

Request for Proposal

**South Dakota Department of Transportation
Office of Air, Rail and Transit**

**Statewide Intercity Bus Study
RFP Number #8711**



PROPOSALS DUE: May 25, 2023 2:00PM Central Time

Primary Contact Information

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1 GENERAL INFORMATION

1.1 SPONSORING AGENCY

The Office of Air, Rail and Transit of the South Dakota Department of Transportation (SDDOT) is the issuing office for this document and all subsequent addenda relating to it. Unless the names of specific agencies are needed for clarity, the term “State” in this RFP refers to the SDDOT, other selected State of South Dakota agencies or South Dakota state government as a whole. However, SDDOT will be the coordinating agency for all matters related to any agreement resulting from this RFP.

SDDOT provides services without regard to race, color, gender, religion, national origin, age or disability, according to the provisions contained in South Dakota Codified Law (SDCL) 20-13, Title VI of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act of 1990 and Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 1994. Any person who has questions concerning this policy or who believes he or she has been discriminated against should contact the Department’s Civil Rights Office at (605)773-3540.

1.2 PURPOSE OF REQUEST FOR PROPOSAL (RFP)

SDDOT seeks vendors with the necessary experience, knowledge, and qualifications to conduct a comprehensive Statewide Intercity Bus (ICB) study identifying intercity bus needs and priorities in the state. The study typically spans a four-year analysis period.

The purpose of this RFP is to develop a plan to ensure that South Dakota’s ICB needs are being met. The plan will describe the current state of ICB service, identify service gaps and needs, propose an implementation strategy for improving service and evaluating progress, and document all findings and recommendations.

SDDOT is the direct recipient of Federal Transit Administration (FTA) funding and is responsible for administering it and state allocated funds. Intercity bus service funding from the Federal Transit Administration (FTA) Section 5311(f) program is part of the overall Section 5311 Formula Grants for Other than Urbanized Areas¹ funding. Each state must award 15 percent of its annual Section 5311 apportionment to develop and support ICB transportation. The requirement can be waived if the Governor certifies that the ICB bus service needs of the state are being met.

Intercity Bus Service is defined as “regularly scheduled bus service for the general public that is operated with limited stops over fixed routed connecting two or more urban areas not in close proximity, that has the capacity for transporting baggage carried by passengers, and that makes meaningful connections with scheduled intercity bus service to more distant points, if such services are available.”

This study will guide SDDOT Transit staff in their continuing effort to improve the state’s intercity bus program and will provide thorough service and policy analysis for interested stakeholders, including service providers and the public. The Scope of Work (Section 3) describes this study’s goals and objectives in detail.

1.3 BUDGET AND PERIOD OF PERFORMANCE

Maximum Budget: \$215,000 Duration: 8 months Anticipated Start Date: July 2023

¹ Section 5311 FTA Circular: https://www.FTA_Circular_9040_1G.pdf

1.4 PROPOSER ELIGIBILITY

SDDOT solicits proposals from colleges, universities, research institutes, foundations, consultants, federal, state, and local agencies, and others with demonstrated capability and experience in the subject area.

No proposal will be accepted from and no contract will be awarded to any person, firm or corporation that is in arrears upon any obligations to the State of South Dakota or that otherwise may be deemed irresponsible or unreliable by the State of South Dakota.

The offeror must be registered with the South Dakota Secretary of State to conduct business within the State of South Dakota prior to execution of a contract.

1.5 PROPOSAL PROCESS

1.5.1 Procurement Schedule

This procurement will follow the schedule defined in the following table.

Activity	End Date & Time	RFP Section
RFP Publication	04/25/2023	1.5.2
Deadline for submission of written inquiries	05/04/2023	1.5.3
SDDOT responses to vendor questions	05/18/2023	
Proposal submission to SDDOT	May 25, 2023 2:00PM Central Time	1.5.4
Evaluation of proposals to determine short list (if required)	06/01/2023	1.6
Demonstrations, presentation, discussions (if required)	06/25/2023	1.7– 1.8
Contract award	07/25/2023	1.8*

1.5.2 Request for Proposal

This document constitutes the complete RFP for this project. The RFP reference number #8711 must be referred to on all proposals, correspondence, and documentation relating to this RFP.

1.5.3 Vendor Inquiries

Vendors and their agents (including subcontractors, employees, consultants, or anyone acting on their behalf) may email inquiries concerning this RFP to obtain clarification of requirements. No inquiries will be accepted after the date and time indicated in the Procurement Schedule.

Questions must be sent to terri.geigle@state.sd.us by e-mail with the subject line “RFP Number #8711. Vendors and their agents may not otherwise contact SDDOT regarding this RFP during the solicitation and evaluation process. Inappropriate contact is grounds for suspension or exclusion from this procurement.

The SDDOT will respond to Vendors’ inquiries (if required) by email. All inquiries and the State’s response will be posted on the state’s procurement system and SDDOT website.

Vendors will be notified on the state’s procurement system and SDDOT website regarding any modifications to this RFP. Vendors may not rely on any other statements, either written or verbal, that alter any specification, term, or condition of this RFP.

1.5.4 Proposal Submission

All proposals must be received by the SDDOT by the date and time indicated in the Schedule of Activities. Proposals received after the deadline will be late and ineligible for consideration.

Proposals must be signed in ink by an officer of the Vendor legally authorized to bind the Vendor to the proposal. Proposals that are not properly signed may be rejected.

The Vendor must submit an original hard copy and flash drive of the proposal. Vendors may not send the electronic copy of the proposal via email.

The cost proposal must be in a separate sealed envelope labeled “Cost Proposal” and marked with the RFP number and title. The words “Sealed Proposal Enclosed” must be prominently displayed on the outside of the shipping container.

Proposals should be labeled in capital letters as follows:

REQUEST FOR PROPOSAL #: 8711
PROPOSAL DUE: May 25, 2023 2:00PM Central Time
BUYER: JACK DOKKEN
PROGRAM MANAGER
SD DEPARTMENT OF TRANSPORTATION
OFFICE OF AIR, RAIL AND TRANSIT
700 E. BROADWAY AVENUE
PIERRE, SD 57501

1.5.5 Proposal Format

The proposal must adhere to the format prescribed in Section 5 of this RFP.

1.5.6 Modification or Withdrawal of Proposals

Proposals may be modified or withdrawn by the Vendor prior to the submission deadline. No oral, telephonic, or facsimile responses or modifications to informal, formal bids, or RFPs will be considered.

1.6 PROPOSAL EVALUATION

Proposals will be evaluated by staff of the SDDOT Office of Air, Rail, and Transit and a technical panel knowledgeable of the subject.

1.6.1 SDDOT Conflict of Interest Policy

The State of South Dakota’s conflict of interest policy prohibits any employee, officer, or agent of the State of South Dakota or approved third party applicant from participating in the selection, award, or administration of a procurement supported by federal funds, if, to his or her knowledge, any of the following has a financial or other interest in suppliers considered for award:

- the employee, officer, or agent
- any member of his or her immediate family
- his or her domestic partner
- any organization that employs or is about to employ any of the above
- any organization that has a financial or other interest in the firm selected for the award.

1.6.2 Comparative Assessment

After determining that a proposal satisfies the requirements stated in the Request for Proposal, the evaluators will use subjective judgment to conduct a comparative assessment of the proposal by considering:

- commitment and ability to accomplish the work within prescribed time and budget
- experience and reliability of the vendor’s organization

- qualifications of the personnel proposed to perform the work, whether from the offeror's organization or from a subcontractor
- specialized expertise, capability, and technical competence to meet the project requirements as demonstrated by the proposed approach and methodology
- resources available to perform the work, including any specialized services, within the specified time limits for the project
- record of past performance, including price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration
- availability to the project locale
- familiarity with the project locale
- proposed project management techniques
- ability and proven history in handling special project constraints

It is the vendor's sole responsibility to submit information related to the evaluation categories. The State of South Dakota is under no obligation to solicit such information if it is not included with the proposal. The vendor's failure to submit such information may adversely affect the evaluation of the proposal.

1.7 SUPPLEMENTAL INFORMATION

The State may require or invite additional information after proposals are submitted.

1.7.1 Presentation/Demonstrations

The State may require a presentation or demonstration by a Vendor to clarify a proposal. However, the State may award a contract based on the initial proposals received without a presentation or demonstration. If presentations or demonstrations are required, they will be made at the Vendor's expense.

1.7.2 Discussions

The State may invite the vendor to have engage in discussions after the proposals have been submitted. Discussions will be made at the vendor's expense.

1.7.3 Financial Statement

The State may require the vendor to submit a copy of its most recent audited financial statements.

1.8 NEGOTIATIONS AND AWARD

This procurement is a Request for Proposal/Competitive Negotiation process. Each proposal will be evaluated, and each Vendor will be available for negotiation discussions and meetings at SDDOT's request. SDDOT reserves the right to negotiate any component of any proposal submitted. From the time the proposals are submitted until formal award of a contract, all proposals and negotiation discussions will be considered confidential.

SDDOT and the highest ranked offeror will mutually discuss and refine the scope of work and negotiate terms, including compensation and performance schedule. If the agency and the highest ranked offeror are unable to negotiate a contract at a fair and reasonable compensation level, SDDOT will, either orally or in writing, terminate negotiations with the offeror. The agency may then negotiate with the next highest ranked offeror. The negotiation process may continue through successive offerors, according to proposal ranking, until an agreement is reached, or the contracting process terminates.

1.8.1 Best and Final Offers

The State reserves the right to request best and final offers. The State will initiate the request for best and final offers; they may not be initiated by a vendor. Best and final offers may not be necessary if the State is satisfied with the proposals received.

If best and final offers are sought, the State will select the vendors to be notified and ask them to submit their best and final offers. Requests will identify specific areas to be covered and the response deadline. Conditions, terms, or price of the proposal may be altered, provided the changes are within the scope of this Request for Proposal and the instructions contained in the request for best and final offer. If a Vendor does not submit a best and final offer or a notice of withdrawal, the Vendor's previous proposal will be considered its best and final proposal. After best and final offers are received, final evaluations will be conducted.

1.8.2 Rejection, Waiver, and Award

The State reserves the right to reject any or all proposals, waive technicalities, and make award(s) as deemed to be in the best interest of the State of South Dakota.

1.9 PROTEST PROCEDURES

Section 200.318(k) of Title 2, Code of Federal Regulations, and the common grant rules assign responsibility to the grant Recipient (SDDOT), in accordance with good administrative practice and sound business judgment, for resolving all contractual and administrative issues arising out of their third-party procurements, including, but not limited to, source evaluation, protests, disputes, and claims. FTA will not substitute its judgment for that of the Recipient unless the matter is primarily a federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

The Recipient must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward.

In conformance with FTA Circular 4220.1F, the Recipient will in all instances disclose information regarding any protests to FTA and expeditiously notifying FTA of any protests when applicable. FTA C 4220.1F Ch. VII, (1)(a)(2)(a). All protest decisions must be in writing. FTA C 4220.1F Ch. VII, (1)(a)(1).

Any "Interested Party," as defined in FTA Circular 4220.F, who is aggrieved in connection with the solicitation or award of a contract associated with the FTA grant may protest to the Secretary of the South Dakota Department of Transportation at 700 East Broadway Avenue, Pierre, South Dakota 57501, or Joel.Jundt@state.sd.us. The protest must be submitted in writing within ten (10) business days after such aggrieved interested party knows, or should have known, of the facts giving rise thereto. Protests received after the ten-business-day period will not be considered. The written protest will include, as a minimum, the following:

- the name and address of the protestor
- appropriate identification of the procurement by bid, RFP, or award number
- a statement of the reasons for the protest
- any available exhibits, evidence or documents substantiating the protest.

SDDOT will respond, in detail, to each substantive issue raised in the protest by the protestor. The Secretary of the SDDOT has the authority to make a final determination on the protest. The Secretary's determination will be final. A request for reconsideration of the decision regarding the protest may be allowed by the Secretary of the SDDOT if information becomes available that was not previously known, or there has been an error of law or regulation. FTA will only entertain a protest that alleges SDDOT failed

to follow SDDOT'S protest procedures, and the protest must be filed in accordance with FTA'S Third-Party Contracting Guidance Circular (FTA C 4220.1F).

1.10 REQUIRED CERTIFICATIONS

By signing and submitting its proposal, the proposer certifies its compliance with the following administrative requirements of the State of South Dakota.

1.10.1 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

By signing and submitting its proposal, the Vendor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any Federal department or agency from transactions involving the use of Federal funds. If the Vendor is unable to certify any of the statements in this certification, the Vendor will attach an explanation to its proposal.

1.10.2 Non-Discrimination Statement

The State requires all contractors, vendors, and suppliers doing business with the State to provide a statement of non-discrimination. By signing and submitting its proposal, the Vendor certifies that it does not discriminate in its employment practices with regard to race, color, creed, religion, age, sex, ancestry, national origin, or disability.

1.10.3 Certification Relating to Prohibited Entity

By submitting a response to this solicitation or agreeing to contract with the State, the bidder or offeror certifies and agrees that the following information is correct:

The bidder or offeror, in preparing its response or offer or in considering proposals submitted from qualified, potential vendors, suppliers, and subcontractors, or in the solicitation, selection, or commercial treatment of any vendor, supplier, or subcontractor, is not an entity, regardless of its principal place of business, that is ultimately owned or controlled, directly or indirectly, by a foreign national, a foreign parent entity, or foreign government from China, Iran, North Korea, Russia, Cuba, or Venezuela, as defined by South Dakota Executive Order 2023-02. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to reject the bid or response submitted by the bidder or offeror on this project and terminate any contract awarded based on the bid or response. The successful bidder or offeror further agrees to provide immediate written notice to the contracting executive branch agency if during the term of the contract it no longer complies with this certification and agrees such noncompliance may be grounds for contract termination.

1.10.4 Restriction of Boycott of Israel

By submitting a response to this solicitation or agreeing to contract with the State, contractors, vendors, suppliers, or subcontractors with five (5) or more employees who enter into a contract with the State of South Dakota that involves the expenditure of one hundred thousand dollars (\$100,000) or more, agree that the following information is correct:

The bidder or vendor, in preparing its response or offer or in considering proposals submitted from qualified, potential vendors, suppliers, and subcontractors, or in the solicitation, selection, or commercial treatment of any vendor, supplier, or subcontractor, has not reused to transact business activities, has not terminated business activities, and has not taken other similar actions intended to limit its commercial relations, related to the subject matter of the bid or offer, with a person or entity on the basis of Israeli national origin, or residence or incorporation in Israel or its territories, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is

understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to reject the bid or response submitted by the bidder or vendor on this project and terminate any contract awarded based on the bid or response. The successful bidder or vendor further agrees to provide immediate written notice to the contracting executive branch agency if during the term of the contract it no longer complies with this certification and agrees such noncompliance may be grounds for contract termination.

2 STANDARD CONTRACT TERMS AND CONDITIONS

Any contract or agreement resulting from this RFP will include the State's standard terms and conditions listed below, along with any additional terms and conditions negotiated by the parties.

- 2.1 The Contractor will perform those services described in the Scope of Work, attached hereto as Section 3 of the RFP and by this reference incorporated herein.
- 2.2 The Contractor's services under this Agreement will start on date determined by both parties and will be automatically renewed annually, unless terminated sooner pursuant to the terms hereof.
- 2.3 The Contractor will not use State equipment, supplies or facilities. The Contractor will provide the State with its Employer Identification Number, Federal Tax Identification Number or Social Security Number upon execution of this Agreement.
- 2.4 The State will make payment for services upon satisfactory completion of the services. The TOTAL CONTRACT AMOUNT will be determined after contract negotiation. The State will not pay Contractor's expenses as a separate item. Payment will be made pursuant to itemized invoices submitted with a signed state voucher. Payment will be made consistent with SDCL chapter 5-26.
- 2.5 The Contractor agrees to indemnify and hold the State of South Dakota, its officers, agents, and employees, harmless from and against any and all actions, suits, damages, liability, or other proceedings that may arise as the result of performing services hereunder. This section does not require the Contractor to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents, or employees.
- 2.6 The Contractor, at all times during the term of this Agreement, will obtain and maintain in force insurance coverage of the types and with the limits as follows:
 - A. Commercial General Liability Insurance:

The Contractor will maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1 million for each occurrence. If such insurance contains a general aggregate limit, it will apply separately to this Agreement or be no less than two times the occurrence limit.
 - B. Professional Liability Insurance or Miscellaneous Professional Liability Insurance:

The Contractor agrees to procure and maintain professional liability insurance or miscellaneous professional liability insurance with a limit not less than \$1 million.
 - C. Business Automobile Liability Insurance:

The Contractor will maintain business automobile liability insurance or equivalent form with a limit of not less than \$1 million for each accident. Such insurance will include coverage for owned, hired, and non-owned vehicles.
 - D. Workers' Compensation Insurance:

The Contractor will procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

Before beginning work under this Agreement, Contractor will furnish the State with properly executed Certificates of Insurance which will clearly evidence all insurance required in this Agreement. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Contractor agrees to provide immediate notice to the State and

provide a new certificate of insurance showing continuous coverage in the amounts required. Contractor will furnish copies of insurance policies if requested by the State.

- 2.7 While performing services hereunder, the Contractor is an independent contractor and not an officer, agent, or employee of the State of South Dakota.
- 2.8 Contractor agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to the person or property of third parties, or which may otherwise subject Contractor or the State to liability. Contractor will report any such event to the State immediately upon discovery.

Contractor's obligation under this section will only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Contractor's obligation to report will not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section will not excuse or satisfy any obligation of Contractor to report any event to law enforcement or other entities under the requirements of any applicable law.

- 2.9 This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Contractor breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time with or without notice. If termination for such a default is affected by the State, any payments due to Contractor at the time of termination may be adjusted to cover any additional costs to the State because of Contractor's default. Upon termination the State may take over the work and may award another party an agreement to complete the work under this Agreement. If after the State terminates for a default by Contractor it is determined that Contractor was not at fault, then the Contractor will be paid for eligible services rendered and expenses incurred up to the date of termination.
- 2.10 This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.
- 2.11 This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing will be expressly identified as a part hereof and be signed by an authorized representative of each of the parties hereto.
- 2.12 This Agreement will be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement will be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.
- 2.13 The Contractor will comply with all federal, state, and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.
- 2.14 The Contractor may not use subcontractors to perform the services described herein without the express prior written consent of the State. The Contractor will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Contractor will cause its subcontractors, agents, and employees to comply, with applicable federal, state, and local laws, regulations, ordinances,

guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

- 2.15 Contractor hereby acknowledges and agrees that all reports, plans, specifications, technical data, miscellaneous drawings, software system programs and documentation, procedures, or files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, and all information contained therein provided to the State by the Contractor in connection with its performance of services under this Agreement will belong to and is the property of the State and will not be used in any way by the Contractor without the written consent of the State. Papers, reports, forms, software programs, source code(s) and other material which are a part of the work under this Agreement will not be copyrighted without written approval of the State.
- 2.16 The Contractor certifies that neither Contractor nor its principals are presently debarred, suspended, proposed for debarment or suspension, or declared ineligible from participating in transactions by the federal government or any state or local government department or agency. Contractor further agrees that it will immediately notify the State if during the term of this Agreement Contractor or its principals become subject to debarment, suspension, or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.
- 2.17 Any notice or other communication required under this Agreement will be in writing and sent to the address set forth above. Notices will be given by and to South Dakota Department of Transportation Office of Air, Rail, and Transit on behalf of the State, and by Authorized Designee, on behalf of the Contractor, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties will be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination will be sent by registered or certified mail, or, if personally delivered, when received by such party.
- 2.18 In the event that any court of competent jurisdiction will hold any provision of this Agreement unenforceable or invalid, such holding will not invalidate or render unenforceable any other provision hereof.
- 2.19 All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

3 SCOPE OF WORK

The scope of work consists of a series of thirteen tasks serving four main objectives.

3.1 DESCRIBE CURRENT STATE OF INTERCITY BUS SERVICES

1. Meet with the project's technical oversight panel to review project scope and refine the work plan at the beginning of the project.
2. Conduct an inventory of intercity bus routes in South Dakota, documenting routes, providers, feeder services, schedules and frequency, communities served, stations and stops, connections within the state and to nationwide service, fares, passengers served, and other pertinent information.
3. Identify all intercity bus providers operating in South Dakota and describe their routes, services, passengers served, fleet size, facilities, number of employees, operating costs, revenues, grant funding, and fuel purchased in South Dakota.
4. Assess the perceptions of passengers, intercity bus service providers, human service organizations, local government agencies, and other stakeholders regarding the availability, quality, price, financial viability, and users' awareness of intercity bus services.
5. Review laws and policies that support, inhibit, or otherwise affect intercity bus service in South Dakota.
6. Submit a technical memorandum summarizing the results of Tasks 1-5 in narrative, tabular, and mapped format.

3.2 ASSESS GAPS AND NEEDS

7. Identify and evaluate the severity of current and emerging needs in intercity bus services, service providers, fleets, facilities, workforce, and funding based the current state of intercity bus services, demographic analysis of future passenger demand and needs, and industry characteristics and trends.
8. Submit a technical memorandum summarizing the results of Task 7 in narrative, tabular, and mapped format.

3.3 DEVELOP IMPLEMENTATION STRATEGY

9. In collaboration with staff of the SDDOT Office of Air, Rail, and Transit, develop a vision and 4-year goals for improving intercity bus service in South Dakota.
10. Develop a phased implementation strategy, consistent with FTA Intercity Bus Services requirements, that defines a sustainable level of intercity bus service in South Dakota; identifies and quantifies needed capital and operational investments; proposes viable business and financing models; and recommends appropriate public agency policies, strategies, and practices over the next four years.
11. Recommend a detailed evaluation methodology, consistent with methods used to assess current gaps and needs, by which SDDOT can regularly reassess gaps and needs in intercity bus services and gauge progress of the implementation strategy.
12. Submit a technical memorandum summarizing the results of Tasks 9-11 in narrative, tabular, and mapped format.

3.4 DEVELOP INTERCITY BUS PLAN

13. Develop an Intercity Bus Plan—for use by SDDOT, FTA, intercity bus services users and providers, and other stakeholders—that clearly presents in a professional publication format the study findings, recommendations, implementation strategy, and evaluation methodology.

4 PROJECT DELIVERABLES

4.1 DELIVERABLES

The Contractor will provide the following deliverables in electronic format, using Microsoft® Word (.docx), PowerPoint (.pptx), or Excel (.xlsx), and Adobe® Portable Document Format (.pdf) for text products and ESRI-compatible file formats for discrete map products.

Deliverable	Task	Description
1	1	Revised work plan
2	6	Technical memorandum summarizing the results of Tasks 1-5 (Current State of Intercity Bus Services) in narrative, tabular, and mapped format
3	8	Technical memorandum summarizing the results of Task 7 (Gaps and Needs) in narrative, tabular, and mapped format
4	12	Technical memorandum summarizing the results of Tasks 9-11 (Implementation Strategy) in narrative, tabular, and mapped format
5	13	Intercity Bus Plan—for use by SDDOT, FTA, intercity bus services users and providers, and other stakeholders—that clearly presents in a professional publication format the study findings, recommendations, implementation strategy, and evaluation methodology
6	1 - 13	Presentation slide decks and meeting notes for meetings with the project's technical panel

4.2 PAYMENT FOR DELIVERABLES

Payment will be made upon SDDOT's acceptance of key project deliverables. For this study, percentages of total project cost will be paid upon satisfactory completion of the following tasks:

Task	Percent of Total Cost
6	25%
8	20%
12	25%
13	30%
Total	100%

5 PROPOSAL FORMAT

The proposal will consist of two parts—the Technical Proposal and the separate Cost Proposal.

5.1 TECHNICAL PROPOSAL

The Technical Proposal should be prepared simply to concisely demonstrate the Vendor’s ability to satisfy the requirements of the RFP. It must be arranged in order of the sections listed below. Elaborate brochures, sales literature, and other material unnecessary to an effective proposal are not desired.

Use of the South Dakota State Seal in any of the vendor’s documents is illegal per South Dakota Codified Law § 1-6-3.1. No person may reproduce, duplicate, or otherwise use the official seal of the State of South Dakota or its facsimile for any for-profit commercial purpose without specific authorization from the Secretary of State. A violation of this section is a Class 1 misdemeanor.

5.1.1 Title Page

The title page should identify:

- project title (Statewide Intercity Bus Study)
- RFP Number (8711)
- submission date
- name and title of submitter
- authorized signature
- company logo (if applicable)
- company name
- address
- city, state, and zip code
- telephone number
- e-mail address

By signing the title page, the proposer certifies compliance with the administrative requirements of the State of South Dakota (see section 1.10).

5.1.2 Table of Contents

The Technical Proposal must include a table of contents referencing page numbers of sections and subsections. All pages must be numbered.

5.1.3 Executive Summary

The one- or two-page Executive Summary should briefly summarize the Vendor’s proposal. It must identify any requirements that cannot be met by the Vendor. A reader should be able to ascertain the essence of the proposal by reading the executive summary.

Proprietary information requests must be stated in the Executive Summary. The proposal of the successful Vendor becomes public information, but proprietary information such as client lists and nonpublic financial statements can be protected under limited circumstances. The executive summary must contain specific justification explaining why the information is to be protected.

Vendors must clearly identify in the executive summary and the body of the proposal specific proprietary information they request to be protected. An entire proposal may not be marked as proprietary.

5.1.4 Understanding of the Project

To demonstrate comprehension of the project, the Vendor should describe their understanding of the purpose and scope of the project, critical success factors, potential problems, and concepts for the deliverables. The Vendor should not simply repeat the wording of the RFP, but rather communicate their own insights regarding the nature and significance of the problem. This section should not exceed two pages.

5.1.5 Objectives

The Objectives section should cite, in order, each of the study's objectives listed in Section 3 of the Request for Proposal and describe how each will be accomplished. Deviations from the objectives listed in the RFP must be explained and justified.

5.1.6 Work Plan

The Work Plan should cite, in order, each task listed in Section 3 of the Request for Proposal and describe in appropriate detail how each will be performed and contribute to accomplishing the study's objectives. Deviations from the tasks listed in the RFP must be explained and justified.

The work plan should describe the work and explain how the Vendor will accomplish it. It should describe the technical basis for the work, methodologies to be employed, and technical challenges and means to overcome them. The plan should be complete, providing the greatest level of detail the Vendor's understanding of the problem permits.

5.1.7 Deliverables

The Deliverables section should describe the content and format each product the Vendor will create during the course of the work. At a minimum, the section must include all the major deliverables required in Section 4.1. It may include other documents such as meeting notes, progress reports, and working papers.

5.1.8 Schedule

The Schedule section should include when each task of the project will be performed. Planned beginning and ending dates, in terms of elapsed time from project inception, should be listed. The information should be presented in a form that can be converted to actual dates after the project is started. The schedule should allow at least twenty (20) working days for SDDOT to review technical memoranda and draft reports.

5.1.9 Staffing Plan

The Staffing Plan should include narrative that accurately identifies the individuals who will be assigned to the project, explains their roles and responsibilities, both technical and administrative, and describes how their academic and professional qualifications and experience relate to the project. Brief summaries of past accomplishments in the same or closely related problem areas should be cited, but lengthy *curricula vitea* should be deferred to an appendix to the proposal if they are included at all.

The plan should include a table that lists the number of hours each person will commit to each task and the total number of hours committed to each task and assigned to each person. Names of key professionals should be specified, while support personnel may be identified by classification.

Team members' current commitments to other work should be described in sufficient detail to permit assessment of their availability to meet the proposal's commitments. If the use of subcontractors is anticipated, the table should group and subtotal the hours from each subcontractor separately.

The section should include a statement that the level of effort proposed for principal members of the research team will not be changed without the written consent of SDDOT.

5.1.10 SDDOT Involvement

This section should describe assistance required from the South Dakota Department of Transportation and partner agencies, such as access to transportation facilities, access to records or data, or interviews. The required level of effort should be quantified as fully as possible.

5.1.11 Quality Management Plan

The Quality Management Plan should describe how the research activity will be managed to ensure the quality of work and deliverables. It should identify management responsibilities of team members and the processes that will be used to prevent, detect, and resolve quality problems.

In addition, the Quality Management Plan should describe how the quality of technical writing will be ensured and identify specific staff or external resources that will be employed to ensure clarity, accuracy, and proper grammar of all deliverables.

5.1.12 Corporate Qualifications

This section should describe the qualifications of the organizations proposed to perform the work. The section should identify corporate resources, including any specialized services, available to perform the work within the project timeline. Other factors, such as availability to and familiarity with the project locale, corporate knowledge of the subject and experience in similar projects, organizational capacity and stability, and experience in government-sponsored work should be explained.

5.1.13 Relevant Project Experience

This section should describe up to four recent projects related to the subject of this RFP that the Vendor completed.

For each project, the scope of work, project scale, starting and completion dates, and particular challenges and constraints should be described.

The Vendor's technical and managerial roles and responsibilities for the project should be explained. The outcome of the work, in terms of successfully accomplishing the work on time and within budget, should be described. Litigation or adverse contract action regarding contract performance should be reported.

The project's principal sponsor should be listed, including company name and contact information, as well as the project manager and contact information. Contact information should include address, phone, and e-mail.

5.1.14 Federal Certifications and Clauses

The chosen vendor and any other contractors involved with this project must each comply with all Federal Certifications and Clauses listed in Section 6 of this RFP. If any Federal Certification or Clause cannot be met, provide explanation in this section of the proposal. Two signed statements must be included:

- Certification and Restrictions on Lobbying (page 34 of this RFP)
- Government-Wide Debarment and Suspension (Nonprocurement) (pages 35 - 36 of this RFP)

5.2 COST PROPOSAL

The Cost Proposal must be submitted in a separate sealed envelope labeled "Cost Proposal". The Cost Proposal will be evaluated independently from the Technical Proposal.

The Cost Proposal must include a statement confirming the Vendor's willingness and ability to perform the work described in this RFP for the price being offered. All costs related to the provision of the required services must be included.

5.2.1 Cost Summary

The Cost Proposal must present a summary table listing the costs, by cost category, for the prime contractor and all proposed subcontractors. The total proposed cost must be clearly indicated.

Indirect costs must be substantiated if the proposal is selected. Prior to contract execution, the successful proposer will be required to submit documentation substantiating the basis and rate used to calculate indirect costs by the prime contractor and each of the subcontractors.

Cost Category	Contractor Name	Subcontractor Name	Subcontractor Name	Total Proposed Cost
Wages				
Benefits				
Travel				
Other Costs				
Indirect Costs				
Total				

5.2.2 Personal Services

Staffing costs must be listed in separate tables for the prime contractor and each subcontractor. The names of principal investigators and other key professionals should be specified, while support personnel may be identified by classification.

Name	Project Role	Hours	Hourly Rate	Wages	Benefits & Indirect Costs	Total
			Total			

5.2.3 Travel

Tables must identify proposed travel costs. If the proposal involves subcontractors, include separate tables for the prime contractor and each subcontractor.

Name	Destination & Trip Purpose	Method of Travel	Cost per Trip	Trips	Cost
				Total	

Name	Lodging			Per Diem			Total Cost
	Rate	Nights	Cost	Rate	Days	Cost	
Total							

The State of South Dakota requires vendors to accept state lodging and per diem rates, which are found at <https://bhr.sd.gov/files/travelrates.pdf>.

5.2.4 Other Costs

Other costs must list and described in separate tables for the prime contractor and each subcontractor.

Description	Project Purpose	Cost
		Total

6 FEDERAL CERTIFICATION AND CLAUSES

6.1 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 contractors access to the sites of performance under this contract in accordance with 2 CFR § 200.337.

6.2 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 nonappropriated 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 I 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.

6.3 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.

1. **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.
2. **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.

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.

6.4 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.
- (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."

6.5 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).

6.6 DEBARMENT AND SUSPENSION

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and 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.

6.7 DISADVANTAGED BUSINESS ENTERPRISE (DBE)

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).

6.8 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).

6.9 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.

6.10 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.

6.11 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.

6.12 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 subagreement.

6.13 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.

6.14 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.

6.15 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.

6.16 PATENT RIGHTS AND RIGHTS IN DATA

Intellectual Property Rights This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the Agency intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 C.F.R. part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions:

Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution.

For purposes of this Contract, the term “subject data” means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of “subject data” include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Federal Government Purposes,” any subject data or copyright described below. For “Federal Government Purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.

a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and

b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.

2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA’s license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed

for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

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

5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.

6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

6.17 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.

6.18 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 procured 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.

6.19 PROMPT PAYMENT

(See also § 200.471)

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.

6.20 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.

6.21 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.

6.22 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).

6.23 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.

6.24 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 effected 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.

6.25 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 subagreements thereunder.

6.26 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.

CERTIFICATION AND RESTRICTIONS ON LOBBYING

I, _____ hereby certify
(Name and title of official)

on behalf of _____ 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.

Contractor: _____

Signature of Authorized Official: _____ Date ____/____/____

Name and Title of Contractor's Authorized Official: _____

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, “Nonprocurement 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 (Nonprocurement),” 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: _____

Signature of Authorized Official: _____ Date ____/____/____

Name and Title of Contractor's Authorized Official: _____