue Buffalo, NY 14202 | CONTACT NAME: Tania Lanza | | |
| | PHONE (A/C, No, Ext): (716) 849-1546 1546 | FAX (A/C, No): (716) 849-8291 | |
| E-MAIL ADDRESS: tlanza@lawleyinsurance.com | | | |
| INSURED Coach & Equipment Mfg Corp Coach & Equipment Bus Sales, Inc. P.O Box 36 Penn Yan, NY 14527 | INSURER(S) AFFORDING COVERAGE | | NAIC # |
| | INSURER A : Hartford Fire Insurance Co | | 19682 |
| | INSURER B : Merchants Mutual Insurance Company | | 23329 |
| | INSURER C : Twin City Fire Insurance Co. | | 29459 |
| | INSURER D : | | |
| | INSURER E : | | |

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|--|-----------|----------|---------------|-------------------------|-------------------------|---|
| A | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR \$10,000,000 Maximum GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER: | | | 01UENOD2092 | 1/1/2023 | 1/1/2024 | EACH OCCURRENCE \$ 1,000,000 |
| | | | | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 |
| | | | | | | | MED EXP (Any one person) \$ 10,000 |
| | | | | | | | PERSONAL & ADV INJURY \$ 1,000,000 |
| | | | | | | | GENERAL AGGREGATE \$ 2,000,000 |
| | | | | | | | PRODUCTS - COMP/OP AGG \$ 2,000,000 |
| | | | | | | | EBL AGGREGATE \$ 2,000,000 |
| A | <input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY | | | 01UENOD2093 | 1/1/2023 | 1/1/2024 | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 |
| | | | | | | | BODILY INJURY (Per person) \$ |
| | | | | | | | BODILY INJURY (Per accident) \$ |
| | | | | | | | PROPERTY DAMAGE (Per accident) \$ |
| | | | | | | | \$ |
| B | <input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000 | | | CUP0002958 | 1/1/2023 | 1/1/2024 | EACH OCCURRENCE \$ 5,000,000 |
| | | | | | | | AGGREGATE \$ 5,000,000 |
| | | | | | | | \$ |
| C | <input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N <input type="checkbox"/> N/A If yes, describe under DESCRIPTION OF OPERATIONS below | | | 01WEOD2091 | 1/1/2023 | 1/1/2024 | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER \$ |
| | | | | | | | E.L. EACH ACCIDENT \$ 1,000,000 |
| | | | | | | | E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 |
| | | | | | | | E.L. DISEASE - POLICY LIMIT \$ 1,000,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

| | |
|---|--|
| CERTIFICATE HOLDER State of New Hampshire Department of Administrative Services Bureau of Purchase and Property 25 Capitol Street, RM 102 Concord, NH 03301 | CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE  |
|---|--|



ADDITIONAL REMARKS SCHEDULE

| | | | |
|------------------------------------|-----------------------------|-----------------------------------|--|
| AGENCY Lawley, LLC | | License # 1009544 | NAMED INSURED Coach & Equipment Mfg Corp Coach & Equipment Bus Sales P.O Box 36 Penn Yan, NY 14527 |
| POLICY NUMBER SEE PAGE 1 | | | |
| CARRIER SEE PAGE 1 | NAIC CODE SEE P 1 | EFFECTIVE DATE: SEE PAGE 1 | |

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

AI/WOS Wording

Additional Insured and Waiver of Subrogation coverage shown above and marked with an X. Terms set forth as evidenced by the attached endorsement(s) identified on the ACORD 101.

When required by executed written contract, the following endorsements apply:

General Liability:

- IH 03 13 06 11 - Notice of Cancellation to Certificate Holders
- HG 00 01 06 05 - Commercial General Liability Coverage Form

Automobile Liability:

- HA 99 17 06 14 - Commercial Automobile Broad Form New York
- IH 03 13 06 11 - Notice of Cancellation to Certificate Holder (s)
- CA 20 01 11 20 - Lessor Additional Insured and Loss Payee

Garage Liability:

- HA 25 15 06 14 - Commercial Automobile Broad Form - Auto Dealers

Excess Liability:

- MU 82 70 08 06 - General Liability Follow Form

Workers Comp:

- WC 00 03 01 A - Alternate Employer
- WC 00 03 13 - Waiver of Our Right to Discover From Others
- WC 99 03 86 - Notice of Cancellation To Designated Person(s) or Organization(s) Other than Named Insured
- WC 99 03 94 - Notice of Cancellation to Certificate Holder(s)

STATE OF NEW HAMPSHIRE TRANSMITTAL LETTER

Date: 07.03.2023

Company Name: COACH & EQUIPMENT BUS SALES, INC.
Address: 1 KEUKA BUSINESS PARK
PENN YAN, NY 14527

To: Point of Contact: **Andrew Bennett**
Telephone: **(603)-271- 7411**
Email: NH.Purchasing@das.nh.gov

RE: Bid Invitation Name: **Paratransit Cutaway Buses, Class 1, 2, 3**
Bid Number: **2751-23**
Bid Posted Date (on or by): **June 08, 2023**
Bid Closing Date and Time: **July 06, 2023 @ 10:00 AM (ET)**
Dear **Andrew Bennett**:

[Insert name of signor] DAVID DELFORTE, on behalf of COACH & EQUIPMENT BUS SALES [insert name of entity submitting bid (collectively referred to as "Vendor")] hereby submits an offer as contained in the written bid submitted herewith ("Bid") to the State of New Hampshire in response to BID # **2751 -23** for Paratransit Cutaway Buses, Class 1, 2, 3 at the price(s) quoted herein in complete accordance with the bid.

Vendor attests to the fact that:

1. The Vendor has reviewed and agreed to be bound by the Bid.
2. The Vendor has not altered any of the language or other provisions contained in the Bid document.
3. The Bid is effective for a period of 180 days from the Bid Closing date as indicated above.
4. The prices Vendor has quoted in the Bid were established without collusion with other vendors.
5. The Vendor has read and fully understands this Bid.
6. Further, in accordance with RSA 21-I:11-c, the undersigned Vendor certifies that neither the Vendor nor any of its subsidiaries, affiliates or principal officers (principal officers refers to individuals with management responsibility for the entity or association):
 - a. Has, within the past 2 years, been convicted of, or pleaded guilty to, a violation of RSA 356:2, RSA 356:4, or any state or federal law or county or municipal ordinance prohibiting specified bidding practices, or involving antitrust violations, which has not been annulled;
 - b. Has been prohibited, either permanently or temporarily, from participating in any public works project pursuant to RSA 638:20;
 - c. Has previously provided false, deceptive, or fraudulent information on a vendor code number application form, or any other document submitted to the state of New Hampshire, which information was not corrected as of the time of the filing a bid, proposal, or quotation;
 - d. Is currently debarred from performing work on any project of the federal government or the government of any state;
 - e. Has, within the past 2 years, failed to cure a default on any contract with the federal government or the government of any state;
 - f. Is presently subject to any order of the department of labor, the department of employment security, or any other state department, agency, board, or commission, finding that the applicant is not in compliance with the requirements of the laws or rules that the department, agency, board, or commission is charged with implementing;
 - g. Is presently subject to any sanction or penalty finally issued by the department of labor, the department of employment security, or any other state department, agency, board, or commission, which sanction or penalty has not been fully discharged or fulfilled;
 - h. Is currently serving a sentence or is subject to a continuing or unfulfilled penalty for any crime or violation noted in this section;
 - i. Has failed or neglected to advise the division of any conviction, plea of guilty, or finding relative to any crime or violation noted in this section, or of any debarment, within 30 days of such conviction, plea, finding, or debarment; or
 - j. Has been placed on the debarred parties list described in RSA 21-I:11-c within the past year.

This document shall be signed by a person who is authorized to legally obligate the responding vendor. A signature on this document indicates that all State of New Hampshire terms and conditions are accepted by the responding vendor and that any and all other terms and conditions submitted by the responding vendor are null and void, even if such terms and conditions have terminology to the contrary. The responding vendor shall also be subject to State of New Hampshire terms and conditions as stated on the reverse of the purchase order.

Authorized Signor's Signature  Authorized Signor's Title FLEET SALES REPRESENTATIVE

**REQUEST FOR BID FOR PARATRANSIT CUTAWAY BUSES, CLASS 1, 2, 3 FOR
THE STATE OF NEW HAMPSHIRE**

PURPOSE:

The purpose of this bid invitation is to establish a contract for supply and delivery of Paratransit Cutaway Buses, Class 1, 2, 3 to the State of New Hampshire with product list and requirements indicated in the SCOPE OF WORK and OFFER sections of this bid invitation, in accordance with the requirements of this bid invitation and any resulting contract.

INSTRUCTIONS TO VENDOR:

Read the entire bid invitation prior to filling it out. Complete the pricing information in the "Offer" section (detailed information on how to fill out the pricing information can be found in the "Offer" section); complete the "Vendor Contact Information" section; and finally, fill out, and signed page one of the bid invitation.

BID SUBMITTAL:

All bids shall be submitted on this form (or an exact copy), shall be typed or clearly printed in ink, and shall be received on or before the date and time specified on page 1 of this bid under "Bid Closing". Interested parties may submit a bid to the State of New Hampshire Bureau of Purchase and Property by **email to NH.Purchasing@DAS.NH.Gov**. All bids shall be clearly marked with bid number, date due and purchasing agent's name.

IF YOU ARE EXPERIENCING DIFFICULTIES EMAILING YOUR BID OR YOU WISH TO VERIFY THAT YOUR BID RESPONSE HAS BEEN RECEIVED, PLEASE CALL (603) 271-2201.

BID INQUIRIES:

Any questions, clarifications, and/or requested changes shall be submitted by an individual authorized to commit their organization to the Terms and Conditions of this bid and shall be received in writing at the Bureau of Purchase and Property no later than 4:00 PM on the date listed in the timeline below. Questions shall not be submitted to anyone other than the Purchasing Agent or his/her representative. Bidders that submit questions verbally or in writing to any other State entity or State personnel shall be found in violation of this part and may be found non-compliant.

Questions shall be submitted by E-mail to Andrew Bennett at the following address:

Andrew.J.Bennett@DAS.NH.Gov

Submissions shall clearly identify the bid Number, the Vendor's name and address and the name of the person submitting the question.

BID DUE DATE:

All bid submissions shall be received at the Bureau of Purchase and Property no later than the date and time shown on the transmittal letter of this bid. Submissions received after the date and time specified shall be marked as "Late" and shall not be considered in the evaluation process.

All offers shall remain valid for a period of one hundred eighty (180) days from the bid due date. A vendor's disclosure or distribution of bids other than to DAS, Bureau of Purchase and Property may be grounds for disqualification.

ADDENDA:

In the event it becomes necessary to add to or revise any part of this bid prior to the scheduled submittal date, the NH Bureau of Purchase and Property shall post on our web site any Addenda. Before your submission and periodically prior to the RFB closing, Vendors are required to **check the site for any addenda** or other materials that may have been issued affecting the bid. The web site address is:

<https://apps.das.nh.gov/bidscontracts/bids.aspx>

TIMELINE:

The timeline below is provided as a general guideline and is subject to change. Unless stated otherwise, consider the dates below a "no later than" date.

| | |
|------------|---|
| 06/08/2023 | Bid Solicitation distributed on or by |
| 06/20/2023 | Last day for questions, clarifications, and/or requested changes to bid |
| 06/27/2023 | Responses posted to questions received |
| 07/06/2023 | 10:00 AM (ET) Bid Closing |
| 08/01/2023 | Estimated Implementation of Contract |

TERMS OF SUBMISSION:

All material received in response to this bid shall become the property of the State and shall not be returned to the Vendor. Regardless of the Vendors selected, the State reserves the right to use any information presented in a bid response. The content of each Vendor's bid shall become public information once a contract(s) has been awarded.

A responding bid that has been completed and signed by your representative shall constitute your company's acceptance of all State of New Hampshire terms and conditions and shall legally obligate your company to these terms and conditions.

A signed response further signifies that from the time the bid is published (bid solicitation date and time) until a contract is awarded, no bidder shall offer or give, directly or indirectly, any gift, expense reimbursement, or honorarium, as defined by RSA 15-B, to any elected official, public official, public employee, constitutional official, or family member of any such official or employee who shall select, evaluate, or award the RFB.

Furthermore, a signed response signifies that any terms and/or conditions that may be or have been submitted by the Vendor are specifically null and void and are not a part of this bid invitation or any awarded purchase order, even if said terms and/or conditions contain language to the contrary.

The form P-37 Contract attached hereto shall be part of this bid and the basis for the contract(s). The successful Vendor and the State, following notification, shall promptly execute this contract form, which is to be completed by incorporating the service requirements and price conditions established by the vendor's offer.

CHAPTER ADM 600 PROCUREMENT AND PROPERTY RULES APPLY TO AND ARE MADE A PART HEREOF.

Complete bids shall be filled out on the original documents and format that are a part of this bid invitation. Vendors may submit additional paperwork with pricing, but all pricing shall be on the documents provided with this bid invitation and in the State's format.

CONTRACT TERM:

The term of the contract shall commence on August 1, 2023, or upon approval of the Governor and Executive Council, whichever is later, through July 31, 2028, a period of approximately five (5) years.

CONTRACT AWARD:

The award shall be made to the Vendor meeting the criteria established in this RFB and providing the lowest cost in total. The State reserves the right to reject any or all bids or any part thereof and add/delete items/locations to the contract. All award(s) shall be, in the form of a State of New Hampshire Contract.

Successful Vendor shall not be allowed to require any other type of order, nor shall the successful Vendor be allowed to require the filling out or signing of any other document by State of New Hampshire personnel.

NOTIFICATION AND AWARD OF CONTRACT(S):

Bid results shall not be given by telephone. For Vendors wishing to attend the bid closing, the names of the vendors submitting responses and pricing shall be made public. Other specific response information shall not be given out. Bid results shall be made public after final approval of the contract(s).

Bid results may also be viewed on our website at <https://apps.das.nh.gov/bidscontracts/bids.aspx>.

For Vendors wishing to attend the bid closing: **Names of the Vendors submitting responses and pricing shall be made public. In lieu of in person public bid openings the State shall conduct openings via electronic means until further notice.**

LIABILITY:

The State shall not be held liable for any costs incurred by Vendors in the preparation of bids or for work performed prior to contract issuance.

PUBLIC DISCLOSURE OF BID OR PROPOSAL SUBMISSIONS:

Generally, the full contents of any proposal (including all materials submitted in connection with it, such as attachments, exhibits, addenda, and vendor presentations) become public information upon completion of final contract or purchase order negotiations with the selected vendor. Certain information concerning proposals, including but not limited to scoring, is generally available to the public even before this time, in accordance with the provisions of NH RSA 21-G:37.

Confidential, commercial or financial information may be exempt from public disclosure under RSA 91-A:5, IV. Any and all information contained in or connected to a bid or proposal that a Bidder considers confidential shall be clearly designated in the following manner:

If the Bidder considers any portion of a submission confidential, they shall provide a separate copy of the full and complete document, fully redacting those portions by blacking them out and shall note on the applicable page or pages of the document that the redacted portion or portions are "confidential." Use of any other term or method, such as stating that a document or portion thereof is "proprietary", "not for public use", or "for client's use only", is not acceptable. In addition to providing an additional fully redacted copy of the bid submission to the person listed as the point of contact on Page one (1) of this document, the identified information considered to be confidential **must be accompanied by a separate letter stating the rationale for each item designated as confidential. In other words, the letter must specifically state why and under what legal authority each redaction has been made. Submissions which do not conform to these instructions by failing to include a redacted copy (if required), by failing to include a letter specifying the rationale for each redaction, by failing to designate redactions in the manner required by these instructions, or by including redactions which are contrary to these instructions or operative law may be rejected by the State as not conforming to the requirements of the bid or proposal. Marking or designating an entire proposal, attachment or section as confidential shall neither be accepted nor honored by the State. Marking an entire bid, proposal, attachment or full sections thereof confidential without taking into consideration the public's right to know shall neither be accepted nor honored by the State.**

Notwithstanding any provision of this request for submission to the contrary, proposed pricing shall be subject to public disclosure REGARDLESS of whether or not marked as confidential.

If a request is made to the State by any person or entity to view or receive copies of any portion of a proposal, the State will assess what information it believes is subject to release; notify the Bidder that the request has been made; indicate what, if any, portions of the proposal or related material shall be released; and notify the Bidder of the date it plans to release the materials. To halt the release of information by the State, a Bidder must initiate and provide to the State, prior to the date specified in the notice, a court action in the Superior Court of the State of New Hampshire, at its sole expense, seeking to enjoin the release of the requested information.

By submitting a proposal, Bidders acknowledge and agree that:

- The State may disclose any and all portions of the proposal or related materials which are not marked as confidential and/or which have not been specifically explained in the letter to the person identified as the point of contact for this RFP;
- The State is not obligated to comply with a Bidder's designations regarding confidentiality and must conduct an independent analysis to assess the confidentiality of the information submitted in your proposal; and
- The State may, unless otherwise prohibited by court order, release the information on the date specified in the notice described above without any liability to a Bidder.

Appeal/Protest Process:

In the case of an application that is not selected (whether in whole or in part), the applicant may appeal/protest the decision in accordance with NH RSA 21-G:37.

In the case of an RFB that requires approval from the governor and executive council, the issuing agency shall, at least 5 business days prior to submitting the contract to the department of administrative services, post the vendors' names and respective prices for each responding vendor on its website.

An applicant questioning DAS's identification of the selected applicant(s) may request that DAS review its selection process. Such requests shall be made in writing and be received by DAS within five (5) business days after the rank or score is posted on the State of NH's Bids and Proposals website. Requests shall be sent to:

Andrew Bennett
Fleet Administrator
State of New Hampshire
Department of Administrative Services
Bureau of Purchase and Property
25 Capitol Street, RM 102
Concord, NH 03301

The request shall specify all points on which the applicant believes the agency erred in its process and shall contain such argument in support of its position as the applicant seeks to present. In response, DAS shall review the process it followed for evaluating responses and, within five (5) business days of receiving the request for review, issue a written response either affirming its initial selection of an applicant or cancelling the solicitation. In its request for review, an applicant shall not submit, and DAS shall not accept nor consider, any substantive information that was not included by the applicant in its original submission. No hearing shall be held in conjunction with a review. The outcome of DAS's review shall not be subject to appeal.

TERMINATION:

The State of New Hampshire shall have the right to terminate the contract at any time with a thirty (30) day written notice to the successful Vendor.

VENDOR CERTIFICATIONS:

All Vendors shall be duly registered with the NH Bureau of Purchase and Property as State of New Hampshire vendors. All Vendors that are corporations, limited liability companies, or other limited liability business entities (this excludes sole proprietors and general partnerships) shall be duly registered with the New Hampshire Secretary of State to conduct business in the State of New Hampshire.

- STATE OF NEW HAMPSHIRE VENDOR APPLICATION: To be eligible for a contract award, a Vendor must have a completed Vendor Application Package on file with the NH Bureau of Purchase and Property. See the following website for information on obtaining and filing the required forms (no fee): <https://DAS.NH.Gov/Purchasing>
- NEW HAMPSHIRE SECRETARY OF STATE REGISTRATION: To be eligible for a contract award, a Vendor that is a corporation, limited liability company, or other limited liability business entity (this excludes sole proprietors and general partnerships) must be registered to conduct business in the State of New Hampshire **AND** in good standing with the NH Secretary of State. Please visit the following website to find out more about the requirements for registration with the NH Secretary of State: <https://sos.nh.gov/corporation-division/>
- CONFIDENTIALITY & CRIMINAL RECORD: If Applicable, any employee or approved subcontractor of the Vendor who will be accessing or working with records of the State of New Hampshire shall be required to sign a Confidentiality and Non-Disclosure Agreement and a Release of Criminal Record Authorization Form. These forms shall be returned to the designated State agency prior to commencing any work.

- **CERTIFICATE OF INSURANCE:**

Prior to being awarded a contract the Vendor shall be required to submit proof of comprehensive general liability insurance coverage prior to performing any services for the State. The coverage shall insure against all claims of bodily injury, death or property damage in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Coverage shall also include State of New Hampshire workers' compensation insurance to the extent required by RSA Chapter 281-A.

BID PRICES:

Bid prices shall remain firm for one year and may be adjusted on the anniversary date of this contract annually. Prices shall be in US dollars and shall include delivery and all other costs required by this bid invitation. Special charges, surcharges (including credit card transaction fees), or fuel charges of any kind (by whatever name) may not be added on at any time. Any and all charges shall be built into your bid price at the time of the bid. Unless otherwise specified, prices shall be F.O.B. DESTINATION, (included in the price bid), which means delivered to a state agency's receiving dock or other designated point as specified in this contract or subsequent purchase orders without additional charge. Shipments shall be made in order to arrive at the destination at a satisfactory time for unloading during receiving hours.

Per Administrative Rule 606.01 (e) "if there is a discrepancy between the unit price and the extension price in a response to an RFP, RFB or RFQ, the unit price shall be binding upon the vendor".

Price decreases shall become effective immediately as they become effective to the general trade.

Updated Published Price List MUST be e-mailed to Andrew.J.Bennett@DAS.NH.Gov.

PRICE ADJUSTMENTS:

On the anniversary date of this contract annually, the successful Vendor may request a price adjustment on the vehicles bid and optional equipment list, either upward or downward, keyed to the industry changes or general trade. The allowable adjustment will be based on using the U.S. Bureau of Labor Statistics Table 1 Consumer Price Index for New Vehicles found at <https://www.bls.gov/news.release/cpi.t01.htm>. Specifically, the 12-month unadjusted percent change for New Vehicles will be used. Written notice of an impending price increase, including substantiation for it, must be submitted in writing to Bureau of Purchase & Property, 25 Capitol Street, Rm. 102, Concord, NH 03301 or emailed to the state contract manager no less than sixty (60) calendar days prior to the effective date of said price increase. The State reserves the right to reject any price increases it deems unreasonable. If parties to the contract cannot agree on renewal terms, it is hereby understood that the contract will be rebid.

Notwithstanding that provision, a chassis model price increase shall be considered when a model year change is specific to the automotive or van industry. The successful Vendor shall provide a certification from the manufacturer to justify the chassis model price increase. The price may be adjusted only in the same amount as the price increase to the successful Vendor. The successful Vendor shall submit the request and all necessary documentation to the Bureau of Purchase and Property. The documentation of such factors shall be provided by the dealer. Should the Bureau of Purchase and Property not grant this price increase, the vehicle(s) affected by the chassis or manufacturers price increase may be removed by the Bureau of Purchase and Property's purchasing schedule upon the responsible dealer's request.

A minimum of sixty (60) calendar days advance written notice of price increase is required which is to be accompanied by sufficient documentation to justify the requested increase.

AUDITS AND ACCOUNTING:

The successful Vendor shall allow representatives of the State of New Hampshire to have complete access to all records for the purpose of determining compliance with the terms and conditions of this bid invitation and in determining the award and for monitoring any resulting contract.

At intervals during the contract term, and prior to the termination of the contract, the successful Vendor may be required to provide a complete and accurate accounting of all products and quantities ordered by each agency and institution and by political sub-divisions and authorized non-profit organizations.

ESTIMATED USAGE:

The quantities indicated in the offer section of this bid invitation are an estimate only for the State of New Hampshire's term requirements. These quantities are indicated for informational purposes only and shall not be considered minimum or guaranteed quantities, nor shall they be considered maximum quantities. These quantities **do not** include any eligible participant usage.

USAGE REPORTING:

The successful Vendor shall be required to submit a quarterly and annual usage report for analysis for each state agency or eligible participant. Reports are due no later than 30 days after each end of each calendar quarter to The Bureau of Procurement & Support Services, Andrew Bennett and sent electronic to Andrew.J.Bennett@DAS.NH.Gov. At a minimum, the Report shall include:

- Contract Number
- Utilizing Agency and Eligible Participant
- Services/Products Purchased (showing the manufacturer, item, part number, and the final cost.)
- Recycling documentation with respect to content used in the manufacture, development and distribution process of goods and services sold. This report shall include but not be limited to:
 - Percentage of recycled materials contained within finished products
 - Percentage of waste recycled throughout the manufacturing process
 - Types and volume of packaging used for transport
 - Any associated material avoided and/or recycled as applicable under contract
 - A standardized reporting form will be provided after contract award
- Total Cost of all Services/Products Purchased. Ability to sort by agency/eligible participant.
- Preferred in Excel format

ESTABLISHMENT OF ACCOUNTS:

Each State of New Hampshire agency shall have its own individual customer account number. There may also be instances where divisions or bureaus within an agency will need their own individual customer account numbers. Should any State of New Hampshire agency place an order under the contract, the successful Vendor agrees to establish an account within three business days from the date the order is placed. However, there shall be no delay in any shipment; the agency shall receive the items ordered in accordance with the delivery time required under this bid invitation, as if an account already exists for the agency.

ELIGIBLE PARTICIPANTS:

Political sub-divisions (counties, cities, towns, school districts, special district or precinct, or any other governmental organization), or any nonprofit agency under the provisions of section 501c of the federal internal revenue code, are eligible to participate under this contract whenever said sub-division or nonprofit agency so desires. These entities are autonomous and may participate at their sole discretion. In doing so, they are entitled to the prices established under the contract. However, they are solely responsible for their association with the successful Vendor. The State of New Hampshire assumes no liability between the successful Vendor and any of these entities.

PAYMENT:

Payment method (P-Card or ACH). **Payments shall be made via ACH or Procurement Card (P-card = Credit Card) unless otherwise specified by the state of New Hampshire. Use the following link to enroll with the State Treasury for ACH payments:** <https://www.nh.gov/treasury/state-vendors/index.htm> This link will also be utilized to amend existing ACH/remit details. Eligible participants shall negotiate their own payment methods with the successful Vendor.

INVOICING:

Invoices shall be submitted to the corresponding State agency after completion of work/acceptance of delivery.

TERMS OF PAYMENT:

Payment shall be made in full within thirty (30) days after both receipt of the invoice and acceptance of the corresponding goods meet the State's satisfaction, including but not limited to Buy America (if applicable), Federal Motor Vehicle Safety Standards (FMVSS), and other applicable certifications.

VENDOR RESPONSIBILITY:

The successful Vendor shall be solely responsible for meeting all terms and conditions specified in the bid, and any resulting contract.

All State of New Hampshire bid invitations and addenda to such bid invitations are advertised on our website at: <https://apps.das.nh.gov/bidscontracts/bids.aspx>

It is a prospective Vendor's responsibility to access our website to determine any bid invitation under which the Vendor desires to participate. It is also the Vendor's responsibility to access our website for any posted addenda.

The website is updated several times per day; it is the responsibility of the prospective Vendor to access the website frequently to ensure that no bidding opportunity or addendum is overlooked.

It is the prospective Vendor's responsibility to forward a signed copy of any addendum requiring the Vendor's signature to the Bureau of Purchase and Property with the bid response.

In preparation of a bid response, the prospective Vendor shall:

- Provide pricing information as indicated in the "Offer" section; and
- Provide all other information required for the bid response (if applicable); and
- Complete the "Vendor Contact Information" section; and
- Complete the company information on the "Transmittal Letter" page, and sign under penalty of unsworn falsification in the space provided on that page.

It is the responsibility of the Vendor to maintain this any awarded contract and New Hampshire Vendor Registration with up-to-date contact information.

Contract specific contact information (Sales contact, Contractor contract manager, etc.) shall be sent to the State's Contracting Office listed in Box 1.9 of Form P-37.

Additionally, all updates i.e., telephone numbers, contact names, email addresses, W9, tax identification numbers are required to be current through a formal electronic submission to the Bureau of Purchase and Property at: <https://www.das.nh.gov/purchasing/vendorresources.aspx>

IF AWARDED A CONTRACT:

The successful Vendor shall complete the following sections of the attached Agreement State of New Hampshire Form #P-37:

- Section 1.3 Contractor Name
- Section 1.4 Contractor Address
- Section 1.11 Contractor Signature
- Section 1.12 Name & Title of Contractor Signatory (if Vendor is not a sole proprietor)

- Provide certificate of insurance indicating the coverage amounts required by Section 14 of the Form Number P-37.
- Provide proof of sufficient workers' compensation insurance coverage or evidence of exemption from RSA Chapter 81-A.
- If the successful Vendor is a corporation, limited liability company, or other limited liability business entity, then provide a certificate of good standing issued by the NH Secretary of State or, for a newly incorporated, formed, or registered entity, a copy of the appropriate registration document certified by the NH Secretary of State.

SPECIFICATION COMPLIANCE:

Vendor's offer shall meet or exceed the required specifications as written, see Attachment 2 – Vehicle Specifications. The State of New Hampshire shall be the sole determining factor of what meets or exceeds the required specifications.

Unless otherwise specified by the Bureau of Purchase and Property in this bid invitation document, all equipment/items offered by the Vendor shall be new (and of the current model year, if applicable); shall not be used, rebuilt, refurbished; shall not have been used as demonstration equipment, and shall not have been placed anywhere for evaluation purposes.

The manufacturer(s) and/or model(s) indicated in this bid are equivalent to the type and quality required. You may bid different make(s) and model(s); however, your offer shall match or exceed the one(s) indicated and you shall demonstrate to the satisfaction of the purchasing Agency that they meet or exceed the minimum standards. Items that do not meet the minimum standards shall not be accepted. Product literature and specifications may be enclosed.

If **sub-contractors** are to be utilized, please include information regarding the proposed sub-contractors including the name of the company, their address, contact person and three references for clients they are currently servicing. Approval by the State must be received prior to a sub-contractor starting any work.

WARRANTY REQUIREMENTS:

All OEM warranties shall apply, with extended OEM warranties made available. Other subsystems shall be warranted to be free from defects and related defects for the period and mileage shown below, whichever comes first, commencing on the date of acceptance of the vehicle from the Contractor:

| Item | Years | Mileage |
|------------------------|-------|-----------|
| Body Structure | 5 | 100,000 |
| Chassis | 3 | 36,000 |
| Engine | 5 | 60,000 |
| Transmission | 5 | 60,000 |
| Air Conditioner | 2 | Unlimited |
| Wheelchair Lift | 5 | Unlimited |
| Wheelchair Securements | 3 | Unlimited |
| Rust Proofing | 5 | 150,000 |
| Flooring | 12 | Unlimited |
| Corrosion | 5 | Unlimited |

Extension of Warranty

If, during the warranty period, repairs or modifications on any vehicle are made necessary by defective design, materials or workmanship but are not completed due to lack of material or inability to provide the proper repair within thirty (30) calendar days, the applicable warranty period shall be extended by the number of days equal to the delay period.

Voiding of Warranty

The warranty shall not apply to the failure of any part or component of the vehicle that directly results from misuse, negligence, accident, or repairs not conducted in accordance with the Contractor-provided maintenance manuals and with workmanship performed by adequately trained personnel in accordance with recognized standards of the industry. The warranty also shall be void if the Agency fails to conduct normal inspections and scheduled preventive maintenance procedures as recommended in the Contractor's maintenance manuals and if that omission caused the part or component failure. The Agency shall maintain documentation, auditable by the Contractor, verifying service activities in conformance with the vehicle manufacturer's maintenance manuals provided by the Contractor.

Exceptions and Additions to Warranty

The warranty shall not apply to the following items:

- Scheduled maintenance items
- Normal wear-out items
- Items furnished by the Agency

Should the Agency require the use of a specific product and has rejected the Contractor's request for an alternate product, then the standard supplier warranty for that product shall be the only warranty provided to the Agency. This product shall not be eligible under "Fleet Defects," below.

The Contractor shall not be required to provide warranty information for any warranty that is less than or equal to the warranty periods listed.

Pass-Through Warranty

Should the Contractor elect to not administer warranty claims on certain components and wish to transfer this responsibility to the sub-suppliers or to others, the Contractor shall request this waiver.

Contractor shall state in writing that the Agency's warranty reimbursements shall not be impacted. The Contractor also shall state in writing any exceptions and reimbursement including all costs incurred in transport of vehicles and/or components. At any time during the warranty period, the Contractor may request approval from the Agency to assign its warranty obligations to others, but only on a case-by-case basis approved in writing by the Agency. Otherwise, the Contractor shall be solely responsible for the administration of the warranty as specified. Warranty administration by others does not eliminate the warranty liability and responsibility of the Contractor.

Superior Warranty

The Contractor shall pass on to the Agency any warranty offered by a component supplier that is superior to that required herein. The Contractor shall provide a list to the Agency noting the conditions and limitations of the superior warranty not later than the start of production. The superior warranty shall not be administered by the Contractor.

NON-EXCLUSIVE CONTRACT

Any resulting Contract from this RFB will be a non-exclusive Contract. The State reserves the right, at its discretion, to retain other Contractors to provide any of the Services or Deliverables identified under this procurement or make an award by item, part or portion of an item, group of items, or total Proposal.

DELIVERY TIME:

The successful Vendor shall be required to accomplish delivery of any item ordered under the contract within the time determined by the Vendor in consultation with the agency placing the order just prior to the purchase order being issued.

The use of a private carrier to make delivery **does not** relieve the successful Vendor from the responsibility of meeting the delivery requirement.

RETURNED GOODS:

The successful Vendor shall resolve all order and invoice discrepancies within five (5) business days from notification. Products returned due to quality issues, duplicate shipments, over-shipments, etc. shall be picked up by the successful Vendor within ten (10) business days of notification with no restocking or freight charges, and shall be replaced with specified products or the agency shall be refunded/credited for the full purchase price. Unauthorized substitutions for any products are not allowed.

Standard stock products ordered in error by the State of New Hampshire shall be returned for full credit within fifteen (15) business days of receipt. Products shall be in re-saleable condition (original container, unused) and

there shall be no restocking fee charged for these products. The using agency shall be responsible for any freight charges to return these items to the successful Vendor.

OFFER:

The bidder offers to sell to the state of New Hampshire the commodities or services indicated at the price or prices quoted and in compliance with the requirements and specifications of the bid.

| | | | | DELIVERED | |
|-----------------|-------------|---|------------------|-----------------------|--|
| EST. QTY | UNIT | DESCRIPTION | UNIT COST | EXT. COST | |
| 13 | EA | New Current Model Year, Paratransit Class 1 Accessible Cutaway Chassis Vehicles as Per the Minimum D.O.T. Specifications Dated April 2023 | \$106,475.00 | \$1,384,175.00 | |
| 14 | EA | New Current Model Year, Paratransit Class 2 Accessible Cutaway Chassis Vehicles as Per the Minimum D.O.T. Specifications Dated April 2023 | \$113,250.00 | \$1,585,500.00 | |
| 8 | EA | New Current Model Year, Paratransit Class 3 Accessible Cutaway Chassis Vehicles as Per the Minimum D.O.T. Specifications Dated April 2023 | \$118,765.00 | \$950,120.00 | |
| | | | TOTAL | \$3,919,795.00 | |

MFG/MAKE/MODEL COACH & EQUIPMENT/FORD E SERIES/PHOENIX

In addition to the completion of the above offer sheet, the bidder must also complete Attachment 2 Federal Clauses, Section 4.58 Optional Equipment with Prices and Section 5.0 Vehicle Technical Information located on Attachment 3.

Bidding is open to all vendors however, only vehicles manufactured by approved Transit Vehicle Manufacturers (TVM's) listed on the Federal Transit Administration's (FTA) eligible TVM's list, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible. Transit Vehicle Manufacturers information can be found on the Federal Transit Administration website as follows: <https://www.transit.dot.gov/TVM>. The list of eligible TVM's can be found at <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-transit-vehicle-manufacturers>.

STATE OF NEW HAMPSHIRE MANUFACTURERS FLEET IDENTIFICATION NUMBER

| | |
|----------------|---------|
| FIAT CHRYSLER | 48869 |
| FORD | QS038 |
| GENERAL MOTORS | 80 9909 |
| TOYOTA | GE164 |

VENDOR'S BALANCE OF PRODUCT LINE ITEMS

The items in the Offer Section include the items most commonly purchased by State of New Hampshire agencies, and shall be used for award purposes. During the term of contract, the State may purchase other items that relate to the product/categories represented herein from the successful Vendor's Balance of Product Line. All items ordered shall include all shipping/charges as specified above in "Bid Prices".

VENDOR CONTACT INFORMATION:

Please provide contact information below for a person knowledgeable of and who can answer questions regarding, this bid response.

| | | |
|-----------------------|------------------------|----------------------------|
| <u>DAVID DELFORTE</u> | <u>585.455.7715</u> | <u></u> |
| Contact Person | Local Telephone Number | Toll Free Telephone Number |

| | |
|--|----------------------------------|
| <u>DDELFORTE@COACHANDEQUIPMENT.COM</u> | <u>WWW.COACHANDEQUIPMENT.COM</u> |
| E-mail Address | Company Website |

DELIVERY LOCATIONS:

New Hampshire Statewide

ATTACHMENTS:

The following attachments are an integral part of this bid invitation:

Attachment 1: Sample P-37 Form

Attachment 2: Federal Clauses

Attachment 3: Vehicle Specifications

The Bid Opening is open to the public online at the following:

Microsoft Teams meeting

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 271 349 670 805

Passcode: qYRfUg

[Download Teams](#) | [Join on the web](#)

Join with a video conferencing device

nhgov@m.webex.com

Video Conference ID: 115 271 213 1

[Alternate VTC instructions](#)

Or call in (audio only)

[+1 603-931-4944,472108235#](#) United States, Concord

Phone Conference ID: 472 108 235#

[Find a local number](#) | [Reset PIN](#)

[Learn More](#) | [Meeting options](#)

ATTACHMENT 1

SAMPLE FORM TO BE COMPLETED UPON AWARD

FORM NUMBER P-37 (version 2/23/2023)

Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

| | | | |
|---|----------------------------|---|----------------------|
| 1.1 State Agency Name | | 1.2 State Agency Address | |
| 1.3 Contractor Name | | 1.4 Contractor Address | |
| 1.5 Contractor Phone Number | 1.6 Account Unit and Class | 1.7 Completion Date | 1.8 Price Limitation |
| 1.9 Contracting Officer for State Agency | | 1.10 State Agency Telephone Number | |
| 1.11 Contractor Signature Date: | | 1.12 Name and Title of Contractor Signatory | |
| 1.13 State Agency Signature Date: | | 1.14 Name and Title of State Agency Signatory | |
| 1.15 Approval by the N.H. Department of Administration, Division of Personnel <i>(if applicable)</i> By: _____ Director, On: _____ | | | |
| 1.16 Approval by the Attorney General (Form, Substance and Execution) <i>(if applicable)</i> By: _____ On: _____ | | | |
| 1.17 Approval by the Governor and Executive Council <i>(if applicable)</i> G&C Item number: _____ G&C Meeting Date: _____ | | | |

2. SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 (“State”), engages contractor identified in block 1.3 (“Contractor”) to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT B which is incorporated herein by reference (“Services”).

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 (“Effective Date”).

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed.

3.3 Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds. In no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT C which is incorporated herein by reference.

5.2 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8. The payment by the State of the contract price shall be the only and

the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 The State’s liability under this Agreement shall be limited to monetary damages not to exceed the total fees paid. The Contractor agrees that it has an adequate remedy at law for any breach of this Agreement by the State and hereby waives any right to specific performance or other equitable remedies against the State.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal employment opportunity laws and the Governor’s order on Respect and Civility in the Workplace, Executive order 2020-01. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of age, sex, sexual orientation, race, color, marital status, physical or mental disability, religious creed, national origin, gender identity, or gender expression, and will take affirmative action to prevent such discrimination, unless exempt by state or federal law. The Contractor shall ensure any subcontractors comply with these nondiscrimination requirements.

6.3 No payments or transfers of value by Contractor or its representatives in connection with this Agreement have or shall be made which have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business.

6.4. The Contractor agrees to permit the State or United States access to any of the Contractor’s books, records and accounts for the purpose of ascertaining compliance with this Agreement and all rules, regulations and orders pertaining to the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 The Contracting Officer specified in block 1.9, or any successor, shall be the State's point of contact pertaining to this Agreement.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) calendar days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) calendar days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 give the Contractor a written notice specifying the Event of Default and set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

9. TERMINATION.

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) calendar days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, deliver to the Contracting Officer, not later than fifteen (15) calendar days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. In addition, at the State's discretion, the Contractor shall, within fifteen (15) calendar days of notice of early termination, develop and submit to the State a transition plan for Services under the Agreement.

10. PROPERTY OWNERSHIP/DISCLOSURE.

10.1 As used in this Agreement, the word "Property" shall mean all data, information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files,

formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

10.2 All data and any Property which has been received from the State, or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

10.3 Disclosure of data, information and other records shall be governed by N.H. RSA chapter 91-A and/or other applicable law. Disclosure requires prior written approval of the State.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

12.1 Contractor shall provide the State written notice at least fifteen (15) calendar days before any proposed assignment, delegation, or other transfer of any interest in this Agreement. No such assignment, delegation, or other transfer shall be effective without the written consent of the State.

12.2 For purposes of paragraph 12, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.3 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State.

12.4 The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

13. INDEMNIFICATION. The Contractor shall indemnify, defend, and hold harmless the State, its officers, and employees from and against all actions, claims, damages, demands, judgments, fines, liabilities, losses, and other expenses, including, without limitation, reasonable attorneys' fees, arising out of or relating to this Agreement directly or indirectly arising from death, personal injury, property damage, intellectual property infringement, or other claims asserted against the State, its officers, or employees caused by the acts or omissions of negligence, reckless or willful misconduct, or fraud by the Contractor, its employees, agents, or subcontractors. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the State's sovereign immunity, which immunity is hereby reserved

to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate or excess; and

14.1.2 special cause of loss coverage form covering all Property subject to subparagraph 10.2 herein, in an amount not less than 80% of the whole replacement value of the Property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or any successor, a certificate(s) of insurance for all insurance required under this Agreement. At the request of the Contracting Officer, or any successor, the Contractor shall provide certificate(s) of insurance for all renewal(s) of insurance required under this Agreement. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. The Contractor shall furnish the Contracting Officer identified in block 1.9, or any successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. **WAIVER OF BREACH.** A State's failure to enforce its rights with respect to any single or continuing breach of this Agreement shall not act as a waiver of the right of the State to later enforce any such rights or to enforce any other or any subsequent breach.

17. **NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. **AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

19. CHOICE OF LAW AND FORUM.

19.1 This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire except where the Federal supremacy clause requires otherwise. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

19.2 Any actions arising out of this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be brought and maintained in the Merrimack County Superior Court of New Hampshire which shall have exclusive jurisdiction thereof.

20. **CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and any other portion of this Agreement including any attachments thereto, the terms of the P-37 (as modified in EXHIBIT A) shall control.

21. **THIRD PARTIES.** This Agreement is being entered into for the sole benefit of the parties hereto, and nothing herein, express or implied, is intended to or will confer any legal or equitable right, benefit, or remedy of any nature upon any other person.

22. **HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

23. **SPECIAL PROVISIONS.** Additional or modifying provisions set forth in the attached EXHIBIT A are incorporated herein by reference.

24. **FURTHER ASSURANCES.** The Contractor, along with its agents and affiliates, shall, at its own cost and expense, execute any additional documents and take such further actions as may be reasonably required to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby.

25. **SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

26. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.

ATTACHMENT 2

FEDERAL CLAUSES

ACCESS TO RECORDS AND REPORTS

- a. Record Retention. The Contractor will retain and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, leases, subcontracts, arrangements, other third party Contracts of any type, and supporting materials related to those records.
- b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.334. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract in accordance with 2 CFR § 200.337.
- d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractor's access to the sites of performance under this contract in accordance with 2 CFR § 200.337.

AMERICANS WITH DISABILITIES ACT(ADA)

The contractor agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

BUS TESTING

The Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 C.F.R. part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the recipient.

BUY AMERICA REQUIREMENTS

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR § 200.322 Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the 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.

Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11. Domestic preferences for procurements

The bidder or offeror must submit to the Agency the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. For more information, please see the FTA's Buy America webpage at: <https://www.transit.dot.gov/buyamerica>

RESTRICTIONS ON LOBBYING

Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay 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 any of the following covered Federal actions: 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.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form if such person has made or has agreed to make any payment using non appropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, whether that person has made or has agreed to make any payment to influence or attempt 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 that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form if that person has made or has agreed to make any payment to influence or attempt 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 that loan insurance or

guarantee.

Certification and disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

(1) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or

(2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000, Unless such person previously filed a

certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

(1) A subcontract exceeding \$100,000 at any tier under a Federal contract;

(2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;

(3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,

(4) A contract or subcontract exceeding \$100,000 at any tier under a

Federal cooperative agreement, shall file a certification, and a disclosure

form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure

to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

CARGO PREFERENCE REQUIREMENTS

The contractor agrees:

a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA Recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and

c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

CIVIL RIGHTS LAWS AND REGULATIONS

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

1 Federal Equal Employment Opportunity (EEO) Requirements. These include, but are not limited to:

a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.

b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246,

"Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

2 Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.

3 Nondiscrimination on the Basis of Age. The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45

C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

4 Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

1.1 Civil Rights and Equal Opportunity

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C.

§ 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. Nondiscrimination. In accordance with 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, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., 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. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. 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, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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.

3. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, 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.

4. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

5. Promoting Free Speech and Religious Liberty. The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to FTA and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

Clean Air Act

(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.

(2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

Federal Water Pollution Control Act

(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.

(2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA."

CONFORMANCE WITH ITS NATIONAL ARCHITECTURE

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards pursuant to 23 CFR § 940. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs.

b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.

c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

d. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily

available on the open market, or contracts for transportation or transmission of intelligence.

e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

Compliance with the Contract Work Hours and Safety Standards Act.

(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 (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of 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 agency 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 paragraph (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."

DEBARMENT AND SUSPENSION

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

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

f) Disqualified from participation in any federally assisted Award.

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

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

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

(Does not apply to projects fully funded by the Tribal Transportation Program (TTP).)

It is the policy of the Agency and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT assisted contracts.

The contractor or subcontractor 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 C.F.R. part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Agency deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, each FTA Recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency's written consent; and that, unless the Agency's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

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 (42 U.S.C. § 6201).

EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

NOTICE TO THIRD PARTY PARTICIPANTS

Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and

Applicable changes to those federal requirements will apply to each Third-Party Agreement and parties thereto at any tier.

FLY AMERICA

a) Definitions. As used in this clause—

1) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. 2) "United States" means the 50 States, the District of Columbia, and outlying areas. 3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

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

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

FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

(1) The contractor certifies that it:

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

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

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

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

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The provisions within include, in part, certain Standard Terms and Conditions required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, detailed in 2 CFR § 200 or as amended by 2 CFR § 1201, or the most recent version of FTA Circular 4220.1 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor

shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

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

NOTIFICATION TO FTA

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third-Party Agreements and must require each Third Party Participant to include an equivalent provision in its sub agreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES

(Does not apply to projects fully funded by the Tribal Transportation Program (TTP).)

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

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.

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. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

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.

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

- a. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
 1. Procure or obtain;
 2. Extend or renew a contract to procure or obtain; or
 3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - i. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - ii. Telecommunications or video surveillance services provided by such entities or using such equipment.
 - iii. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- b. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- c. See Public Law 115-232, section 889 for additional information.
- d. See also § 200.471.

PROMPT PAYMENT

(Does not apply to projects fully funded by the Tribal Transportation Program (TTP).)

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. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

The contractor must promptly notify the Agency, 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 Agency.

SAFE OPERATION OF MOTOR VEHICLES

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or Agency.

Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

SPECIAL NOTIFICATION REQUIREMENTS FOR STATES

Applies to States –

a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:

- (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
- (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
- (3) The amount of federal assistance FTA has provided for a State Program or Project.

b. Documents - The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance,

(2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

SIMPLIFIED ACQUISITION THRESHOLD

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327.

The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America's eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).

SEVERABILITY

The Contractor agrees that if any provision of this agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

TERMINATION

Termination for Convenience (General Provision)

The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency'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 Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

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 Agency may terminate this contract for default. Termination shall be affected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only 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 Agency 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 Agency, 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.

Opportunity to Cure (General Provision)

The Agency, 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 Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency 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 Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach

In the event that Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Agency shall not limit Agency's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

Termination for Convenience (Professional or Transit Service Contracts)

The Agency, by written notice, may terminate this contract, in whole or in part, when it is in the Agency's interest. If this contract is terminated, the Agency shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

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 Agency may terminate this contract for default. The Agency 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 Agency.

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 Agency may terminate this contract for default. The Agency 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 Agency goods, the Contractor shall, upon direction of the Agency, protect and preserve the goods until surrendered to the Agency or its agent. The Contractor and Agency 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 Agency.

Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Agency 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 Agency 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 Agency in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be 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 Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and 2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract. 3. 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 Agency.

Termination for Convenience or Default (Architect and Engineering)

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency 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 Agency's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the Agency, the Agency's 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 Agency may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency. 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 Agency.

Termination for Convenience or Default (Cost Type Contracts)

The Agency may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of Agency 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 Agency, or property supplied to the Contractor by the Agency. If the termination is for default, the Agency 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 Agency and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Agency, 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 Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

TRAFFICKING IN PERSONS

The contractor agrees that it and its employees that participate in the Recipient's Award, may not:

- (a) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect;
- (b) Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or
- (c) Use forced labor in the performance of the Recipient's Award or sub agreements thereunder.

VIOLATION AND BREACH OF CONTRACT

Disputes:

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the agency. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the agencies authorized representative. 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 agencies authorized representative shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance during Dispute:

Unless otherwise directed by the agencies authorized representative, 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 agencies authorized representative and 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 Agency is located.

Rights and Remedies:

Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Agency or 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.

FEDERAL CERTIFICATIONS

CERTIFICATION AND RESTRICTIONS ON LOBBYING

I, DAVID DELFORTE/FLEET SALES REPRESENTATIVE hereby certify
(Name and title of official)

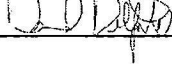
On behalf of COACH & EQUIPMENT BUS SALES, INC. that:
(Name of Bidder/Company Name)

- No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and 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.
- If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the 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.
- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, 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. 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.

Name of Bidder/Company Name: COACH & EQUIPMENT BUS SALES, INC.

Type or print name: DAVID DELFORTE

Signature of authorized representative:  Date 07 / 03 / 2023

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Recipients, contractors, and subcontractors that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract, or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person (found below); or (c) adding a clause or condition to the contract or subcontract.

Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

(1) It will comply and facilitate compliance with U.S. DOT regulations, "Non procurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Non procurement)," 2 CFR part 180,

(2) To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:

- a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:
 1. Debarred,
 2. Suspended,
 3. Proposed for debarment,
 4. Declared ineligible,
 5. Voluntarily excluded, or
 6. Disqualified,
- b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:
 1. 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,
 2. Violation of any Federal or State antitrust statute, or,
 3. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,
- c. It is 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 listed in the preceding subsection 2.b of this Certification,
- d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,
- e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a – 2.d above, it will promptly provide that information to FTA,
- f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:
 1. Equals or exceeds \$25,000,
 2. Is for audit services, or,
 3. Requires the consent of a Federal official, and

g. It will require that each covered lower tier contractor and subcontractor:

1. Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
2. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
 - a. Debarred from participation in its federally funded Project,
 - b. Suspended from participation in its federally funded Project,
 - c. Proposed for debarment from participation in its federally funded Project,
 - d. Declared ineligible to participate in its federally funded Project,
 - e. Voluntarily excluded from participation in its federally funded Project, or
 - f. Disqualified from participation in its federally funded Project, and

(3) It will provide a written explanation as indicated on a page attached in FTA's TrAMS platform or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third-Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

Certification

Contractor: COACH & EQUIPMENT BUS SALES, INC.

Signature of Authorized Official:  Date 07 / 03 / 2023

Name and Title of Contractor's Authorized Official: DAVID DELFORTE/FLEET SALES REPRESENTATIVE

BUS TESTING CERTIFICATION

The undersigned bidder [Contractor/Manufacturer] certifies that the vehicle model or vehicle models offered in this bid submission complies with 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 CFR Part 665.

A copy of the test report (for each bid ITEM) prepared by the Federal Transit Administration's (FTA) Altoona, Pennsylvania Bus Testing Center is attached to this certification and is a true and correct copy of the test report as prepared by the facility.

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 U.S. 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.

Name of Bidder/Company Name: COACH & EQUIPMENT BUS SALES, INC.

Type or print name: DAVID DELFORTE

Signature of authorized representative: 

Date of Signature: 07 / 03 / 2023

PRE-AWARD BUY AMERICA CERTIFICATION

(Does not apply to projects fully funded by the Tribal Transportation Program (TTP).)

As required by 49 CFR part 663 – Subpart B, _____ (the recipient) is satisfied that the vehicles to be purchased, _____ (number and description of vehicles) from _____ (the manufacturer), meet the requirements of 49 U.S.C. 5323(j), as amended. The recipient, or its appointed auditor _____ (the auditor – not the manufacturer or its agent), has reviewed documentation provided by the manufacturer, which lists (1) the proposed component and subcomponent parts of the vehicles identified by manufacturer, country of origin, and cost; and (2) the proposed location of the final assembly point for the vehicles, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

Date : _____

Recipient Authorized Signature: _____

Print Name: _____

Title: _____

PRE-AWARD BUY AMERICA CERTIFICATE OF NON-COMPLIANCE

As required by 49 CFR part 663 – Subpart B, _____ (the recipient) keeps on file a certification that there is a letter from FTA which grants a waiver to the rolling stock to be purchased, _____ (number and description of rolling stock), from the Buy America requirements under 49 U.S.C. 5323(j)(2)(A), (2)(B), or (2)(D), as amended.

Date : _____

Recipient Authorized Signature: _____

Print Name: _____

Title: _____

PRE-AWARD FMVSS COMPLIANCE CERTIFICATION

As required by 49 CFR part 663 – Subpart D, _____ (the recipient) certifies that it received, at the pre-award stage, a copy of

_____ 's (the manufacturer) self certification information

stating that the vehicles, _____ (number and description of vehicles), will comply with the relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in 49 CFR part 571.

Date: _____

Recipient Authorized Signature: _____

Print Name: _____

Title: _____

PRE-AWARD CERTIFICATION OF FMVSS INAPPLICABILITY

As required by 49 CFR part 663 – Subpart D, _____ (the recipient) certifies that it received at the pre-award stage, a statement from

_____ (the manufacturer) indicating that the vehicles, _____ (number and

description of vehicles), will not be subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in 49 CFR part 571.

Date: _____

Recipient Authorized Signature: _____

Print Name: _____

Title: _____

PRE-AWARD PURCHASER'S REQUIREMENTS CERTIFICATION

As required by 49 CFR part 663 – Subpart B, _____ (the recipient)
certifies that the vehicles to be purchased, _____ (number and description of
vehicles) from

_____ (the manufacturer), are the
same product described in the recipient's solicitation specification and that the proposed manufacturer is
a responsible manufacturer with the capability to produce vehicles that meet the specifications set forth
in the solicitation.

Date: _____


Recipient Authorized Signature: _____

Print Name: _____

Title: _____

CERTIFICATE OF COMPLIANCE WITH BUY AMERICA ROLLING STOCK REQUIREMENTS

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j), and the applicable regulations in 49 CFR § 661.11 Date: 07.03.2023

Signature: 

Company: COACH & EQUIPMENT BUS SALES, INC.

Print Name: DAVID DELFORTE

Title: FLEET SALES REPRESENTATIVE

CERTIFICATE OF NON-COMPLIANCE WITH BUY AMERICA ROLLING STOCK REQUIREMENTS

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

Date: _____

Signature: _____

Company: _____

Print Name: _____

Title: _____

TRANSIT VEHICLE MANUFACTURER (TVM) DBE CERTIFICATION

Pursuant to the provisions of Section 105(f) of the Surface Transportation Assistance Act of 1982, each bidder for this contract must certify that it has complied with the requirements of 49 CFR Part 26.49, regarding the participation of Disadvantaged Business Enterprises (DBE) in FTA assisted procurements of transit vehicles. Absent this certification, properly completed and signed, a bid shall be deemed non-responsive.

Certification:

I hereby certify, for the bidder named below, that it has complied with the provisions of 49 CFR Part 26.49 and that I am duly authorized by said bidder to make this certification.

BIDDER/COMPANY

Name of Bidder/Company COACH & EQUIPMENT BUS SALES, INC.

Signature of Representative 

Type or Print Name DAVID DELFORTE

Title FLEET SALES REPRESENTATIVE Date 07 / 03 /2023

POST-DELIVERY BUY AMERICA CERTIFICATION

(Does not apply to projects fully funded by the Tribal Transportation Program (TTP).)

As required by 49 CFR part 663 – Subpart C, _____(the recipient) certifies that it is satisfied that the vehicles received, _____(number and description of vehicles) from _____(the manufacturer), meet the requirements of 49 U.S.C. 5323(j), as amended. The recipient, or its appointed auditor _____(the auditor – not the manufacturer or its agent), has reviewed documentation provided by the manufacturer, which lists (1) the actual component and subcomponent parts of the vehicles identified by the manufacturer, country of origin, and cost; and (2) the actual location of the final assembly point for the vehicles, including a description of the activities that took place at the final assembly point and the cost of final assembly.

Date: _____

Recipient Authorized Signature: _____

Print Name: _____

Title: _____

POST-DELIVERY BUY AMERICA CERTIFICATE OF NON-COMPLIANCE

As required by 49 CFR part 663 – Subpart C, _____(the recipient) certifies that there is a letter from FTA which grants a waiver to the vehicles received, _____(manufacturer, number and description of vehicles) from the Buy America requirements under 49 U.S.C. 5323(j), as amended.

Date: _____

Recipient Authorized Signature: _____

Print Name: _____

Title: _____

POST-DELIVERY FMVSS COMPLIANCE CERTIFICATION

As required by 49 CFR part 663 – Subpart D _____ (the recipient) certifies that it received, as the post-delivery stage, a copy of _____ the (manufacturer) self certification information stating that the vehicles, _____ (number and description of vehicles), comply with the relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in 49 CFR part 571.

Date: _____

Recipient Authorized Signature: _____

Print Name: _____

Title: _____

POST-DELIVERY CERTIFICATION OF FMVSS INAPPLICABILITY

As required by 49 CFR part 663 – Subpart D, _____ (the recipient) certifies that it received at the post-delivery stage, a statement from, _____ the manufacturer) indicating that the vehicles _____ (number and description of vehicles), are not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in 49 CFR part 571.

Date: _____

Recipient Authorized Signature: _____

Print Name: _____

Title: _____

POST-DELIVERY PURCHASER'S REQUIREMENTS CERTIFICATION

As required by 49 CFR part 663 – Subpart C, after visually inspecting and road testing the contract vehicles,
_____ (the recipient) certifies that the vehicles,
_____ (number and description of vehicles) from
_____ (the manufacturer), meet the contract specifications.

Date: _____

Recipient Authorized Signature: _____

Print Name: _____

Title: _____


07.03.2023