

INVITATION FOR BIDS

Issue Date: February 1, 2011  
Title: Tire Leasing IFB#12-02  
Issuing and Using Agency: Bloomington-Normal Public Transit System  
(BNPTS)  
Attn: Isaac Thorne  
Procurement Director  
351 Wylie Dr.  
Normal, Illinois 61761

Bids For Furnishing The Goods Described Herein Will Be Received Until: 2:00 p.m. local time on March 7, 2011.

All Inquiries For Information Should Be Directed To: ISSUING AGENCY, address listed above at Phone: (309) 829-1130.

IF BIDS ARE MAILED, SEND DIRECTLY TO: BNPTS, PURCHASING DEPARTMENT, 351 WYLIE DR., NORMAL, IL 61761. IF BIDS ARE HAND DELIVERED OR SENT BY COURIER, DELIVER **to address above**. The IFB title, date and time of Bid submission deadline, as reflected above, must clearly appear on the face of the returned Bid package.

In Compliance With This Invitations for Bids And To All Conditions Imposed Therein and Hereby Incorporated By Reference, The Undersigned Offers And Agrees To Furnish The Goods/Services Described Herein In Accordance With The Attached Signed Bid.

Name and Address of Firm:

\_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_ By: \_\_\_\_\_  
*(Signature in Ink)*

\_\_\_\_\_ Zip Code: \_\_\_\_\_ Name: \_\_\_\_\_  
*(Please Print)*

Telephone: ( ) \_\_\_\_\_ Title: \_\_\_\_\_

Fax Number: ( ) \_\_\_\_\_ FEI/FIN Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

IDOT-CERTIFIED DISADVANTAGED BUSINESS ENTERPRISE (DBE): ( ) YES ( ) NO

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## DEFINITION OF WORDS AND TERMS

Words and terms shall be given their ordinary and usual meanings. Where used in the Contract documents, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

Acceptance or Accepted: Written documentation of BNPTS's determination that the Contractor's Work has been completed in accordance with the Contract.

Addendum/Addenda: Written additions, deletions, clarification, interpretations, modifications or corrections to the solicitation documents issued by BNPTS during the Solicitation period and prior to contract award.

Administrative Change: Documentation provided by BNPTS to Contractor, which reflects internal BNPTS procedures not affecting the Contract terms or Specifications.

Bidder/Bidder or Offeror: Individual, association, partnership, firm, company, corporation or a combination thereof, including joint ventures, submitting a Bid/Bid to perform the Work.

Buyer: Individual designated by BNPTS to conduct the Contract solicitation process, draft and negotiate contracts, resolve contractual issues and support the Treasurer during Contract performance.

Change Documentation: A written document agreed upon by Treasurer, which if it creates a material change to the Contract term or Scope of Work shall be executed as a Contract Amendment.

Change Order: Written order issued by BNPTS, with or without notice to sureties, making changes in the Work within the Scope of this Contract.

Contract Amendment: A written change to the Contract modifying, deleting or adding to the terms or scope of work, signed by both parties, with or without notice to the sureties.

Contract or Contract Documents: The writings and drawings embodying the legally binding obligations between BNPTS and the Contractor for completion of the Work.

Contract Administrator: The individual designated by BNPTS to administer the Contract and be the Contractor's primary point of contact. The Contract Administrator will approve orders, receipts, invoices and document the Contractor's performance, but has no contracting authority. This Person may be the Treasurer.

Contract Period: The period of time during which the Contractor shall perform the Services or Work under the Contract.

Contract Price: Amount payable to the Contractor under the terms and conditions of the Contract for the satisfactory performance of the Services or Work under the Contract.

Contractor: The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with BNPTS for the performance of Services or Work under the Contract.

Cost Analysis: The review, evaluation and verification of cost data and the evaluation of the specific elements of costs and profit. Cost analysis is the application of judgment utilizing criteria to project from the data to the estimated costs in order to form an opinion on the degree to which proposed costs represent what the Contract should cost, assuming reasonable economy and efficiency.

Day: Calendar Day.

Documentation: Technical publications relating to the use of the Work to be provided by Contractor under this Contract, such as reference, user, installation, systems administration and technical guides, delivered by the Contractor to BNPTS.

DOT: Department of Transportation.

Final Acceptance: The point when BNPTS acknowledges that the Contractor has performed the entire Work in accordance with the Contract.

FTA: Federal Transit Administration.

BNPTS: Bloomington-Normal Public Transit System.

Person: Includes individuals, associations, firms, companies, corporations, partnerships, and joint ventures.

Price Analysis: The process of examining and evaluating a price without evaluating its separate cost elements and proposed profit.

Project Manager: The individual designated by BNPTS to manage the project on a daily basis and who may represent BNPTS for Contract administration. This Contract may be part of a larger BNPTS project.

Provide: Furnish without additional charge.

Reference Documents: Reports, specifications, and/or drawings that are available to Bidders for information and reference in preparing Bids but not as part of this Contract.

IFB or Solicitation: Invitation for Bids. Also known as the solicitation document.

Scope of Work or Statement of Work (SOW): A section of the Invitation for Bids consisting of written descriptions of Services to be performed, or the goods to be provided, or the technical requirements to be fulfilled under this Contract.

Services: The furnishing of labor, time or effort by a Contractor, but not involving the delivery of any specific manufactured goods.

Shall or Will: Whenever used to stipulate anything, Shall or Will means mandatory by either the Contractor or BNPTS, as applicable, and means that the Contractor or BNPTS, as applicable, has thereby entered into a covenant with the other party to do or perform the same.

Specifications or Technical Specifications: A Section of the Invitation for Bids consisting of written descriptions of Services to be performed, or the goods to be provided, or the technical requirements to be fulfilled under this Contract.

Subcontractor: The individual, association, partnership, firm, company, corporation, or joint venture entering into an agreement with the Contractor to perform any portion of the Work covered by this Contract.

Submittals: Information that is submitted to the Contract Administrator in accordance with the Scope of Work/Specifications.

DBE: Disadvantage Business Enterprise.

Work: Everything to be provided and done for the fulfillment of the Contract and shall include all goods and services specified under this Contract, including Contract Amendments and settlements.

## SECTION 1 - INSTRUCTIONS TO BIDDERS

### 1-1 Introduction

BNPTS is the primary public transportation provider for the Bloomington-Normal region. Currently, BNPTS operates eleven fixed routes that provide transit services within the City of limits of Bloomington and Normal. For those riders who cannot use the fixed route buses, a special curb-to-curb service operates for eligible riders. The After Hours program provides limited public transportation available only after fixed routes have ended their operating day. Other services also provided with cooperation with Illinois State University are the Redbird Express- a campus shuttle and NiteRide-evening bus service.

### 1-2 Purpose

The purpose of this IFB is for the leasing of tires. BNPTS follows a procurement process that ensures free and open competition and requires that prices be verified as fair and reasonable.

#### Prices

The prices of such tire leasing shall be the prices quoted on the Cost Bid form. These prices shall remain firm/fixed for 120 days after the Bids are submitted.

### 1-3 Bid Submission

The Bidder will submit one (1) Bid in a sealed envelope with the originals of all required certifications and affidavits along with four (4) hard copies of the Bid and all required certificates and affidavits. Oversize pages used for drawings or similar purposes are not prohibited. Each Bid, complete with affidavits and certifications, will be bound together with the required IFB Cover Page and Vendor Checklist (Attachment A) on top. The package containing the Bid must be clearly marked with the words "Tire Leasing" and the time and date Bids are due.

If no Bid is to be submitted, do not return the solicitation unless otherwise specified. A letter should be sent to the BNPTS's Procurement Director advising whether future solicitations for the type of supplies or services covered by this solicitation are desired. Failure of the recipient to notify BNPTS that future solicitations are desired may result in removal of the name of such recipient from the mailing list for the type of supplies or services covered by solicitation.

### 1-4 Postponement or Cancellation of Invitation for Bids

BNPTS reserves the right to cancel this IFB at any time or change the date and time for submitting Bids by announcing same prior to the date and time established for Bid submittal.

### 1-5 Bid Signature

Each Bid shall include the IFB Cover Page signed by a person authorized to bind the proposing firm to the terms of the Contract. Bids signed by an agent are to be

accompanied by evidence of that person's authority, unless such evidence has been previously furnished to BNPTS.

**1-6 Addenda**

Receipt and review of Addenda by each Bidder must be acknowledged on the Addendum Page (Attachment C). All addenda must be signed and returned with each Bid.

**1-7 Procurement Schedule**

The projected schedule for this procurement is:

Invitation for Bids available:	February 1, 2012
Deadline for clarification/changes to the IFB and requests for approved equals:	February 15, 2012
Bids due by 2:00 p.m.:	March 7, 2012
Evaluation of Bids:	TBD
Trustees to Award @ Board Meeting	TBD
Contract signing/Notice to Proceed:	TBD

**1-8 Inquiries**

The Bidder is required to show on all correspondence with BNPTS the following: "Tire Leasing." Any communication with BNPTS should be written and directed to: Isaac Thorne, Procurement Director, BNPTS, 351 Wylie Dr., Normal, IL 61761. Written communication may also be forwarded via facsimile to (309) 828-1952 or email to ithorne@bnpts.com. Correspondence will not be accepted by any other party.

**1-9 Interpretation of IFB and Contract Documents**

No oral interpretations as to the meaning of the IFB will be made to any Bidder. Any explanation desired by a Bidder regarding the meaning or interpretation of the IFB, scope of work, etc., must be requested in writing and with sufficient time allowed (a minimum of twenty (20) calendar days before date set to receive Bids) for a reply to reach Bidders before the submission of their Bids. Any interpretation or change made will be in the form of an addendum to the IFB, scope of work, etc., as appropriate, and will be furnished as promptly as is practicable to all parties to whom the IFB has been issued, but at least seven (7) calendar days prior to the Bid due date. All Addenda will become part of the IFB and any subsequently awarded Contract. Oral explanations, statements, or instructions given by BNPTS before the award of the Contract will not be binding upon BNPTS.

**1-10 Approved Equal**

In all cases, services and materials must be furnished as specified. Where brand names or specific items are used in the specifications, consider the term "or approved equal" to follow.

Any unapproved deviations, exceptions, substitutions, alternates or conditional

qualifications contained in a Bid may be cause for its rejection.

If potential Bidders believe that their product is equal to the product specified, they must submit a written request to BNPTS on the provided form (Attachment D) and this request will be approved or rejected by BNPTS at least seven (7) calendar days prior to the due date of Bids. Requests for approved equals and clarification of specifications must be received by BNPTS in writing a minimum of twenty (20) days before the Bid opening to allow analysis of the request.

Any request for an approved equal must be fully supported with catalog information, specifications and illustrations, or other pertinent information, as evidence that the substitute offered is equal to or better than the specification. Where an approved equal is requested, the Bidder must demonstrate the equality of this product to BNPTS to determine whether the Bidder's product is or is not equal to that specified.

#### **1-11 Examination of IFB and Contract Documents**

Bidders are expected to examine the scope of services required, specifications, schedules, and all instructions. Failure to do so will be at the Bidder's risk. It is the intent of these specifications to provide services of first quality, and the workmanship must be the best obtainable in the various trades. The services, which the vendor proposes to furnish, must be high quality in all respects. No advantage will be taken by Contractor or vendor in the omission of any part or detail, which goes to make the services complete. All manner of workmanship and material used in the production of the services and not herein contained or specified shall be of the industry standard and shall conform to the best practices known in the industry.

Contractor will assume responsibility for all equipment used in the Bid item, whether the same is manufactured by Contractor or purchased ready made from a source outside Contractor's company. It is the sole responsibility of Contractor to read the specifications and understand them.

The submission of a Bid shall constitute an acknowledgment upon which BNPTS may rely that the Bidder has thoroughly examined and is familiar with the solicitation, including any work site identified in the IFB, and has reviewed and inspected all applicable statutes, regulations, ordinances and resolutions addressing or relating to the goods and services to be provided hereunder. The failure or neglect of a Bidder to receive or examine such documents, work sites, statutes, regulations, ordinances, or resolutions shall in no way relieve the Bidder from any obligations with respect to its Bid or to any Contract awarded pursuant to this IFB. No claim for additional compensation will be allowed which is based on lack of knowledge or misunderstanding of this IFB, work sites, statutes, regulations, ordinances, or resolutions.

#### **1-12 Cost of Bids**

BNPTS is not liable for any costs incurred by Bidders in the preparation, presentation, testing, or negotiation of Bids submitted in response to this solicitation.

#### **1-13 Samples**

Samples of items when called for must be furnished free of expense. Samples must be

labeled with the Bidder's name, manufacturer's brand name and number, Bid number, and item reference. Request for return of samples shall be accompanied by instructions, which include shipping authorization and name of carrier, and must be received within ninety (90) days after Bid opening date. If instructions are not received within this time, the commodities shall be disposed of by BNPTS.

#### **1-14 Modification or Withdrawal of Bids Prior to Submittal Date and Late Bids**

At any time before the time and date set for submittal of Bids, a Bidder may request to withdraw or modify its Bid. Such a request must be made in writing by a person with authority as identified on the IFB Cover Page, provided their identity is made known and a receipt is signed for the Bid. All Bid modifications shall be made in writing executed and submitted in the same form and manner as the original Bid. Any Bid or modification of Bid received at BNPTS's office designated in the solicitation after the exact time specified for Bid receipt will not be considered.

#### **1-15 Errors and Administrative Corrections**

BNPTS will not be responsible for any errors in Bids. Bidders will only be allowed to alter Bids after the submittal deadline in response to requests for clarifications or Best and Final Offers by BNPTS. BNPTS reserves the right to request an extension of the procurement period from Bidders.

BNPTS reserves the right to allow corrections or amendments to be made that are due to minor administrative errors or irregularities, such as errors in typing, transposition or similar administrative errors. Erasures or other changes or entries made by the Bidder must be initialed by the person signing the Bid.

#### **1-16 Compliance with IFB Terms and Attachments**

BNPTS intends to award a Contract based on the terms, conditions, and attachments contained in this IFB. Bidders are strongly advised to not take any exceptions. Bidders shall submit Bids which respond to the requirements of the IFB. An exception is not a response to an IFB requirement.

#### **1-17 Bid Requirements/ Mandatory Required Documentation**

Bids shall contain the following items and follow the exact sequence outlined below. BNPTS will not respond to any Bidder's request for approval or exception unless the required documentation is furnished.

- A. Cover Letter, providing the following information:
  - 1. Identification of the Bidder(s), including name, address and telephone number of the appropriate contact person at each firm.
  - 2. Signature of a person authorized to bind the proposing firm to the terms of the Bid.
  
- B. IFB Cover Page and Attachments (Attachments A-M)
  
- C. Bid Cost Form

**1-18 Collusion**

The Bidder guarantees that the Bid submitted is not a product of collusion with any other Bidder, and no effort has been made to fix the Bid price of any Bidder or to fix any overhead, profit, or cost element of any Bid price (Attachment G). Failure to submit the signed affidavit at the time of Bid opening shall be grounds for disqualification of the Bidder's offer.

If BNPTS determines that collusion has occurred among Bidders, none of the Bids from the participants in such collusion shall be considered. BNPTS's determination shall be final.

**1-19 Pricing, Taxes, and Effective Date**

The price to be quoted in any Bid will include all items of labor, materials, tools, equipment, delivery and other costs necessary to fully meet the requirements of BNPTS. Any items omitted, which are clearly necessary for the completion of this project, will be considered a portion of such specifications, although not directly specified.

Bids shall include all freight charges, FOB to the designated delivery points.

**BNPTS is exempt from payment of Federal, Excise and Transportation Tax, and the Illinois Sales, Excise and Use Tax. Bidders will not include these taxes in their price(s). All other government taxes, duties, fees, licenses, permits, royalties, assessments, and charges shall be included in the proposed price.**

**In the event of a discrepancy between the unit price and the extended amount for a required item, the unit price will govern.**

**1-20 Rejection of Bids**

BNPTS reserves the right to reject any or all Bids and waive any minor informalities or irregularities.

**1-21 Exclusionary or Discriminatory Specifications**

BNPTS agrees that it will comply with the requirements of 49 U.S.C. Section 5323(h)(2) by refraining from using any Federal assistance awarded by the FTA to support procurements using exclusionary or discriminatory specifications. BNPTS further agrees to refrain from using state or local geographic preferences, except those expressly mandated or encouraged by Federal Statute.

**1-22 Protest Procedures**

Any protest or objection to the Conditions and Specifications will be submitted for resolution to BNPTS's General Manager (GM). Each protest must be made in writing and supported by sufficient information to enable the protest to be considered. A protest or objection will not be considered by BNPTS if it is insufficiently supported or if it is not received within the specified time limits.

All protests based upon restrictive specifications, alleged improprieties, or similar situations prior to Bid opening must be submitted to BNPTS's GM no later than seven (7) calendar days prior to the specified Bid opening date.

Protests arising after the opening of Bids based upon grounds that were known or should have been known will be submitted to BNPTS's GM within five (5) business days after notification of Contract award. All protests will be considered by the Protest Review Board. The decision of the Protest Review Board is final. The Protest Review Board will consist of the General Manager and the Legal Counsel for BNPTS. No further appeals will be considered by BNPTS. The Bidder may file a protest with FTA provided that the Bid complies fully with the requirements of FTA Circular 4220.1F.

B. Review Process

Except as otherwise provided in this Contract, any Protest concerning a question of fact arising under this Contract which is not disposed of by the agreement shall be decided by a Protest Board comprised of BNPTS's General Manager and the Legal Counsel for BNPTS. This board shall reduce their decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Protest Board shall be final, unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a Protest hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Protest Board's decision.

This clause does not preclude consideration of law questions in connection with decisions provided for in this clause, provided that nothing in this Contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

**1-23 Bid Alternatives**

Bids shall address all requirements identified in this solicitation. In addition, BNPTS may consider Bid alternatives submitted by Bidders that provide enhancements beyond the IFB requirements. Bid alternatives may be considered if deemed to be in BNPTS's best interests. Bid alternatives must be clearly identified.

**1-24 Disadvantaged Business Enterprise (DBE) Participation**

It is the policy of BNPTS that Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26 shall have a level playing field to compete fairly for DOT-assisted contracts. DBEs must be certified by the Illinois Department of Transportation (IDOT). Contractor is encouraged to take all necessary and reasonable steps to ensure that DBE's have a level playing field to compete for and perform services on the contract, including participation in any subsequent supplemental contracts. If the contractor

intends to subcontract a portion of the services on the project, contractor is encouraged to contact DBE's to solicit their interest, capability and qualifications.

It is the policy of BNPTS to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. Therefore, BNPTS encourages prime contractors to use DBE financial institutions whenever possible.

49 CFR Part 26 requires BNPTS to collect certain data about firms attempting to participate in IDOT contracts. This data must be provided on the enclosed Firm Data Sheet (Attachment H).

- A. Certification – To be certified as a DBE, a firm must meet all certification eligibility standards. Firms that qualify as a DBE must: 1) be a small business as defined by the Small Business Administration; 2) be at least 51% owned by minorities, women and/or socially and economically disadvantaged adults, and 3) have its day-to-day operations controlled by women or minorities. VDOT will make its certification decisions based on the facts as a whole. DBE certification entitles contractors to participate in BNPTS's DBE Program, however this certification does not guarantee that the contractor will obtain work with BNPTS.
- B. Process – A firm must apply for certification through the Illinois Department of Minority Business Enterprise. For information about certification as a DBE, contact the Illinois Department of Minority Business Enterprise at (804) 786-5560 or (800) 235-0671.

Certification guidelines and applications are also available online as PDF's at the following links:

[www.dot.state.il.us](http://www.dot.state.il.us)  
[www.egov.citychicago.org](http://www.egov.citychicago.org)   [www.transitchicago.com](http://www.transitchicago.com)  
[www.pace.com](http://www.pace.com)   [www.Metrorail.com](http://www.Metrorail.com)

- C. BNPTS's DBE Program – For information about BNPTS's DBE Program, firms may contact:

Angela Lancaster  
Treasurer  
BNPTS  
351 Wylie Drive  
Normal, IL 61761  
309-829-1124  
alancaster@bnpts.com

## SECTION 2 – BID EVALUATION & CONTRACT AWARD

### 2-1 General

**BNPTS shall award the contract to the lowest responsive and responsible Bidder based on the total cost per mile of the three (3) year contract and that is in the best interest of BNPTS.**

### 2-2 Eligibility for Award

**In order to be eligible for award, Bidders must be responsive and responsible.**

- A. Responsive Bids are those complying in all material aspects of the solicitation, both as to the method and timeliness of submission and as to the substance of the resulting Contract. Bids that do not comply with all the terms and conditions of the solicitation may be rejected as non-responsive.
- B. Responsible Bidders are those prospective Contractors who, at a minimum, must:
  - 1. have adequate financial resources, as required during performance of the Contract.
  - 2. are able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments.
  - 3. have a satisfactory record of past performance.
  - 4. have necessary technical capability to perform.
  - 5. certify that they are not on the U.S. Comptroller General's list of ineligible Contractors.
  - 6. are qualified as a manufacturer or regular provider of the equipment being offered.
  - 7. are otherwise qualified and eligible to receive an award under applicable laws and regulations.

### 2-3 Single Bid Response

**If only one Bid is received in response to the IFB, a sample of three (3) Bids, if available, awarded to the Bidder within the past two (2) years may be requested of the single Bidder. A cost/price analysis and evaluation and/or audit may be performed of the cost Bid in order to determine if the price is fair and reasonable.**

## **2-4 Contract Award**

Contract award, if any, will be made by BNPTS to the lowest responsible and responsive Bidder whose Bid meets the requirements of the IFB, and will be the most advantageous to BNPTS with respect to price over the duration of the contract. BNPTS shall have no obligations until a Contract is signed between the Bidder and BNPTS.

Contract award will occur when BNPTS signs the Contract and issues a purchase order. No other act of BNPTS shall constitute Contract award. The Contract will establish the Contract value and incorporate the terms of this document, but will not be the authorization for Contractor to proceed.

## **2-5 Execution of Contract and Notice to Proceed**

The Bidder to whom BNPTS intends to award the Contract shall sign the Contract and return it to BNPTS. Upon authorization by BNPTS's Board of Trustees, or designee, a Contract will be issued. Upon receipt by BNPTS of any required documentation and submittals by Contractor, a Notice to Proceed may be issued, if appropriate. A Purchase Order if appropriate may serve as the Notice to Proceed.

## **2-6 Public Disclosure of Bids**

BNPTS is subject to the Illinois Freedom of Information Act. Therefore, the contents of this IFB and the Contractor's Bid submitted in response to this IFB shall be considered public documents and are subject to the Illinois FOIA statutes. As such, all Bids submitted to BNPTS will be available for inspection and copying by the public after the selection process has been concluded. There are, however, various items that may be exempt under public disclosure laws. If any proprietary, privileged, or confidential information or data is included in the Contractor's Bid, each page that contains this information or data should be marked as such (e.g., "Proprietary," "Confidential," "Business Secret," or "Competition Sensitive") in order to indicate your claims to an exemption provided in the Illinois FOIA. It is BNPTS's sole right and responsibility, however, to make the determination whether these items are exempt or not exempt under the Illinois FOIA statutes.

All data, documentation and innovations developed as a result of these contractual services shall become the property of BNPTS.

## **SECTION 3 – STANDARD CONTRACTUAL TERMS & CONDITIONS**

### **3-1 Administration**

This Contract is between BNPTS and the Contractor who will be responsible for providing the goods and/or performing the services described herein. BNPTS is not party to defining the division of work between the Contractor and its Subcontractors, if any, and the Specifications and/or Scope of Services have not been written with this intent.

Contractor represents that it has or will obtain all duly licensed and qualified personnel and equipment required to perform hereunder. Contractor's performance under this Contract may be monitored and reviewed by a Contract Administrator appointed by BNPTS. Reports and data required to be provided by Contractor shall be delivered to the Contract Administrator. Questions by Contractor regarding interpretation of the terms, provisions, and requirements of this Contract shall be addressed to the Contract Administrator for response.

### **3-2 Notification of Delay**

Contractor will notify BNPTS's Contract Administrator and General Manager as soon as Contractor has, or should have, knowledge that an event has occurred which will delay delivery or start-up of services. Within five days, Contractor will confirm such notice in writing furnishing as many details as is available.

### **3-3 Request for Extension**

Contractor agrees to supply, as soon as such data are available, any reasonable proofs that are required by BNPTS's Contract Administrator to make a decision of any request for extension. BNPTS's Contract Administrator will examine the request and any documents supplied by Contractor and will determine if Contractor is entitled to an extension and the duration of such extension. BNPTS's Contract Administrator will notify Contractor of the decision in writing. It is expressly understood and agreed that Contractor will not be entitled to damages or compensation, and will not be reimbursed for losses on account of delays resulting from any cause under this provision.

### **3-4 Contract Changes**

Any proposed change in the contract will be submitted to BNPTS for its prior written approval and BNPTS will make the change by a Change Order. BNPTS may, at any time by written order, and without notice to the sureties, make changes within the general scope of this contract. No oral order or conduct by BNPTS will constitute a Change Order unless confirmed in writing by BNPTS.

If any such change causes an increase or decrease in the cost or the time required for the performance of any part of the work under this Contract, an equitable adjustment will be made, at the sole discretion of BNPTS, in the Contract price, or delivery schedule, or both, and the Contract will be modified in writing accordingly. Every Change Order may require a cost/price analysis to determine the reasonableness of the proposed change.

Any claim by Contractor for adjustment under this clause must be asserted within fourteen (14) calendar days from the date of receipt by Contractor of the notification of change. The request for equitable adjustment must be in writing and state the general nature and monetary extent of the claim. BNPTS may require additional supporting documents and cost or price analysis to determine the validity of the claim.

No claim by Contractor for an equitable adjustment hereunder will be allowed if asserted after final payment under this Contract. No claim will be allowed for any costs incurred more than twenty (20) calendar days before Contractor gives written notice, as required in this section.

### **3-5 Change Order Procedure**

- A. Contractor Changes: Any proposed change in this Contract shall be submitted to BNPTS's Contract Administrator for approval.
- B. Written Change Orders: Oral change orders are not permitted. No change in this Contract shall be made unless BNPTS's GM or Treasurer gives prior written approval therefore. Contractor shall be liable for all costs resulting from, and/or for satisfactorily correcting any specification change not properly ordered by written modification to the Contract and signed by BNPTS's GM.
- C. Change Order Procedure: Within 15 days after receipt of the written request to modify the Contract, the Contractor shall submit to BNPTS's Contract Administrator a detailed price and schedule Bid for the work to be performed. This Bid shall be accepted or modified by negotiations between the Contractor and BNPTS's Treasurer. At that time, a detailed modification shall be executed in writing by both parties. Disagreements that cannot be resolved within negotiations shall be resolved in accordance with subsection 3-19, Disputes, Claims and Appeals. Regardless of any disputes, the Contractor shall proceed with the work ordered.
- D. Price Adjustment for Regulatory Changes: If price adjustment is indicated, either upward or downward, it shall be negotiated between BNPTS and Contractor for changes that are mandatory as a result of legislation or regulations that are promulgated and become effective between the date of Bid opening and the date of contract performance. Such price adjustment may be modified where required.

### **3-6 Instructions by Unauthorized Third Persons**

In accordance with subsection 3-4, Contract Changes, of the solicitation, BNPTS's GM or his authorized representative are the only persons authorized to make changes within the general scope of the Contract.

Any instructions, written or oral, given to Contractor by someone other than BNPTS's GM or his authorized representative, which are considered to be a change in the Contract, will not be considered as an authorized Contract change. Any action on the part of Contractor taken in compliance with such instructions will not be grounds for subsequent payment or other consideration in compliance with the unauthorized

change.

### **3-7 Cost or Price Analysis**

BNPTS reserves the right to conduct a cost or price analysis for any purchase. BNPTS may be required to perform a cost analysis when competition is lacking for any purchase. Sole source procurements which result in a single Bid being received will be subject to a cost analysis which will include the appropriate verification of cost data, the evaluation of specific elements of costs and the projection of data to determine the effect on Bid prices. BNPTS may require a Pre-Award Audit and potential Contractors shall be prepared to submit data relevant to the proposed work which will allow BNPTS to sufficiently determine that the proposed price is fair, reasonable, and in accordance with Federal, State and local regulations. Procurements resulting in a single Bid will be treated as a negotiated procurement and BNPTS reserves the right to negotiate with the single Bidder to achieve a fair and reasonable price. If a negotiated price cannot be agreed upon by both parties, BNPTS reserves the right to reject the single Bid. Contract change orders or modifications will be subject to a cost analysis.

### **3-8 Termination**

#### **A. Termination for Convenience**

The performance of work under this Contract may be terminated by BNPTS in accordance with this clause in whole, or from time to time in part, whenever BNPTS's General Manager shall determine that such termination is in its best interest. Any such termination shall be effected by delivery to Contractor of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.

After receipt of a notice of termination, and except as otherwise directed by BNPTS's GM, Contractor shall:

1. stop work under the Contract on the date and to the extent specified in the Notice of Termination;
2. place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the Contract as is not terminated;
3. terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
4. assign BNPTS, in the manner at the times, and to the extent directed by BNPTS's GM, all of the rights, title, and interest of Contractor under the orders and subcontracts so terminated, in which case BNPTS shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
5. settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of

BNPTS's GM, to the extent he may require which approval or ratification shall be final for all the purposes of this clause;

6. transfer title to BNPTS and deliver in the manner at the times and to the extent if any, directed by BNPTS's GM, the work in process, completed work, supplies, and other material produced as part of, or acquired in connection with the performance of the work terminated, and the completed or partially completed plans, information and other property which, if the Contract had been completed, would have been required to be furnished to BNPTS;
7. use its best efforts to sell, in the manner, at the times, to the extent, and at the price(s) directed or authorized by BNPTS's GM, any property of the types referred to above, provided, however, that Contractor shall not be required to extend credit to any purchaser, and may acquire any such property under the conditions prescribed by and at a price(s) approved by BNPTS's GM, and provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by BNPTS to Contractor under this Contract or shall otherwise be credited to the price or cost of the work covered by this Contract or paid in such other manner as BNPTS's GM may direct;
8. complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and take such action as may be necessary, or as BNPTS's GM may direct, for the protection or preservation of the property related to this Contract, which is in the possession of Contractor and in which BNPTS has or may acquire an interest.

Settlement of claims under this Termination for Convenience clause shall be in accordance with paragraphs (c) through (m) of the clause contained in the Federal Acquisition Regulation (FAR) Part 52, subpart 52.249-2, except that wherever the word "Government" or "Contracting Officer" appears it shall be deleted and the words "BNPTS" shall be substituted in lieu thereof.

**B. Termination for Breach or Default**

BNPTS may, by written notice of default to Contractor, terminate the whole or any part of this Contract if Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or Contractor fails to perform any of the other provisions of the Contract, or so fails to make progress as to endanger performance of this Contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as BNPTS's GM may authorize in writing) after receipt of notice from BNPTS's GM specifying such failure.

If the Contract is terminated in whole or in part for default, BNPTS may procure, upon such terms and in such manner as BNPTS's GM may deem appropriate, supplies or services similar to those so terminated. Contractor shall be liable to BNPTS for any excess costs for such similar supplies or

services, and shall continue the performance of this Contract to the extent not terminated under the provisions of this clause.

Except with respect to defaults of subcontractors, Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control and without the fault or negligence of Contractor. Examples of such clauses include (1) Acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of Contractor. If the failure to perform is caused by the default of a subcontractor at any tier, and if such default arises out of causes beyond the control of Contractor and subcontractor, Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the required delivery schedule.

In the event of any termination, BNPTS shall pay the agreed rate only for services delivered up to the date of termination. BNPTS has no obligation to Contractor, of any kind, after the date of termination. Contractor shall deliver all records, equipment, and materials to BNPTS within five (5) working days of the date of termination. Failure to agree will be a dispute under subsection 3-19, Disputes, Claims and Appeals. BNPTS may withhold from these amounts any sum BNPTS determines to be necessary to protect BNPTS against loss, because of outstanding liens or claims of former lien holders.

If, after Notice of Termination of this Contract is served under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued pursuant to termination for convenience of BNPTS.

The rights and remedies of BNPTS provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

C. Opportunity to Cure

BNPTS in its sole discretion may, in the case of a termination for breach or default, allow Contractor thirty (30) days 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 BNPTS's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor or written notice from BNPTS setting forth the nature of said breach or default, BNPTS 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 BNPTS from also pursuing all

available remedies against Contractor and its sureties for said breach or default.

D. Waiver of Remedies for any Breach

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

**3-9 Lack of Funds**

If expected or actual funding is withdrawn, reduced, or limited in any way prior to the expiration date set forth in this Contract or in any amendment hereto, BNPTS may, upon written notice to Contractor, terminate this Contract in whole or in part. Such termination shall be in accordance with BNPTS's rights to terminate for convenience or default.

**3-10 Force Majeure**

The timely receipt of BNPTS's requirements is essential. If the requirements are not received on time in accordance with the delivery schedule, BNPTS may cancel the unfilled portion of the contract for cause, purchase substitute requirements elsewhere, and recover from Contractor any increased costs, thereby incurred together with all resulting incidental and consequential damages. BNPTS may also terminate for cause, purchase substitute requirements elsewhere and recover costs and damages for breach of Contractor obligations.

The Contractor shall be entitled to a reasonable extension of time from BNPTS for the delays caused by damage to Contractor's and/or BNPTS's property caused by fire, lightning, earthquakes, tornadoes, and other extreme weather conditions or acts of nature, power failures, riots, acts of civil or military authorities of competent jurisdiction, strikes, lockouts, and any other industrial, civil or public disturbances beyond the control of the Contractor and its subcontractors causing the inability to perform the requirements of this Contract. Any delay other than one mentioned above shall constitute a breach of Contractor's contractual obligations.

**3-11 Taxes, Licenses, Laws, and Certificate Requirements**

Contractor shall maintain and be liable for all taxes, fees, licenses, and costs as may be required by federal, state, and local laws, rules, and regulations for the conduct of business by Contractor and any subcontractors and shall secure and at all times maintain any and all such valid licenses and permits as may be required to provide the services or supplies under this Contract. If for any reason, Contractor's required licenses or certificates are terminated, suspended, revoked, lapsed, or in any manner modified from their status at the time this Contract becomes effective, Contractor shall immediately notify BNPTS in writing of such condition.

Contractor will give all notices and comply with all federal, state, local and BNPTS laws, ordinances, rules, regulations, standards, and orders of any public authority bearing on the performance of the Contract, including, but not limited to, the laws referred to in

these General Provisions of the Contract and the other Contract Documents. If the Contract Documents are at variance therewith in any respect, any necessary changes shall be adjusted by appropriate modification. Omission of any applicable laws, ordinances, rules, regulations, standards or orders by BNPTS in the Contract Documents shall be construed as an oversight and shall not relieve the Contractor from his obligations to meet such fully and completely. Upon request, Contractor shall furnish to BNPTS certificates of compliance with all such laws, orders and regulations. Contractor shall be responsible for obtaining all necessary permits and licenses required for performance under the Contract.

Applicable provisions of all federal, state, and local laws, and of all ordinances, rules, and regulations shall govern any and all claims and disputes which may arise between person(s) submitting a Bid response hereto and BNPTS, by and through its officers, employees and authorized representatives, or any other persons, natural and otherwise, and lack of knowledge by any Contractor shall not constitute a cognizable defense against the legal effect thereof.

### **3-12 Defective Work, Materials or Services**

When and as often as BNPTS determines that the work, materials, or services furnished under the Contract are not fully and completely in accordance with any requirement of the Contract, it may give notice and description of such non-compliance to Contractor. Within seven (7) calendar days of receiving such written notification, Contractor must supply BNPTS with a written detailed plan which indicates the time and methods needed to bring the work, materials, or services within acceptable limits of the Contract. BNPTS may reject or accept this plan at its discretion. In the event this plan is rejected, the work, materials, or services will be deemed not accepted and returned to Contractor at Contractor's expense. This procedure to remedy defects is not intended to limit or preclude any other remedies available to BNPTS by law, including those available under the Uniform Commercial Code.

### **3-13 No Waiver of Warranties or Contractual Rights**

Conducting of tests and inspections, review of specifications or plans, payment for a product or service, or acceptance of a product or service by BNPTS shall not constitute a waiver, modification, or exclusion of any express or implied warranty or any right under this Contract or in law.

### **3-14 Assignment**

Contractor shall not assign any interest, obligation, or benefit under or in this Contract or transfer any interest in the same, whether by assignment or novation, without the prior written consent of BNPTS. If an assignment is approved, this Contract shall be binding upon and inure to the benefit of the successors of Contractor. This provision shall not prevent Contractor from pledging any proceeds from this Contract as security to a lender. An assignment may be conditioned upon the posting of bonds, securities and the like by the assignee, and the assignee must assume the written Contract and be responsible for the obligations and liabilities of Contractor, known and unknown, under this Contract and applicable law.

BNPTS may assign its rights and obligations under the Contract to any successor to

the rights and functions of BNPTS or to any governmental agency to the extent required by applicable laws or governmental regulations, or to the extent BNPTS deems necessary or advisable under the circumstances.

### **3-15 Indemnification and Hold Harmless**

To the maximum extent permitted by law and except to the extent caused by the sole negligence of BNPTS, Contractor shall indemnify, defend and hold harmless BNPTS, officers, officials, agents, and employees, from and against any and all claims, suits, actions, losses, costs, penalties, and damages of any kind or nature whatsoever arising out of, in connection with, or incident to the goods and/or services provided by or on behalf of Contractor. In addition, Contractor shall, at BNPTS's option, assume the defense of BNPTS and its officers and employees in all legal or claim proceedings arising out of, in connection with, or incident to such goods and/or services, and shall pay all defense expenses, including reasonable attorney's fees, expert fees, and costs incurred by BNPTS on account of such litigation or claims. This indemnification obligation shall include, but is not limited to, all claims against BNPTS by an employee or former employee of Contractor or its subcontractors, and Contractor, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects BNPTS only, under any industrial insurance act, other Worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. This indemnification obligation shall also obligate Contractor to protect, indemnify, defend, and save harmless BNPTS, officials, agents, and employees from any and all claims or lawsuits alleging a violation of a third party's copyright or patent rights arising out of or in connection with Contractor's provision of goods and/or services under this Contract. Notwithstanding anything provided in this section, BNPTS retains the right to provide its own defense against any suits, claims, or actions, and to assess any costs of such defense to Contractor, including attorney's fees, expert witness fees, and court costs.

### **3-16 Applicable Law and Forum**

All work done pursuant to any contract resulting from this IFB will be governed by and construed according to the laws of the State of Illinois. Any actions arising here from shall be filed in the County of McLean, Illinois.

### **3-17 Attorney Fees**

In the event either party shall engage the services of an attorney or other professional due to the default of the other party, the defaulting (non-prevailing) party shall pay all legal costs and fees, including attorney's fees, incurred by the non-defaulting (prevailing) party in enforcing its rights.

### **3-18 Conflicts of Interest and Non-Competitive Practices**

- A. Conflict of Interest – Contractor by entering into this Contract with BNPTS to perform or provide work, services, or materials, has thereby covenanted that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any interest, which conflicts in any manner or degree with the work, services, or materials required to be performed and/or provided under this Contract and that it shall not employ any person or agent having any such

interest. In the event that Contractor or its agents, employees or representatives hereafter acquires such a conflict of interest, is shall immediately disclose such interest to BNPTS and take action immediately to eliminate the conflict or to withdraw from this Contract, as BNPTS may require.

B. Contingent Fees and Gratuities – Contractor, by entering into this Contract with BNPTS to perform or provide work, services, or materials, has thereby covenanted:

1. No person or selling agency except bona fide employees or designated agents or representatives of Contractor has been or will be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and
2. No gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by Contractor or any of its agents, employees, or representatives, to any official, member or employee of BNPTS or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.

### **3-19 Disputes, Claims and Appeals**

Contractor shall address questions or claims regarding meaning and intent of the Contract or arising from this Contract in writing to the Procurement Director within ten (10) calendar days of the date in which Contractor knows or should know of the question or claim. The Contract Administrator will ordinarily respond to Contractor in writing with a decision, but absent such written response, the question or claim shall be deemed denied upon the tenth day following receipt by the Contract Administrator.

In the event Contractor disagrees with any determination or decision of the Contract Administrator, Contractor may, within five (5) calendar days of the date of such determination or decision, appeal the determination or decision in writing to the GM. Such written notice of appeal shall include all documents and other information necessary to substantiate the appeal. The GM will review the appeal and transmit a decision or determination in writing. The decision will be considered final. Appeal to the GM shall be a condition precedent to litigation hereunder.

All claims, counterclaims, disputes and other matters in question between BNPTS and Contractor that are not resolved between the Contract Administrator and/or GM and Contractor or through alternative dispute resolution, pursuant to Paragraph 3-20 below, will be decided pursuant to Paragraph 3-16 above.

Pending final decision of a dispute hereunder, Contractor shall proceed diligently with the performance of the Contract and in accordance with the direction of the Contract Administrator and/or GM. Failure to comply precisely with the time deadlines under this Subsection as to any claim shall operate as a waiver and release of that claim and an acknowledgment of prejudice to BNPTS.

### 3-20 Mediation and Arbitration

If a dispute arises out of or relates to this Contract, or the breach thereof, and if said dispute cannot be settled through direct discussions, the Parties agree to first endeavor to settle the dispute in an amicable manner by mediation. Thereafter, any unresolved controversy or claim arising out of or relating to this Contract, or breach thereof, may be settled by arbitration, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The Parties to this Contract may seek to resolve disputes pursuant to arbitration, but are not required to do so. Nothing in this paragraph precludes any Party from seeking further relief once the required alternative dispute resolution efforts have failed.

### 3-21 Reports, Record Retention, Audit Access and Proof of Compliance with Contract

- A. Reports: The Contractor agrees to provide to the Federal Transit Administration those reports required by U.S. DOT's grant management rules and any other reports the Federal Government may require.
- B. Record Retention: The Contractor agrees that, during the course of the Project and for three (3) years thereafter, it will maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to the Project as the Federal Government may require for the project.
- C. Audit Access:
  - 1. Federal, state, local, or BNPTS auditors shall have access to Contractor's and its subcontractors' records for the purpose of inspection, cost or price analysis, audit, or other reasonable purposes related to this Contract. Federal, state, local, or BNPTS auditors shall have access to records and be able to copy such records during Contractor's normal business hours. Contractor shall provide proper facilities for such access, inspection, and copying.
  - 2. Audits may be conducted during or after the Contract period for purposes of evaluating claims by or payments to Contractor and for any other reason deemed appropriate and necessary by BNPTS. Audits shall be conducted in accordance with generally accepted auditing principles and/or federal, state, local, or BNPTS audit procedures, laws, or regulations. Contractor shall fully cooperate with the auditor(s).
  - 3. If an audit is commenced more than sixty (60) days after the date of final payment for contract work, BNPTS shall give reasonable notice to Contractor of the date on which the audit shall begin.
- D. Proof of Compliance with Contract: Contractor shall, upon request, provide BNPTS with satisfactory documentation of Contractor's compliance with the Contract. In addition, Contractor shall permit BNPTS, and if federally funded, the FTA and the Comptroller General of the United States, or a duly authorized representative, to inspect all work, materials, payrolls, and other data and records involving the Contract.

### **3-22 Other Public Agency Orders**

Other federal, state, county, and local entities may utilize the terms and conditions established by this Contract. BNPTS does not accept any responsibility or involvement in the purchase orders or contracts issued by other agencies.

### **3-23 Conflicts of Interest – Current and Former Employees**

BNPTS seeks to eliminate and avoid actual or perceived conflicts of interest and unethical conduct by current and former BNPTS employees in transactions with BNPTS. Consistent with this policy, no current or former BNPTS employee may contract with, influence, advocate, advise, or consult with a third party about a BNPTS transaction, or assist with the preparation of Bids submitted to BNPTS while employed by BNPTS or within one (1) year after leaving BNPTS's employment, if he/she participated in determining the work to be done or process to be followed while a BNPTS employee.

All Bidders, vendors, or contractors who anticipate contracting with BNPTS must identify at the time of offer, such current or former BNPTS employees involved in preparation of Bids/Bids or the anticipated performance of the work or services if awarded the Contract. Failure to identify former BNPTS employees involved in this transaction may result in BNPTS's denying or terminating this Contract. In addition, after award, Contractor is responsible for notifying BNPTS's Contract Administrator of current or former BNPTS employees who may become involved in the Contract any time during the term of the Contract.

Furthermore, no member, officer, or employee of BNPTS during their tenure or for two (2) years thereafter will have any financial interests, direct or indirect, in this Contract or the proceeds thereof.

### **3-24 Severability**

Whenever possible, each provision of this Contract shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal, or unenforceable, then such provision or portion thereof shall be modified to the extent necessary to render it legal, valid, and enforceable and have the intent and economic effect as close as possible to the invalid, illegal, and unenforceable provision.

### **3-25 Nonwaiver of Breach**

No action or failure to act by BNPTS shall constitute a waiver of any right or duty afforded to BNPTS under the Contract; nor shall any such action or failure to act by BNPTS constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically stated by BNPTS in writing.

### **3-26 Use of BNPTS's Name in Contractor Advertising or Public Relations**

BNPTS reserves the right to review and approve all BNPTS-related copy prior to publication. Contractor will not allow BNPTS-related copy to be published in Contractor's advertisements or public relations programs until submitting BNPTS-

related copy and receiving prior written approval from BNPTS's GM. Contractor will agree that published information on BNPTS or its program will be factual, and in no way imply that BNPTS endorses Contractor's firm, service, or product.

## SECTION 4 – SPECIFIC CONTRACTUAL TERMS & CONDITIONS

### 4-1 Type of Contract

Any contract resulting from this solicitation will be structured as a firm/fixed price contract. The contract shall be awarded to the lowest responsive and responsible bidder based on the lowest price of the tire lease.

### 4-2 Contract Documents and Precedence

The documents constituting the Contract between BNPTS and Contractor are intended to be complementary so that what is required by any one of them shall be as binding as if called for by all of them. In the event of any conflicting provisions or requirements within the several parts of the Contract Documents, the following order of precedence shall be applied:

- A. Any required federal regulations that may not be altered by BNPTS;
- B. Purchase order;
- C. Contract amendments;
- D. Solicitation and all issued addenda and approved equals;
- E. Any optional federal regulations elected by BNPTS as expressly set forth herein;
- F. Clarifications of and amendments to Contractor's Bid as accepted by BNPTS; and
- G. Contractor's Bid and Attachments, and all clarifications and amendments issued prior to contract award.

### 4-3 Contract Term

The term of any Contract arising from this IFB shall begin with the execution of the contract for a period of five (5) years.

### 4-4 Contract

A contract shall be issued referencing this solicitation. The contract shall define and authorize the work by Contractor based on the prices agreed to by BNPTS. The contract issued by BNPTS may reflect agreed to modification of contract terms, funding, or other matters subject to subsection 3-4, Contract Changes.

### 4-5 Payment Procedures

Payments for services rendered and expenses incurred shall be made after presentation of Contractor's invoices upon delivery of goods ordered by BNPTS. Such invoices shall be computed in accordance with the fee schedule agreed to by BNPTS and Contractor, and incorporated into the final contract, and are due and payable within thirty (30) days of receipt of a correct invoice as agreed upon by BNPTS. Each invoice

shall contain Contractor's list of items delivered. Contractor agrees to supply with each invoice additional information as may be requested by BNPTS.

Invoices should clearly identify the BNPTS purchase order number and any prompt payment discount offered to BNPTS for paying within thirty (30) days of receipt. BNPTS may, at any time, conduct an audit of any and/or all records kept by the Contractor for this project. Any overpayment uncovered in such an audit may be charged against the Contractor's future invoices. BNPTS may withhold payment for services it believes were improper, failed to meet with project specifications, or are otherwise questionable.

Invoices should be submitted to:

BNPTS  
351 Wylie Drive  
Normal, IL 61761  
Attn: Isaac Thorne

#### **4-6 Liquidated Damages**

BNPTS uses printed materials and forms to transmit important operational information both internally and externally. As such, their timely delivery is important to BNPTS. In the event of an unauthorized delay of Contractor delivery of products beyond the due date specified on the purchase order, and not subject to the Unavoidable Delays clause, BNPTS may apply liquidated damages. The damages will be \$25 per day until the delivery terms have been fully satisfied.

#### **4-7 Advance Payment Prohibited**

No advance payment shall be made for the work furnished by Contractor pursuant to this Contract.

#### **4-8 Price Adjustments**

Price adjustments either upward or downward may be negotiated only at the time of renewal unless BNPTS requests a contract modification.

#### **4-9 Shipping Charges**

All prices shall include freight FOB to the designated delivery point. BNPTS shall reject requests for additional compensation for freight charges.

#### **4-10 Delivery Points**

This Contract requires all goods and/or services and supervision necessary to furnish the goods and services as set forth herein to be made to any authorized BNPTS-related facility, and will be determined at the time of order at the sole discretion of BNPTS.

#### **4-11 Summary Report**

Contractor shall, if requested, submit to BNPTS a quarterly report of services provided

to BNPTS under this Contract. The report, in a format acceptable to BNPTS, shall identify by item the amount of work completed, the status of the project in relation to the schedule, and any other information that may be relevant to project oversight.

#### **4-12 Warranty Provisions**

- A. No Waiver of Warranties and Contract Rights: Conducting of tests and inspections, review of Scope of Work or plans, payment for a work, or acceptance or final acceptance of the work by BNPTS shall not constitute a waiver of any rights under this Contract or in law. The termination of this Contract shall in no way relieve Contractor from its warranty/guarantee responsibility.
- B. Warranty: Contractor warrants that the work performed under this Contract shall be free from defects in material and workmanship, and shall conform with all requirements of this Contract. Any work corrected shall be subject to this subsection to the same extent as the work initially provided.
- C. Warranty Applicable to Third Party Suppliers, Vendors, Distributors, and Subcontractors: Contractor shall ensure that the warranty requirements of this Contract are enforceable through and against Contractor's suppliers, vendors, distributors, and subcontractors. Contractor is responsible for liability and expense caused by any inconsistencies or differences between the warranties extended to BNPTS by Contractor and those extended to Contractor by its suppliers, vendors, distributors, and subcontractors. Such inconsistency or difference shall not excuse Contractor's full compliance with its obligations under this Contract. Contractor shall cooperate with BNPTS in facilitating warranty related work by such suppliers, vendors, distributors, and subcontractors.

#### **4-13 Express Warranties for Services**

Contractor warrants that the services shall in all material respects conform to the requirements of this Contract. Contractor warrants that qualified professional personnel with in-depth knowledge shall perform the services in a timely and professional manner; and that the services shall conform to the standards generally observed in the industry for similar services. Contractor warrants that the services shall be in compliance with all applicable laws, rules, and regulations.

#### **4-14 Warranty Remedies**

If at any time before Final Acceptance of any work covered by this Contract, Contractor or BNPTS discovers one or more material defects or errors in the work of any other aspect in which the work materially fails to meet the provisions of the warranty requirements herein, Contractor shall, at its own expense and within thirty (30) days of notification of the defect by BNPTS, correct the defect, error, or nonconformity.

Notice Required – BNPTS shall give written notice of any defect to Contractor. If Contractor has not corrected the defect within thirty (30) days after receiving the written

notice, BNPTS, in its sole discretion, may correct the defect itself. In the case of an emergency where BNPTS believes delay could cause serious injury, loss, or damage, BNPTS may waive the written notice and correct the defect. In either case, BNPTS shall charge-back the cost for such warranty repair to Contractor.

Contractor is responsible for all costs of repair or replacement in order to restore the work to the applicable Contract requirements or scope of work, including shipping charges, for work found defective before Final Acceptance, regardless of who actually corrects the defect.

**4-15 Independent Status of Contractor**

In the performance of this Contract, the parties shall be acting in their individual, corporate, or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent contractor relationship shall be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim or right, privilege or benefit, which would accrue to an employee.

**4-16 Notices**

Any notice which is required to be given hereunder shall be deemed sufficiently given or rendered if such notice is in writing and is delivered personally or sent by certified mail, postage prepaid, return receipt requested, or by a national overnight courier service to the following addresses:

To BNPTS:  
BNPTS  
General Manager  
351 Wylie Drive  
Normal, IL 61761

With a copy to: Treasurer

To Contractor: (To be determined)

Any notice given hereunder by personal delivery or express mail shall be deemed delivered when received. Any properly addressed notice given herein by certified mail shall be deemed delivered when the return receipt therefore is signed, or refusal to accept the mailing by the addressee is noted thereon by the postal authorities. Either party may, at any time, change its address for the above purposes by sending a notice to the other party stating the change and setting forth the new address.

**4-17 Nondisclosure of Data**

Data provided by BNPTS either before or after Contract award shall only be used for its intended purpose. Bidders, vendors, Contractors, and subcontractors shall not utilize or distribute the BNPTS data in any form without the prior express written approval of BNPTS.

#### **4-18 Non-Disclosure Obligation**

While providing the work required under this Contract, Contractor might encounter licensed technology, software, documentation, drawings, schematics, manuals, data, or other materials marked "Confidential," "Proprietary," or "Business Secret." Contractor shall, with regard to such information and material received or used in performance of this Contract, employ practices no less than those used for the protection of Contractor's own confidential information.

The Contract imposes no obligation upon Contractor with respect to confidential information which Contractor can establish that: a) was in the possession of, or was rightfully known by Contractor without an obligation to maintain its confidentiality prior to receipt from BNPTS or a third party; b) is or becomes generally known to the public without violation of this Contract; c) is obtained by Contractor in good faith from a third party having the right to disclose it without an obligation of confidentiality; or, d) is independently developed by Contractor without the participation of individuals who have had access to BNPTS's or the third party's confidential information. Contractor may disclose confidential information if so required by law, provided that Contractor notifies BNPTS that the third party of such requirement prior to disclosure.

#### **4-19 Public Disclosure Requests**

Contracts shall be considered public documents and, with exceptions provided under public disclosure laws, will be available for inspection and copying by the public.

If a Contractor considers any portion of any documents which may be delivered to BNPTS pursuant to this Contract to be protected under the law, Contractor shall clearly identify each such item with words such as "Confidential," "Proprietary," or "Business Secret." If a request is made for disclosure of any such document, BNPTS will determine whether the document should be made available under the law. If the document or parts thereof are determined by BNPTS to be exempt from public disclosure, BNPTS will not release the exempted document. If the document is not exempt from public disclosure law, BNPTS will notify Contractor of the request and allow Contractor five (5) days to take whatever action it deems necessary to protect its interests. If Contractor fails or neglects to take such action within said period, BNPTS will release the document deemed subject to disclosure. By signing a Contract, Contractor assents to the procedure outlined in this paragraph and shall have no claim against BNPTS on account of actions taken under such procedure.

#### **4-20 Ownership of Data**

Subject to the rights granted Contractor pursuant to this Agreement, all right, title and interest in and to the data collected and developed during the performance of this contract shall at all times remain the sole and exclusive property of BNPTS. Contractor shall surrender all such data to BNPTS prior to submitting an invoice for final payment.

#### **4-21 Patents and Royalties**

Contractor is responsible for paying all license fees, royalties, or the costs of defending claims for the infringement of any intellectual property that may be used in performing this Contract. Before final payment is made on this Contract, Contractor shall, if requested by BNPTS, furnish acceptable proof of a proper release from all such fees or claims.

#### **4-22 Changed Requirements**

New federal, state, and local laws, regulations, ordinances, rules, policies, and administrative practices may be established after the date this Contract is established and may apply to this Contract. To achieve compliance with changing requirements, Contractor agrees to accept all changed requirements that apply to this Contract and require subcontractors to comply with revised requirements as well. Changed requirements will be implemented through subsection 3-5, Change Order Procedure.

#### **4-23 Counterparts**

This Contract may be signed in two (2) counterparts, each of which shall be deemed an original and which shall together constitute one (1) Contract.

#### **4-24 Contractual Relationships**

No contractual relationship will be recognized under the Contract other than the contractual relationship between BNPTS and the Prime Contractor.

#### **4-25 Final Acceptance**

BNPTS shall deliver written notice of its Final Acceptance of the project only after successful completion by the Contractor of all Work under this Contract, and after BNPTS's receipt of all final deliverables reflecting any contract changes.

After satisfying all Contract requirements, Contractor shall request final acceptance in writing stipulating the following:

- A. All work is completed.
- B. Final acceptance and payment does not constitute a waiver by BNPTS of any rights with respect to Contractor's continuing obligations under the contract.
- C. A waiver of all claims beyond final payment by Contractor against BNPTS other than those previously made in writing and still unsettled. Final acceptance of the Work will be confirmed by BNPTS in writing and by making the final acceptance payment to Contractor.

## SECTION 5 – INSURANCE REQUIREMENTS

### 5-1 Commencement of Work

Contractor shall not commence work until all insurance required under this section has been obtained and the proper insurance verification has been provided to BNPTS.

### 5-2 General Requirements

All insurance policies shall be written with a company or companies licensed to conduct business within the State of Illinois and holding a current Best's Key Rating of A- VII or better. Contractor agrees to name BNPTS as additional insureds on General, Business Automobile and Excess or Umbrella liability policies **by endorsement to the policies**. Insurance policies shall be endorsed to give BNPTS 30 days written notice (10 days in case of Workers Compensation) of cancellation for any reason, non renewal or material change in coverage or limits. In case of non-payment of premium by Contractor, BNPTS retains the rights but is not obligated to pay any premiums and deduct such amounts from any payments due to the Contractor.

There shall be no exclusions for punitive damages in the General or Business Automobile policies.

Complete, certified copies of all insurance policies applicable to this agreement will be sent to BNPTS within 60 days of each inception or anniversary date, so that these insurance policies may be reviewed by BNPTS. Until copies of policies are received, Evidence of Coverage in the form of an original Certificate of Insurance shall be submitted to BNPTS. The Contractor also agrees to have deficiencies in the insurance policies amended as per the directions of BNPTS or its representative.

### 5-3 Required Coverages

The Contractor agrees to provide the following coverages:

- A. **Commercial General Liability** (Occurrence Form), either singly or in combination with Excess or Umbrella Liability Insurance policy **covering all operations** with the following limits:

Each Occurrence (Bodily Injury, Property Damage)	\$1,000,000
Personal and Advertising Injury Limit	
\$1,000,000	
General Aggregate Limit	\$1,000,000
Products and Completed Operations Aggregate Limit	\$1,000,000
Fire Damage Limit	
\$ 50,000	
Medical Payments – Any One Person	
\$ 5,000	

- B. **Business Automobile Policy** either singly or in combination with Excess or Umbrella Liability Insurance policy **covering all operations** with the following limits:

Owned, Hired or Non Owned (Per Accident)	\$1,000,000
Uninsured Motorist (Per Accident)	
Minimum State Limits	
Medical Payments (Each Person)	
\$ 5,000	
Comprehensive (\$5,000 Deductible – Maximum)	Actual Cash Value
Collision (\$5,000 Deductible – Maximum)	Actual Cash Value

In the case of policies that list specific vehicles or specific drivers, proof of coverage is required to be provided to BNPTS for each vehicle or driver before it can be used in service. The Contractor will be fully responsible for all physical damage deductibles to BNPTS owned vehicles. In addition, Contractor will be fully responsible for all rental costs and other costs associated with any vehicles that replace any vehicle that sustains any type of physical damage.

**C. Workers Compensation**

Part A	Statutory
Part B – Employers Liability	
Bodily Injury by Accident	\$500,000
Bodily Injury by Disease (Policy Limit)	\$500,000
Bodily Injury by Disease (Each Employee)	\$500,000

All States and Voluntary Compensation endorsements shall be included in the Workers Compensation policy. Workers Compensation shall be provided to all employees of the Contractor.

## **SECTION 6 – FEDERAL TRANSIT ADMINISTRATION (FTA) STATE OF ILLINOIS REQUIREMENTS**

### **6-1 Applicability and Federal Grant Contract**

Any contract resulting from this solicitation will be between the successful proposer and BNPTS, and is subject to financial assistance provided by the U.S. Department of Transportation, the Illinois Department of Transportation. The successful Contractor is required to comply with all terms and conditions prescribed in third party contracts in the grant Contract between the U.S. Department of Transportation and BNPTS.

### **6-2 Interest of Members or Delegates of Congress**

In accordance with 41 U.S.C. Section 22, the Contractor agrees that it will not admit any member of or delegate to the United States Congress to any share or part of the Project or any benefit derived therefrom.

### **6-3 No Federal Government Obligations to Third Parties**

Contractor agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, any third party Contractor, or any person not a party to the Grant Agreement or Cooperative Agreement in connection with the performance of the Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, subagreement, or third party contract, the Federal Government has no obligations or liabilities to any party, including any subrecipient or any third party Contractor.

### **6-4 False or Fraudulent Statements or Claims**

The Contractor acknowledges and agrees as follows:

- A. The Contractor recognizes that the requirements of the Program Civil Remedies Act of 1986, as amended, 31 U.S.C. subsection 3801 et seq. and U.S. Department of Transportation regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its activities in connection with the Project. Accordingly, by signing the contract, the Contractor certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make pertaining to the contract. In addition to other penalties that may apply, the Contractor also acknowledges that if it makes 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, as amended, on the Contractor to the extent the Federal Government deems appropriate.
- B. The Contractor also acknowledges that if it makes a false, fictitious or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 U.S.C. section 5307, the Government reserves the right to impose on the Contractor the penalties of 18 U.S.C. section 1001 and 49 U.S.C. section 5307 (n) (1), to the extent the Federal Government deems appropriate.

## **6-5 Access to Records**

In accordance with 49 U.S.C. Section 5325(a) the Contractor agrees to provide BNPTS, the FTA Administrator, the U.S. Secretary of Transportation, the Comptroller General of the United States, or their duly authorized representatives with access to all books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

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

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of 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 Contractor agrees to maintain same until BNPTS, the FTA Administrator, the U.S. Secretary of Transportation, the Comptroller General of the United States, or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

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

## **6-6 Federal Changes**

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement (Form FTA MA (9) dated October, 2002) between BNPTS and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

## **6-7 Equal Employment Opportunity**

In connection with this project, the Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or disability. The Contractor will take affirmative action to ensure that qualified and approved applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, age, or national origin. Such action will include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment advertising, layoff or termination, rates of pay or other compensation, and selection for training, including apprenticeship. Contractor will also notify any and all subcontractors or suppliers of its obligations under this contract related to this provision.

## **6-8 Civil Rights Requirements**

- A. Nondiscrimination in Federal Transit Programs – Contractor agrees to comply, and assures the compliance of each subcontractor, with the provisions of 49 U.S.C. section 5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

- B. Nondiscrimination – Title VI of the Civil Rights Act – Contractor agrees to comply, and assures the compliance of each subcontractor, with all requirements prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.*, and U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of Civil Rights Act,” and 49 CFR Part 21, and any implementing requirements FTA may issue.
- C. Equal Employment Opportunity - The Contractor agrees to comply, and assures the compliance of each subcontractor, with all requirements of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and 49 U.S.C. § 5332 and any implementing requirements FTA may issue. Those equal employment opportunity requirements include, but are not limited to, those listed in the Master Agreement (Form FTA MA (12) dated October, 2005) Section 12c(1) between BNPTS and FTA.
- D. Access Requirements for Persons with Disabilities – The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d), which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The Contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, Contractor agrees to comply with all applicable requirements of those regulations and any subsequent amendments listed in the Master Agreement (Form FTA MA (12) dated October, 2005) Section 12g between BNPTS and FTA.
- E. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## **6-9 Disadvantaged Business Enterprise (DBE) Participation**

The DBE requirements of 49 CFR Part 26 applies to this Contract. These requirements are described in Section 1, Instructions to Proposers.

## **6-10 Contract Assurance**

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 CFR Part 26 in the award and administration of DOT-assisted contracts.

Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as BNPTS deems appropriate.

### **6-11 Prompt Payment**

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contractor receives from BNPTS. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above-referenced timeframe may occur only for good cause following written approval of BNPTS. This clause applies to both DBE and non-DBE subcontractors.

- A. If the prime Contractor fails to pay the subcontractor within thirty (30) days, the prime Contractor must notify BNPTS and the subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
- B. The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor that remain unpaid after thirty (30) days following receipt by the Contractor of payment from BNPTS for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision (A) of this section. Unless otherwise provided under the terms of the contract, interest shall accrue at the rate of one percent (1%) per month, except for the amounts withheld. Notification of failure by the Contractor to make prompt payment to the subcontractor hereinbefore provided will result in notification to the Contractor's bonding company by BNPTS.
- C. Should either the prime Contractor or subcontractor advise BNPTS of a payment issue involving a DBE Contractor, the DBELO officer shall be notified so as to investigate, as appropriate.
- D. BNPTS may conduct prompt payment audits that require prime contractor to submit appropriate documentation to verify compliance with this provision.

### **6-12 Energy Conservation**

Contractor agrees to comply with the mandatory energy efficiency standards and policies within the applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. Subsection 6321 *et seq.*

### **6-13 Clean Air**

Contractor agrees to comply with all applicable regulations, standards or orders implementing the Clean Air Act, as amended, 42 U.S.C. Subsection 7401 *et seq.* In addition:

- A. Contractor agrees to comply with applicable requirements of U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed Funded or

Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 CFR Part 51 Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 CFR Part 93. To support the requisite air quality conformity finding for the Project, Contractor agrees to implement each air quality mitigation and control measure incorporated in the Project. Contractor further agrees that any project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the description of the design concept and scope to the Project described in the SIP.

- B. U.S. EPA also imposes requirements implementing the Clean Air Act, as amended that may apply to transit operators, particularly operators of large transit bus fleets. Accordingly, Contractor agrees to comply with the following U.S. EPA regulations to the extent they are applicable to the project: "Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines," 40 CFR Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures," 40 CFR Part 86; and "Fuel Economy of Motor Vehicles," 40 CFR Part 600.
- C. Contractor agrees to comply with the notification of violating facilities requirements of Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

Contractor agrees to report and require each subcontractor at any tier to report any violation of these requirements resulting from Project implementation activity of any subcontractor or itself to FTA and the appropriate U.S. EPA office.

#### **6-14 Clean Water**

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. Subsection 1251 *et seq.*

In addition:

- A. Contractor agrees to protect underground sources of drinking water consistent with the provisions of the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. Subsection 300f *et seq.*
- B. Contractor agrees to comply with the notification of violating facilities requirements of Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.
- C. Contractor agrees to report and require each subcontractor at any tier to report any violation of these requirements resulting from Project implementation activity of any subcontractor or itself to FTA and the appropriate U.S. EPA office.

#### **6-15 Preference for Recycled Products**

To the extent applicable, Contractor agrees to comply with U.S. Environmental Protection Agency (U.S. EPA) "Comprehensive Procurement Guidelines for Products Containing

Recovered Materials,” 40 CFR Part 247, implementing section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6962, and otherwise provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient.

#### **6-16 Certification Regarding Debarment, Suspension and Other Responsibility Matters**

- A. Contractor agrees to comply, and assures the compliance of all subcontractors, with Executive Orders Nos. 12549 and 12689, “Debarment and Suspension,” 31 U.S.C. § 6101 note, and U.S. DOT regulations, “Governmentwide Debarment and Suspension (Nonprocurement),” within 49 CFR Part 29.
- B. By signing and submitting a bid, the prospective primary participant (i.e., bidder) is providing a signed Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered transactions (Attachment E). The signed certification must be submitted with the bid proposal.
- C. The inability of a person to provide the required certification will result in denial of participation in this covered transaction.
- D. The certification in this clause is a material representation of fact upon which reliance is placed when BNPTS enters into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, BNPTS may terminate this transaction for cause of default.
- E. The prospective primary participant shall provide immediate written notice to BNPTS if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- F. The terms "covered transaction," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," "and" "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- G. The proposer agrees by submitting this proposal that should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by BNPTS.
- H. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by BNPTS and included with these specifications, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

- I. A participant in a covered transaction must rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. Proposers shall submit with their proposals, Attachment F, if a lower tier participant is part of the proposal. Each participant must check the Nonprocurement List issued by U.S. General Services Administration.
- J. The proposer further agrees that it and its affected subcontractors will provide immediate written notice if at any time the proposer learns that their subcontractor's certification was erroneous when submitted or has become erroneous because of changed circumstances.
- K. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- L. Except for transactions authorized under subdivision (F) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, BNPTS may terminate this transaction for cause or default.

#### **6-17 Disclosure of Lobbying Activities**

- A. Contractor agrees that it will not use Federal assistance funds to support lobbying.
- B. Contractor agrees to comply, and assure the compliance of subcontractors, with U.S. DOT regulations, "New Restrictions on Lobbying," 49 CFR Part 20, modified as necessary by 31 U.S.C. § 1352.
- C. Contractor agrees to comply with Federal statutory provisions to the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence Congress or a State legislature on legislation or appropriations, except through proper, official channels.
- D. No appropriated funds may be expended by the recipient of a federal contract, grant, loan, or cooperative agreement to pay any employee of any agency, member of congress, or an officer or employee of congress in connection with any of the following covered federal actions: the awarding of federal grants; the making of any federal loan; the entering into of any cooperative agreement; the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- E. Each proposer is required to review the above regulations and submit a certification of compliance with federal lobbying regulations (Attachment M).

Pursuant to federal regulations, the proposer is required to have all subcontractors providing more than \$100,000 in services to also complete this certification, to be included with the proposal.

#### **6-18 Buy America**

Contractor agrees to comply with 49 U.S.C. § 5323(j), with FTA regulations, "Buy America Requirements," 49 CFR Part 661, and with implementing guidance FTA may issue.

The equipment to be purchased with this Request for Proposal is subject to the Federal Transit Administration Buy America Requirements in 49 CFR 661. The proposer shall complete the Buy America Certification (Attachment L) made part of this Request for Proposal, and certify that the products subject to this section used in connection with this contract will comply with the requirements of Section 165 and the regulation as set forth. This certification must be submitted as part of the proposal. A proposal will be considered non-responsive if the Buy America Certificate is not submitted. A false certification is a criminal act and in violation of 18 U.S.C. 1001. Willful refusal to comply with the certification by a Contractor may lead to initiation of debarment proceedings under 49 CFR Part 29.

#### **6-19 Fly America**

Contractor understands and agrees that the Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the project unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag air carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and with U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 CFR §§ 301-10.131 through 301-10.143.

#### **6-20 Cargo Preference – Use of U.S. Flag Vessels or Air Carriers**

Contractor agrees to comply with U.S. Maritime Administration regulations, "Cargo Preference – U.S.-Flag Vessels," 46 CFR Part 381, to the extent those regulations apply to the project. The Contractor also agrees:

- A. To utilize privately owned United States Flag Commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to the section, to the extent such vessels are available at fair and reasonable rates to United States Flag Commercial vessels.
- B. To furnish within thirty (30) days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "On Board" Commercial Ocean Bill-of-Lading in English for each shipment of cargo described in paragraph one above to the recipient (through the prime Contractor in case of sub-Contractor Bills-of Lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 7th Street, S.W., Washington, D.C. 20590, marked with appropriate identification of the project.

## 6-21 Disputes, Breaches, Defaults, or Other Litigation

The Contractor agrees that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the project. Accordingly:

- A. Notification to FTA – BNPTS shall notify FTA of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the project or the Federal Government's administration or enforcement of Federal laws or regulations. If BNPTS seeks to name the Federal Government as a party to litigation for any reason, in any forum, BNPTS shall inform FTA before doing so.
- B. Federal Interest in Recovery – The Federal Government retains the right to a proportionate share, based on the percentage of the Federal share awarded for the project, of proceeds derived from any third party recovery, except that BNPTS may return any liquidated damages recovered to its project account in lieu of returning the Federal share to the Government.
- C. Enforcement – BNPTS agrees to pursue all legal rights provided within any third party contract.
- D. FTA Concurrence – FTA reserves the right to concur in any compromise or settlement of any claim involving the project and BNPTS.
- E. Alternative Dispute Resolution – FTA encourages BNPTS to use alternative dispute resolution procedures, as may be appropriate.

## 6-22 Prevention of Substance Abuse by Safety Sensitive Employees

- A. Drug Abuse – To the extent that Contractor, any subcontractor at any tier, or their employees, perform a safety sensitive function under the Project, Contractor agrees to comply with, and assures the compliance of each affected subcontractor at any tier, and their employees with U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 CFR Part 29, Subpart F, as modified by 41 U.S.C. subsection 712 *et seq.*
- B. Alcohol Abuse – To the extent that Contractor, any subcontractor at any tier, or their employees, perform a safety sensitive function under the Project, Contractor agrees to comply with, and assures the compliance of each affected subcontractor at any tier, and their employees with FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655.

## 6-23 Privacy

Should Contractor, or any of its subcontractors, or their employees administer any system of records on behalf of the Federal Government, the Privacy Act of 1974, 5 U.S.C. § 552a, imposes information restrictions on the party administering the system of records.

For purposes of the Privacy Act, when the Contract involves the operation of a system of records

on individuals to accomplish a government function, the recipient and any Contractors, third party Contractors, Subcontractors and their employees involved therein are considered to be government employees with respect to the government function. The requirements of the Act, including the civil and criminal penalties for violations of the Act, apply to those individuals involved. Failure to comply with the terms of the Act or this provision of this Contract will make this Contract subject to termination.

Contractor agrees to include this clause in all subcontracts awarded under this Contract, which involve the design, development, operation, or maintenance of any system of records on individuals subject to the Act.

#### **6-24 Bus Testing**

The Contractor or Manufacturer agrees to comply with 49 U.S.C. A 5323 C and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to BNPTS at a point in the procurement process specified by BNPTS which will be prior to BNPTS's final acceptance of the first vehicle.

A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to BNPTS prior to BNPTS's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of BNPTS of such a vehicle and the details of that vehicle's configuration and major components.

#### **6-25 Charter Bus Requirements**

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

#### **6-26 Contract Work Hour and Safety Standards**

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

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

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

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

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

Contract Work Hours and Safety Standards Act -The Contractor agrees to comply with section 107 of the Contract t Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations, " Safety and Health Regulations for Construction " 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic

to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

Subcontracts - The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

#### **6-27 Copeland Anti-Kickback Act**

The contractor shall comply with the requirements of 29CFR Part 3, which are incorporated by reference in this contract.

#### **6-28 Davis-Bacon Act**

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where the workers can easily see it.

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

If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

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

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

(2) Withholding - BNPTS shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by

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

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

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

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

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

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

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

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

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

(4) Apprentices and Trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determine that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The

ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29CFR Part 30.

(5) Compliance with Copeland Act Requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract Termination: Debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act Requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3 and 5 are herein incorporated by reference in this contract.

(9) Disputes Concerning Labor Standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representative.

## **6-29 Environmental Protection**

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq.* consistent with Executive Order No.

11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 *et seq.*; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

### **6-30 Exclusionary or Discriminatory Specifications**

BNPTS agrees that it will comply with the requirements of 49 U.S.C. Section 5323(h)(2) by refraining from using any Federal assistance awarded by the Federal Transit Administration to support procurements using exclusionary or discriminatory specifications. BNPTS further agrees to refrain from using state or local geographic preferences, except those expressly mandated or encouraged by Federal Statute.

### **6-31 Federal Labor Regulations**

In accordance with section 102 of the Contract Work Hours and Safety and Standards Act, as amended, 40 U.S.C. subsection 327 through 332, the Contractor assures that, for the project, the wages of every mechanic and laborer will be computed on the basis of a standard work week of 40 hours, and that each worker will be compensated for work exceeding the standard work week at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The Contractor agrees that determinations pertaining to these requirements will be made in accordance with applicable U.S. Department of Labor regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR Part 5.

### **6-32 Patent Right**

If any invention, improvement, or discovery of BNPTS or any of its third party Contractors is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, BNPTS agrees to notify the Federal Transit Administration immediately and provide a detailed report.

### **6-33 Federal Rights**

Unless the Federal Government later makes a contrary determination in writing, the rights and responsibilities of BNPTS, third party Contractor at any tier, and each subrecipient at any tier, pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, including any waiver thereof. Absent a determination in writing to the contrary by the Federal Government, BNPTS agrees to transmit to FTA those rights due the Federal Government in any invention, improvement, or discovery resulting from that third party contract as specified in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401 (implementing the Presidential Memorandum [Statement] on Government Patent Policy to the Heads of Executive Departments and Agencies, dated February 18, 1983, 19 Weekly Comp. Pres. Doc. 252-253, Feb. 28, 1983), irrespective of the status of BNPTS, any subrecipient, or any third party contractor at any tier (i.e., a large business, small business, State government or State instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.)

## **6-34 Per-Award and Post Delivery Audit Requirements**

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

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

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

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

## **6-35 Rights in Data Copyrights**

### Definition

The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" used in this section does not include financial reports, cost analyses, or similar information used for Project administration.

### Federal Restrictions

The following restriction applies to all subject data first produced in the performance of the contract: Except for its own internal use, BNPTS may not publish or reproduce subject data in whole or in part, or any manner or form, nor may BNPTS authorize others to do so without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public.

### Federal Rights in Data and Copyrights

In accordance with 49 CFR Section 18.34 and 49 CFR Section 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrecoverable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government Purposes the "subject data" described in the following subsections. As used in the previous sentence, "for Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not provide or otherwise extend to other parties the Federal Governments license to:

Any subject data developed under the Grant Agreement or Cooperative Agreement or under a third party contract or subagreement financed by the Grant Agreement or Cooperative Agreement, whether or not a copyright has been obtained; and

Any rights of copyright to which BNPTS, subrecipient, or a third party Contractor purchases ownership with Federal assistance.

### **6-36 School Bus Requirements**

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

### **6-37 Seismic Safety Requirements**

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

### **6-38 Transit Employee Protection Requirements for Projects Authorized by 49 U.S.C.5310(a)(2) for Elderly Individuals and Individuals with Disabilities**

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

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

### **6-39 Transit Vehicle Manufacturer (TVM) Certification**

The contractor agrees to comply with all the requirements of 49 CFR 23.67, as they apply to the procurement of transit vehicles under this contract, including but not limited to, furnishing the

vehicle purchaser with a certification that it is in full compliance with all the regulatory requirements of 49 CFR 23.67.

## **6-40 Bonding Requirements**

### **Bid Bond Requirements (Construction)**

*Bid Security* A Bid Bond must be issued by a fully qualified surety company acceptable to BNPTS and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder. *Rights Reserved* In submitting this Bid, it is understood and agreed by bidder that the right is reserved by BNPTS to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of BNPTS. It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of BNPTS, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of BNPTS's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

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

### **Performance and Payment Bonding Requirements (Construction)**

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

#### **A. Performance bonds**

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

#### **B. Payment bonds**

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

### Performance and Payment Bonding Requirements (Non-Construction)

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

A. The following situations may warrant a performance bond:

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

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

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

C. A payment bond is required only when a performance bond is required, and if the use of payment bond is in the BNPTS's interest.

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

The penal amount of payment bonds shall equal:

Fifty percent of the contract price if the contract price is not more than \$1 million;

Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

Two and one half million if the contract price is increased.

### Advance Payment Bonding Requirements

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

### Patent Infringement Bonding Requirements (Patent Indemnity)

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

### Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to BNPTS, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by BNPTS, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If

required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

#### **6-41 Incorporation of FTA Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any BNPTS requests which would cause BNPTS to be in violation of the FTA terms and conditions.

#### **6-42 Requirements for the State of Illinois**

##### A. Product Restrictions (Procurement and Construction)

Description shall not, in competitive procurements, contain features that unduly restrict competition. "Brand name or equal" description may be used only as a means to define the performance or other salient requirements of a procurement, and when it is so used, the specific features of two brand names which must be met by offerors should be clearly specified.

##### B. Exclusion of Procurement (Construction Only)

Specifications and bidding documents for building construction shall include only that work and the furnishing of those items necessary to the construction. Items that are integral to the construction, such as garage lifts, may be included. However, items such as shop equipment, office equipment or furniture, or others not considered being "real estate" should be bid separately, as procurements.

##### C. Rejection of Bids / Proposals

The right is reserved to accept any bid or any part thereof or to reject any and all bids. Acceptance of any bid or proposal is subject to concurrence by the Illinois Department of Transportation and the United States Department of Transportation.

D. Financial Assistance

This contract is subject to financial assistance contracts between the BNPTS and the Illinois Department of Transportation and the United States Department of Transportation.

E. Interest of Members of Congress

No member of or delegate to the Illinois General Assembly shall be admitted to any share or part of this contract or to any benefit arising therefrom.

F. Prohibited Interests

No member, or officer, or employee of the BNPTS or a local public body with financial interest or control in this contract during his tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

G. Contract Changes

Any proposed change in this contract shall be submitted to the BNPTS for its prior approval.

H. Subcontracts

The third party (agency, carrier, contractor) shall not enter into any subcontracts or agreements, or start any work by the work forces of the third party or use any materials from the stores of the third party, with respect to this contract, without the prior concurrence of the Illinois Department of Transportation. All such subcontracts, agreements, and force work and materials shall be handled as prescribed for third-party contracts, Agreements, and force-account work by the IDOT manual for Public Transportation Capital Improvement Grants. All requests for concurrence shall be submitted to the BNPTS for approval prior to submittal to IDOT.

I. Equal Employment Opportunity

The Contractor will be required to comply with all applicable Equal Employment Opportunity laws and regulations.

In the event of the Contractor's noncompliance with the provisions of this Equal Employment Opportunity Clause, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of Human Rights the Contractor may be declared ineligible for future contracts of subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the Contract may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this Contract, the Contractor agrees as follows:

(1) That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from the military service; and further that it will examine all job classifications to determine if minority / women are underutilized and will take appropriate affirmative action to rectify such under-utilization.

(2) That, if it hires additional employees in order to perform this Contract or any portion thereof, it will determine the availability (in accordance with the Department's Rules and Regulations)

of minorities and women in the area(s) from which it may be reasonable to recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.

(3) That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.

(4) That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Contractor's obligations under the Illinois Human Rights Act and the Department's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Contractor in its efforts to comply with such Act and Rules and Regulations, the Contractor will promptly so notify the Department and the contracting agency and will recruit employees from other resources when necessary to fulfill its obligations thereunder.

(5) That it will submit reports as required by the Department's Rules and Regulations, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Department's Rules and Regulations.

(6) That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.

(7) That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the Contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this Contract, the Contractor will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency and the Department in the event the subcontractor fails or refuses to comply therewith. In addition, the Contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

#### J. Specific Clauses For Motor Vehicle Procurements Only

Motor vehicles shall meet local, state, and federal regulations on air pollution, noise, and safety.

#### K. Specific Clauses Service and Construction Contracts Only

(1) *Audit and Inspection of Records:* The Contractor shall permit the authorized representatives of the BNPTS and the State of Illinois to inspect and audit all data and records of the contractor relating to his performance under the contract.

(2) *Assignment:* Assignment of any portion of the work by subcontract must be approved in advance by the BNPTS.

(3) *Retention of Records:* The contractor shall maintain records to show actual time devoted and cost incurred.

(4) *Ownership of Records*: The BNPTS shall retain ownership of all plans, specifications, and related documents.

L. Specific Clauses Construction Contracts Only

(1) Government Inspection: Representatives of the State of Illinois shall have access to the site of construction and shall have the right to inspect all project works.

(2) Insurance: The Contractor and his subcontractors shall maintain Workmen's Compensation, Public Liability, Property Damage, and Vehicle Liability Insurance in amounts and on terms satisfactory to the Illinois Department of Transportation and the BNPTS. The Contractor shall carry Builders' Risk Insurance, including fire and extended coverage, on 10 percent of the completed value of the insurable portion of construction. Such insurance coverage is required to remain in effect until the construction has been accepted by the BNPTS.

(3) Prime Contractor Participation: The prime contractor shall perform on the site, with his own staff, work equivalent to at least 10 percent of the total amount of construction work at the site. Only pay items of the construction contract will be used in computing the total amount of construction at the work site.

(4) Warranty of Construction: For a period of one year from the date of completion, as evidenced by the date of final acceptance of the work, the Contractor warrants that work Performed under this Contract confer the Contract requirements and is free of any defects of equip material, or workmanship performed by the Contractor or subcontractors or suppliers.

M. Performance Bond (Construction Contracts in Excess of \$100,000 Only)

The Contractor shall furnish a performance bond in an amount equal 100 percent of his contract price.

N. Certified Payrolls

BNPTS shall obtain from the contractor and each subcontractor a certified copy of each weekly payroll within seven days after the regular payroll date. Following a review by BNPTS for compliance with state and federal labor laws, the payroll copy shall be retained at the project site for later review by the authorized representatives of the State of Illinois.

O. Project Sign

“The Contractor shall erect and maintain signs satisfactory to the Illinois Department of Transportation identifying the project and indicating state participation.” (Sign specifications can be found in the Appendix).

P. Escalation

The Department does not allow escalation clauses as part of specifications or contracts, with the following exceptions, subject to prior concurrence for each contract:

- Procurement for rail vehicles, where the contract price exceeds one year; and

- Procurements of metal product from a mill or manufacturer where quotations based on “price at time of shipment” have historically been used.

Q. Contract Period

The contract period for this procurement shall start with the signing of the contract and end within a reasonable time.

R. Compensation

This procurement is funded by the Federal Transit Administration and by the Illinois Department of Transportation.

## **Section 7 – Statement of Work (SOW)**

### **7-1 GENERAL CONDITIONS**

All materials used in the manufacture of the tires furnished under this bid shall conform to all U.S. Government and State of Illinois laws and regulations and likewise the manufacturing of the tires furnished shall conform to all federal, state, and local laws and regulations.

No advantage shall be taken by the lessor or his sub-lessor in the omission of any part of detail that goes to make the tires complete and ready for service.

The lessor shall assume responsibility for all material and accessories and warranty used in the furnishing of tires, whether the same is manufactured by the lessor or purchased, ready-made, from a source outside the lessor's company.

The following conditions shall be stated in the contract with the BNPTS's future supplier:

- a. Notwithstanding any provision to the contrary set forth in said mileage contract, hereby grants to the operator the following option:
  - (1) Upon the expiration of the term of the contract as extended, BNPTS has the right to further extend said contract and continue to use all tires furnished by Tire Lease under such agreements in BNPTS's possession on the expiration date for a period of 36 months from said expiration date.
  - (2) All terms, conditions and provisions of said contract shall remain in full force and effect during said 60 month period, except that vendor shall be relieved of any requirement to furnish BNPTS with tires during said 36 month period unless requested by BNPTS and agreed to by vendor.
  - (3) The rate or rates per bus mile in effect during such 60-month period shall be the rate or rates in effect for the six- (6) month period immediately preceding the commencement date of such 60 month period.
  - (4) It is understood that BNPTS shall continuously use such tires insofar as practicable on its highest mileage runs until such tires are rendered permanently unfit for service during said 60 month period.
  - (5) Upon the expiration of said 60 month period, BNPTS shall pay for any then unused mileage remaining in such tires (tires supplied by Tire Lessor pursuant to the contract at the rate set forth in paragraph A(3) above. The amount of the unused mileage shall be determined by subtracting from the average mileage secured from similar tires (non-recapped or recapped, as the case may be) normally and permanently removed from service during the six month period immediately preceding the expiration of the 60 month period, the mileage run by the particular tire prior to the expiration date of the 60 month period.

### **7-2 BNPTS TIRES AND USAGE**

New buses may be purchased with tires. The lessor will furnish tires as required by

BNPTS's vehicle specifications. BNPTS currently uses 11R22.5H tire on 30 and 35 foot Buses and 75R16 on 25 foot buses. The total monthly mileage for August 2011 was 145,728. The BNPTS estimates yearly bus miles at 1,320,522.

### **7-3 Prices for Lease of Tires**

Prices are requested on one option. The price bid shall include all items requested. Any items omitted from the specifications, which are clearly necessary for furnishing and maintenance of such tires, shall be considered a portion of such equipment although not directly specified or called for in these specifications, i.e. stem valves, caps, ore, grommets and all necessary repair materials.

The price bid shall be stated on a per vehicle mile.

The total lease rate shall consist of a mileage rate for lease of tires. The mileage used shall be actual vehicle miles.

New radial tubeless tires are currently required by the BNPTS.

### **7-4 Record Keeping**

BNPTS will determine the mileage of each bus and shall furnish the lessor with a list of each vehicle together with the monthly mileage for each vehicle at the end of each and every month during the term of the contract and such report or record will be used by the lessor in computing the monthly statement. No individual tire tracking will be done by BNPTS nor will any tire tracking be required of the supplier. But, BNPTS requires tire branding for in-house analysis.

BNPTS will pay to the lessor, the lease payment due under the contract within ten (10) working days after receipt of a correct invoice from the lessor. Total miles operated will be reported to lessor by the 15th of the month.

The lessor shall provide BNPTS with monthly reports by tire showing original tread and the reason tires were removed from service during the month.

### **7-5 Material Furnished**

Tires furnished shall be new radial type tires and all tires furnished shall meet all federal, state, and local laws, ordinances and regulations.

Lessor will keep on hand a sufficient number of spare tires so that the lessee at all times will have a satisfactory stock of tires to insure continuous operation of its fleet.

At no time shall any tire remain in service on BNPTS buses with less than 4/32 of an inch tread depth when measured in a major tread groove. The measurement shall not be made where the tire bars, bumps, or fillets are located.

Wheel weights required for the balancing of tires within BNPTS's fleet shall be provided by BNPTS. Lessor shall provide valve stems for all tires.

#### **7-6 Service Provided**

Lessee will furnish all service necessary to properly maintain the tires within the BNPTS's fleet including tires from other suppliers being tested. This service shall consist of the following:

1. mounting and dismounting tires to and from rims
2. balancing all tires within the fleet
3. maintaining proper air pressure of all tires within the fleet
4. repairing of tire punctures and flat tires
5. distribution and handling of tires and service equipment
6. any other service necessary to maintain the tires of the fleet not specifically mentioned herein.

The lessee will provide a staff of trained and responsible personnel to adequately service tires at BNPTS's service garage. BNPTS will provide service for all road calls. BNPTS will not regroove any tires during this contract.

#### **7-7 Bonus Accounting**

No bonus provision is requested or will be considered in this invitation for bids.

#### **7-8 Delivery**

All tires furnished for use by BNPTS shall be delivered directly to BNPTS's service garage. The lessor shall pay for all freight or delivery charge.

Disposal of tires and related materials delivered to BNPTS shall be the responsibility of the lessor.

#### **7-9 Work Space and Storage of Tires**

BNPTS will furnish adequate storage space and workspace for the storage and maintenance of tires used on its vehicles.

The storage of a nominal number of tires will be the responsibility of the lessee.

#### **7-10 Title to Tires**

Ownership and title to the leased tires shall remain with the lessor.

#### **7-11 Description of Transit Vehicles**

The following is a description of BNPTS transit vehicles presently in service and the bidder must furnish written certification that the tires furnished under the contract will comply with all federal, state, and local laws for said vehicles. All tires supplied under this agreement shall be a 55 M.P.H. Transit Bus tire that meets or exceeds ISO and GWV requirements.

<b>No. Of Units</b>	<b>Model</b>	<b>No. Of Wheels</b>	<b>Lenth</b>	<b>Description</b>
22	GILLIG	6	30 - Foot	High Floor
5	GILLIG	6	35 - Foot	Low Floor
13	FORD	6	25 – Foot	High Floor

BNPTS expects to make purchases of additional buses within the next few years to add to and/or replace various buses currently within its fleet. In anticipation of this, the successful bidder shall be required to provide proper replacement tires for these buses when needed. The mileage rates for such tires shall be negotiated between BNPTS and the successful bidder at the time the buses are purchased.

**7-12 Description of Facilities**

BNPTS operates maintenance and operations facility located within the Bloomington-Normal limits. The facility is adequately equipped to complete all service and maintenance to tires.

**7-13 Special Conditions**

BNPTS will award the tire lease contract to one (1) supplier and tires of that supplier shall be used on its buses during the term of the contract. However, the reserves the right to test special mileage commercial tires other than the lessor's on not more than ten percent (10%) of its fleet.

Upon expiration of this agreement, the provisions of Section 7.22, with regard to return of new materials, run-out of tires, and payment for in-use materials, etc., shall apply as if restated here.

**7-14 Removal of Buses From Service**

The BNPTS anticipates that it will be operating all of the present number of buses; however, no assurance will be made at this time.

If, during the term of this agreement, BNPTS shall sell, or in any manner dispose of, any buses including the tires thereon, and if said tires are supplied by lessor hereunder, or if for any reason BNPTS shall discontinue its business, or discontinue the use of any such buses, with the exception of storage buses described in Section 7.16, BNPTS shall purchase the unused mileage in each tire thereon (including spares) at prices to be computed at the higher amount of either (a) net average mileage secured from similar tires (non-retreaded or retreaded, as the case may be) normally and permanently removed from service; or (b) the applicable current minimum mileage for bonus qualification for non-retreaded or retreaded tires, the mileage run by the particular tire and multiplying the difference, representing unused mileage reduced to bus miles, by the rate then in effect hereunder.

**7-15 Scrap Tires and Tires Disposal**

BNPTS reserves the right to use scrap tires for the sole and exclusive purpose of transporting and disposing of the BNPTS's surplus buses when necessary. In this regard, the lessor agrees to the following terms:

Lessor understands that it is the desire of BNPTS to use scrap tires for the sole and exclusive purpose of transporting, storing, and disposing of BNPTS's out of service vehicles. Therefore, the parties agree to the following terms and conditions:

It is understood that in this agreement, a "scrap tire" means any tire furnished under the contract which has been determined by lessor to be permanently unfit for further service under the contract. It is also understood that "storage vehicle" means any vehicle furnished with tires under the contract, which has been determined by BNPTS to be placed in storage.

Lessor will furnish scrap tires to BNPTS, with thirty days written prior notice, for the sole and exclusive purpose of transporting and storing BNPTS's storage vehicles. It is understood that in this instance, the BNPTS will mount and inflate said tires.

In consideration of the accommodation and benefit given under clause two above, BNPTS agrees as follows:

- (a) BNPTS agrees to use the scrap tire furnished hereunder for the sole and exclusive purpose of transporting, storing, and disposing of BNPTS's surplus vehicles.
- (b) BNPTS will acquire each scrap tires as is, and lessor makes no warranties as to the condition or fitness for continued use of such tires.
- (c) BNPTS agrees not to file or assert against lessor any claim, action, or cause of action for loss, liability or damage arising out of BNPTS's use of or possession of scrap tires furnished under this agreement.
- (d) BNPTS agrees to indemnify and hold lessor harmless against all claims of any party for loss, liability, or damage resulting from lessor's furnishing of scrap tires to BNPTS hereunder.

It is further agreed that the scrap tires provided to BNPTS for storage purposes will be done at no cost to the BNPTS.

It is further agreed that all tires deemed unsuitable by BNPTS for regular route line service, or tires damaged or destroyed, be removed from BNPTS property and disposed of by Lessor. It is further understood that all tire casings be disposed of properly in accordance with all Federal, State, and local environmental laws and, under no circumstances, shall BNPTS be held liable for tire storage, removal or disposal.

## **7-16 Loss and Damage Tire Billing**

Cost for damaged tires shall be included in the rate per tire mile. "Damage" means the abuse by partial or total destruction of a tire by means other than normal wear, including but not limited to, irregular wear, damage from brake heat, curbing, road hazards and misalignment. BNPTS agrees to maintain buses' suspension and steering in accordance with bus manufacturers' alignment specifications and keep brakes properly adjusted. Tires that are damaged beyond repair by an accident or fire, or have been lost, sold, or purchased, shall be paid for at the rental rate then in effect based on the remaining tire mileage as set forth in Section 7.22.

BNPTS is exempt from payment of Illinois State sales and use taxes and taxes must not be included in proposal prices.

**7-17 Escalation Clause**

The bid base rate per tire mile shall be effective from 11/14/2011 through 11/14/2016. The acceptable bid shall be an all-inclusive firm fixed price for (5) five (12) twelve-month periods.

**7-18 Contract Form**

Any contract or leasing agreement entered into between the lessor and BNPTS shall be the "standard industry form" for tire leases of this nature. Such contract or leasing agreement shall be provided by the lessor, must contain all of the leasing and service specifications presented herein, and be in a form acceptable to BNPTS.

**7-19 Incorporation of Specifications**

These specifications shall be incorporated into and made a part of any contract or leasing agreement entered into between the lessor and BNPTS.

In the event of any conflict between the terms and conditions of said contract or leasing agreement and those of the specifications, the terms and conditions of the specifications shall prevail.

**7-20 Contract Termination**

This contract and any modifications(s) thereof may be terminated by BNPTS at its absolute discretion when it determines that necessity requires such termination. Upon such termination, or upon expiration of this agreement, BNPTS may, at its sole election, direct contractor to remove from BNPTS property all new tires, new tubes, and other new products which have never been mounted which were leased hereunder to the BNPTS and in addition the BNPTS may, at its sole election either:

Pay for all original tread on buses, in BNPTS's garage, in transit or in stock, that have been assigned by Supplier to BNPTS's fleet. Payment for original tires shall be on the basis of the unused mileage remaining in such tires multiplied by the applicable net billing rate per tire mile in effect at said termination date. The unused mileage in each original tread tire.

or

- a) On 30 days' written notice prior to the termination date of this agreement, BNPTS may elect to continue to use all tires furnished by lessor under such agreements in effect on the termination or expiration date, for a period of 36 months from said termination or expiration date; and
- b) All terms, conditions, and provisions of said agreement shall remain in force and effect during said 36 month period, except that the lessor shall be relieved of any requirement to furnish BNPTS with tires, supplies or services, during said 36 month period unless requested by BNPTS and agreed to by lessor; and

- c) The rate or rates per bus mile in effect during such 36 month period shall be the rate or rates in effect for the period immediately preceding and commencement date of such 36 month period; and
- d) It is understood that BNPTS shall continuously use such tires insofar as practicable on its highest mileage runs until such tires are rendered permanently unfit for service during said 36 month period; and
- e) Upon the expiration of said 36-month period, BNPTS shall pay for any then unused mileage remaining in such tires at the rate set forth in Paragraph C above.

## ATTACHMENT A

### VENDOR CHECKLIST

(to verify that all necessary documents are included)

This form must be completed and returned with the technical bid. Failure to return this form may be cause for considering your bid non-responsive.

	<u>Vendor Check-Off</u>	<u>BNPTS Check-Off</u>
Cover Letter	_____	_____
IFB Cover Page	_____	_____
Attachment B Bid Affidavit	_____	_____
Attachment C Addendum Page	_____	_____
Attachment D Requests for Approved Equal	_____	_____
Attachment E Ineligible Bidders Certification	_____	_____
Attachment F Ineligible Bidders Certification	_____	_____
Attachment G Non-Collusion Affidavit	_____	_____
Attachment H Firm Data Sheet	_____	_____
Attachment I Good Faith Effort	_____	_____
Attachment J DBE Affidavit	_____	_____
Attachment K DBE Approval Certification	_____	_____
Attachment L Buy America Certification	_____	_____
Attachment M Certification Regarding Lobbying	_____	_____
Cost Bid Form	_____	_____

**ATTACHMENT B**

**BID AFFIDAVIT**

The undersigned hereby declares that he/she has carefully read and examined the Advertisement, the Scope and Terms, the Specifications, Warranty and Quality Assurance Requirements with all supporting certificates and affidavits for the provision of services specified at the prices stated in the fee bid.

SIGNED : \_\_\_\_\_

TITLE: \_\_\_\_\_

FIRM NAME : \_\_\_\_\_

Subscribed and sworn to before me this \_\_ day of \_\_\_\_\_, 20\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**ATTACHMENT C**  
**ADDENDUM PAGE**

The undersigned acknowledges receipt of the following addenda to the Documents.

(Give number and date of each)

Addendum Number \_\_\_\_\_ Dated \_\_\_\_\_

Addendum Number \_\_\_\_\_ Dated \_\_\_\_\_

Addendum Number \_\_\_\_\_ Dated \_\_\_\_\_

Addendum Number \_\_\_\_\_ Dated \_\_\_\_\_

Addendum Number \_\_\_\_\_ Dated \_\_\_\_\_

Addendum Number \_\_\_\_\_ Dated \_\_\_\_\_

Addendum Number \_\_\_\_\_ Dated \_\_\_\_\_

Failure to acknowledge receipt of all addenda may cause the bid to be considered non-responsive to this Request for Bid, which will require rejection of the bid.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**ATTACHMENT D**

**REQUEST FOR CLARIFICATIONS/APPROVED EQUAL**

DATE: \_\_\_\_\_

PROPOSER: \_\_\_\_\_

SECTION: \_\_\_\_\_ PAGE: \_\_\_\_\_

BIDDERS REQUEST: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

BNPTS RESPONSE: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

APPROVED \_\_\_\_\_

DENIED \_\_\_\_\_

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SIGNATURE \_\_\_\_\_

DATE \_\_\_\_\_

**ATTACHMENT E**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER  
INELIGIBILITY AND VOLUNTARY EXCLUSION**

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

Where the Contractor is unable to certify to any of the statements in this certification, such Contractor shall attach an explanation to this bid.

Contractor (Name) \_\_\_\_\_ certifies or affirms the truthfulness and accuracy of the contents of the statement submitted on or with this certification and understands that the provisions of 31 U.S.C. Sections 3801 ET Seq. are applicable thereto.

AUTHORIZED OFFICIAL: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

**ATTACHMENT F**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER  
INELIGIBILITY AND INVOLUNTARY EXCLUSION  
LOWER TIER TRANSACTIONS**

The Lower Tier Participant (Applicant for a third party subcontract or sub-grant under an Federal Transit Administration Project), \_\_\_\_\_, certifies, by submission of this bid, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, of involuntarily excluded from participation in this transaction by any Federal Department or Agency.

Where the Lower Tier Participant (Applicant for a third party subcontract or sub-grant under a Federal Transit Administration Project) is unable to certify to any of the statements in this certification, such Contractor shall attach an explanation to this bid.

The Lower Tier Participant (Applicant for a third party subcontract or sub-grant under a Federal Transit Administration Project) \_\_\_\_\_ certifies or affirms the truthfulness and accuracy of the contents of the statement submitted on or with this certification and understands that the provisions of 31 U.S.C. Sections 3801 ET Seq. are applicable thereto.

AUTHORIZED OFFICIAL: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

**ATTACHMENT G**

**AFFIDAVIT AND INFORMATION REQUIRED OF BIDDERS**

Affidavit of Non-Collusion

I hereby swear (or affirm) under the penalty for perjury:

1. That I am the bidder (if the bidder is an individual), a partner in the bid (if the bidder is a partnership), or an officer or employee of the bidding corporation having authority to sign on its behalf (if the bidder is a corporation);
2. That the attached bid(s) has been arrived at by the bidder independently and have been submitted without collusion and without any agreement, understanding, or planned common course of action with any other vendor or materials, supplies, equipment, or service described in the invitation to bid, designed to limit independent bids or competition;
3. That the contents of the bid or bids has not been communicated by the bidder or its employees or agents to any person not an employee or agent of the bidder or its surety on any bond furnished with the bid or bids, and will not be communicated to any such person prior to the official opening of the bid or bids; and
4. That I have fully informed myself regarding the accuracy of the statements made in the affidavit:

Signed \_\_\_\_\_

Firm Name \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20

Notary Public \_\_\_\_\_

My Commission expires \_\_\_\_\_, 20

Proposer's E.I. Number \_\_\_\_\_ (number used on Employer's Quarterly Federal Tax Return)

**ATTACHMENT H**

**FIRM DATA SHEET**

The prime consultant is responsible for submitting the information requested below **on all firms on the project team, both prime and all subconsultants**. All firms are to be reported on one combined sheet unless the number of firms requires the use of an additional sheet. Failure to submit complete data will result in the Expression of Interest not being considered.

<b>Firm's Name and Address</b>	<b>Firm's DBE Status*</b>	<b>Firm's Age</b>	<b>Firm's Annual Gross Receipts</b>

\* Y = DBE-Certified by VDOT  
N = Not DBE-Certified by VDOT

NA = Firm Not Claiming DBE Status  
IP = DBE-Certification In-Process

## ATTACHMENT I

### GOOD FAITH EFFORT (For information only – not to be returned)

1. BNPTS has not established a defined percentage contract goal on this contract. Therefore a bidder must, in order to be responsible and/or responsive, make a good faith effort to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.
2. BNPTS will use the good faith efforts mechanism as required by 49 CRF part 26. It is up to BNPTS to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. BNPTS will consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. As emphasized by the Department of Transportation, BNPTS's determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.
3. BNPTS will not require that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith effort showing. The rule specifically prohibits BNPTS from ignoring bona fide good faith efforts.
4. The following is a list of types of actions that BNPTS will consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
  - a. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty.
  - b. the DBEs are interested by taking appropriate steps to follow up initial solicitations.
  - c. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE

## **GOOD FAITH EFFORT (continued)**

- d. participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- e. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- f. Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone
- g. numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- h. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- i. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- j. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- k. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBE.

**ATTACHMENT J**

**DBE AFFIDAVIT**

STATE OF \_\_\_\_\_ (Date \_\_\_\_\_)

COUNTY OF \_\_\_\_\_

The undersigned being duly sworn, deposes and says that he/she is the

\_\_\_\_\_  
(sole owner, partner, president, treasurer or other duly authorized official of a corporation) of

\_\_\_\_\_  
(Name of DBE)

and certifies that since the date of its certification IL UCP, the certification has not been revoked nor has it expired nor has there been any change in the minority status of

\_\_\_\_\_  
(Name of DBE)

\_\_\_\_\_  
(Signature and Title of Person Making Affidavit)

Sworn to before me this \_\_\_\_\_ day \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
(Notary Public)

**NOTE: The offeror must attach the DBE's most recent certification letter or document to this affidavit.**

## ATTACHMENT K

### DISADVANTAGED BUSINESS ENTERPRISE APPROVAL CERTIFICATION

I hereby certify that the Bidder has complied with the requirements of 49 CFR 26.49, Participation by Disadvantaged Business Enterprise in DOT Programs, and that its goals have not been disapproved by the Federal Transit Administration.

---

Signature of the Bidder's Authorized Official

---

Name and Title of the Bidder's Authorized Official

---

Date

**ATTACHMENT L**

**BUY AMERICA CERTIFICATION**

**CERTIFICATE OF COMPLIANCE**

**(PLEASE ONLY SIGN ONE (1) OF THE FOLLOWING BELOW)**

Certificate of Compliance with Section 165(a)

The bidder hereby certifies that it will comply with the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982, as amended and the applicable regulations in 49 CFR Part 661.

Certification requirement for procurement of Tire Leasing.

DATE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**CERTIFICATE FOR NON-COMPLIANCE**

Certification of Non-Compliance with Section 165(a)

The bidder hereby certifies that it cannot comply with the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, but it may qualify for an exception to the requirements pursuant to Section 165(b) (2) or (b) (94) of the Surface Transportation ACT of 1982 AND REGULATION IN 49 CFR 661.1.7.

DATE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**ATTACHMENT M  
CERTIFICATION REGARDING LOBBYING**

The undersigned bidder certifies that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of a member of congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification, of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contracts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions [as amended by “Government wide Guidance for New Restrictions on Lobbying,” 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance has been modified in accordance with Section 10 of Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

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

\_\_\_\_\_ Signature of Contractor’s Authorized Official

\_\_\_\_\_ Name and Title of Contractor’s Authorized Official

\_\_\_\_\_ Date

## Bid Form

Type of Tire	11R22.5	225/75R16
Year One Cost per Tire Mile	_____	_____
Year Two Cost per Tire Mile	_____	_____
Year Three Cost per Tire Mile	_____	_____
Year Four Cost per Tire Mile	_____	_____
Year Five Cost per Tire Mile	_____	_____

Signature:

\_\_\_\_\_

(In Ink)

Company: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

(Including Zip Code)