



# TRANSIT

CITY OF OSHKOSH, WISCONSIN

REQUEST FOR PROPOSALS  
FOR  
BUS ADVERTISING SERVICES

February 23, 2023

GO Transit  
926 Dempsey Trail  
Oshkosh, Wisconsin 54902  
[www.oshkoshtransit.com](http://www.oshkoshtransit.com)

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## PART A – NOTICE TO VENDORS



### CITY OF OSHKOSH PURCHASING DIVISION NOTICE TO VENDORS

1. NOTICE IS HEREBY GIVEN that sealed proposals will be received in the City Clerk's office, Room 108, City Hall, Oshkosh, Wisconsin, for: "PROPOSAL FOR BUS ADVERTISING SERVICES" FOR THE CITY OF OSHKOSH, DUE NO LATER THAN 10:00 AM, TUESDAY, MARCH 21, 2023.
2. It is the bidder's sole responsibility to insure that the proposal is timely and physically received by the City Clerk's office prior to the deadline set forth in this notice. Receipt of a bid/proposal by the mail system or other City departments does not constitute receipt of a bid/proposal by the City Clerk's office.
3. All proposals must be submitted in an envelope sealed by the bidder or designated representative. All proposals should be addressed to the City Manager, c/o City Clerk's Office, City Hall, 215 Church Avenue, P.O. Box 1130, Oshkosh, WI 54903-1130. On the outside of the envelope, the bidder should distinctly indicate the name and address of the bidder and in the lower left corner should clearly indicate the envelope contains a sealed proposals for: "PROPOSAL FOR BUS ADVERTISING SERVICES." Any proposals not complying with these instructions will not be considered submitted to the City, and shall be returned to the bidder unopened and unread.
4. Submission of proposal documents by facsimile equipment or electronic mail (email) will not be accepted.
5. This notice establishes a time by which sealed proposals must be physically received by the City Clerk's office. No proposals will be accepted after that deadline. Under no circumstances will proposals be accepted and read when submitted at the place of bid opening even if presented before that deadline.
6. The City is not responsible for proposals submitted in any other way except those submitted in strict conformance with these instructions.
7. A written request for the withdrawal of a proposal or any part thereof may be granted if the request is received by the City prior to the specified time of opening.
8. All formal proposals submitted shall be binding for thirty-five (35) calendar days following the bid opening date, unless the bidder(s), upon request of the General Services Manager, agrees to an extension.
9. If applicable, bidder must comply with all necessary insurance requirements, bid bond and/or performance bond as required of the project and as noted in the City of Oshkosh Insurance Requirements.
10. If the proposal is accepted, the bidder must execute and file the proper contract within ten (10) days after award by the Common Council and receipt of the contract form for signature. In case the successful bidder shall fail to execute and deliver the Contract and Performance Bond within the time limited by the City, the amount of the bid bond shall be forfeited to the City of Oshkosh as liquidated damages.
11. The City reserves the right to reject any and all proposals and to waive any informalities in bidding.
12. For specifications and further information concerning this invitation to bid, contact Jon Urben, General Services Manager, email: [jurben@ci.oshkosh.wi.us](mailto:jurben@ci.oshkosh.wi.us) or telephone (920) 236-5100.

Mark A Rohloff

City Manager

## PART B - GENERAL INFORMATION

### Service Background

The GO Transit is engaged in the business of carrying passengers for hire in 16 full-size transit buses. The current fleet consists of the following vehicles:

Year	Manufacturer	Model	Size	Quantity
2013	New Flyer	XD35	35'	2
2018	New Flyer	XD35	35'	2
2018	New Flyer	XD40	40"	5
2019	New Flyer	XD35	35'	3
2022	New Flyer	XDE40	40'	2
2022	New Flyer	XD35	35'	2

GO Transit utilizes 9 buses in daily service. All GO Transit buses are rotated on all routes and are not assigned to certain routes. The model year 2022 buses listed above are hybrid-electric and all remaining buses are conventional diesel.

In 2022, GO Transit buses carried 564,372 passenger trips and operated a total of 471,658 revenue miles. Service scheduled in 2025 will be similar in 2023 miles operated. GO Transit bus service runs Monday through Saturday from 6:15 a.m. to 6:45 p.m. on regular schedules in the City of Oshkosh, Wisconsin. In addition to the regular service, GO Transit provides special event service during the Experimental Aircraft Association Fly-In and Sport Aviation Exhibition.

The objectives of this RFP are to identify and select a qualified Contractor to sell, install, display, and maintain advertising space on 16 GO Transit buses to generate advertising revenue for GO Transit.

The City of Oshkosh/GO Transit is hereinafter referred to as "GO Transit."

### Service Availability

The services described in this RFP are based on current funding levels. It is important to note that budgetary constraints at all levels of government may result in the reduction of services currently provided by GO Transit. As a result, GO Transit does not imply or guarantee that current levels of service or passenger volumes will be maintained over the

term of this procurement.

### **Length of Contract**

The contract length will be for three (3) years with options to extend for two one-year periods.

A sample contract is listed in Appendix 1.

### **Scope of Work**

The successful Contractor shall provide all work and services necessary to solicit and secure advertisers for available exterior and interior space on the buses, assist advertisers with design and production of materials as necessary, place and remove or arrange for the placement and removal of said materials on the buses, and handle all billing, collection, and payment of funds for the display of advertising on GO Transit buses. The Contractor shall maximize advertising revenues and, as reasonably as possible, utilize 100% of the available advertising space.

The current available advertising locations include the following:

- Full bus wraps
- Less than full bus wraps
- 30" x 144" direct application display advertisements on exterior of buses, driver side (35' and 40' buses)
- 30" x 88" direct application display advertisements on exterior of buses, curb side (35' buses)
- 21" x 72" direct application display advertisements on exterior of buses, rear (all buses)
- 11" X 28" card insert display advertisements on interior of bus (all buses)

GO Transit currently offers unused interior bus ad space to government entities. The only cost for the government entity would be to cover the printing and material expense of the bus cards. As a value added service, GO Transit prefers a contractor that can provide affordable interior bus cards for GO Transit and approved government entities. Other revenue generating interior bus cards take precedence over interior cards provided at no cost.

All GO Transit buses contain bike racks. GO Transit's bus bike racks are not equipped with ad frames and currently are not used for advertising. As an option and with GO Transit approval, the bus bike racks would be available ad space. However, the contractor would be required to supply and install ad frames compliant with the bike rack manufacturer's recommendations or other equipment necessary to utilize this space. GO Transit does not permit exterior ad frames on other areas of the bus, but would consider ad frames on bike racks according to the requirements above.

Other ad sizes or available space may be used upon approval by GO Transit.

The successful Contractor shall allow GO Transit to display advertising and notices pertaining to its own operations, or public service advertising in unsold spaces and locations. The Contractor may not sell or install more than four (4) full bus wraps at any given time.

It shall be the responsibility of the Contractor to provide, install and remove all advertising signs.

The successful Contractor shall be responsible for complying with all applicable Federal, state and local laws and regulations governing the sale of transit advertising. Specific Federal & City of Oshkosh requirements that apply to the Contractor are outlined in Appendices 2 & 3 of this solicitation.

### **Optional Future Advertising Space**

GO Transit does not currently sell advertising space at the downtown transit center, bus shelters or benches. GO Transit's downtown transit center is located at 110 Pearl Ave. The center consists of a long platform with a metal roof. It features one heated shelter and two open shelters where bus riders transfer between buses and is a destination to catch routes. GO Transit also has 31 shelters and 7 benches located through the City of Oshkosh along GO Transit routes.

GO Transit may wish, at a later date, to engage the selected Contractor to sell advertising at these locations. However, GO Transit does not guarantee that this space will be made available during the term of the agreement.

Contractors are welcome, but not required, to submit preliminary proposals on optional future advertising space as a part of their response to this request for proposals. However, the evaluation of proposals will be based on the advertising scope described in the "Scope of Work" section.

### **Disadvantaged Business Enterprise**

GO Transit has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. It is the policy of GO Transit to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts.

There is no contract goal established for this agreement. If a proposer is certified with the State of Wisconsin as a DBE vendor, please indicate DBE certification within the submitted proposal.

## **PART C – CONTRACTOR REQUIREMENTS**

### **Revenue**

In the Revenue Proposal Form in Part F, the Contractor shall provide a monthly guaranteed minimum revenue amount and a monthly percentage of gross monthly sales. The Contractor shall pay GO Transit the monthly guaranteed minimum revenue amount or the monthly percentage of gross monthly sales, whichever is greater. Proposers can propose different monthly minimums and percentages for each of the three (3) contract years and each of the two (2) option years at its discretion.

Any agency fees, commissions or production costs for which the contractor may become liable as a result of sale of the advertising space contemplated by this solicitation shall be the responsibility of the contractor, and shall not be deducted from the guaranteed payments due GO Transit.

In the event that GO Transit reduces the number of buses in its fleet by more than 10%, or cause the available advertising space to be reduced by more than 10%, then the monthly guaranteed amount paid by the awarded Contractor will be adjusted by the same amount.

### **Residual Advertising**

Bus advertising contracted for and installed by GO Transit's current bus advertising Contractor shall be referred to as residual advertising. The awarded Contractor shall be required to fulfill existing contracts.

### **Assignment of Contracts**

All advertising contracts generated through this revenue agreement shall be deemed to be assigned to GO Transit if the revenue agreement with GO Transit is terminated or upon the natural expiration of its terms with any further action required and all such assigned advertising contracts shall become the property of GO Transit. The Contractor shall provide GO Transit, or GO Transit's designee, with all advertising materials related to the assigned advertising contracts.

### **Material**

The vinyl material used for the direct application advertisements shall be selected for ease of application and removal, durability, and readability. Other materials may be used upon approval by GO Transit.

Full and partial bus wraps with ad material that covers bus windows must be designed to allow passengers to see outside of the bus.

GO Transit uses interior bus ad cards printed on .03 styrene plastic. GO Transit prefers this material or an approved equal for all future interior ad cards.

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## Installation & Removal

The Contractor is solely responsible for all labor and expense of application and removal of each advertisement and, if any damage occurs as a result of decal or card removal, for restoring the buses to their original condition, including repainting and reapplying the GO Transit logo if necessary. If any advertisement is damaged for any reason, including but not limited to accident, vandalism, or routine washing, the Contractor shall be responsible for all labor and expense in performing touch-ups or repairs.

GO Transit at its sole option, may direct the Contractor to complete the work or make the necessary repairs to advertisements at the Contractor's expense.

Advertisements displayed by the Contractor with dated content shall be removed by the end of the month in which the material expires.

Contractor's signs, posters, card frames and other items affixed to GO Transit buses shall not interfere with the normal operation, safety, or routine maintenance of said buses.

The Contractor must maintain a record of all interior and exterior advertising posted and removed by bus number.

## Advertising Policy

GO Transit's advertising policy defines permitted and prohibited advertising under this agreement. A copy of the current advertising policy can be obtained by emailing Steve Tomasik at [stomasik@ci.oshkosh.wi.us](mailto:stomasik@ci.oshkosh.wi.us).

## Insurance

The Contractor shall not commence work under this agreement until it has obtained all insurance required under Appendix 4. Evidence of this insurance coverage shall be furnished to GO Transit in the form of a certificate of insurance within the submitted proposal.

## Payments to GO Transit

It shall be the responsibility of the Contractor to collect and retain all money and compensation paid or agreed to be paid by third parties for any and all advertising on GO Transit buses.

Monthly reports and payments shall be forwarded within fifteen (15) days after the end of each month to:

GO Transit  
926 Dempsey Trail  
Oshkosh, WI 54902



At a minimum, monthly reports shall contain each advertiser account:

- Name
- Gross revenue
- Percentage due GO Transit
- Totals by category

### **Public Records**

The Contractor's proposal, agreement with the City of Oshkosh, and all agreements with advertisers are public records under Wisconsin Statutes and shall be maintained and provided when requested.

### **Audits**

The Contractor shall make financial and operating records available to State, Federal, County and City auditors in order to comply with program audit requirements. Accounting records and other related financial books and records shall be subject to an audit as directed by GO Transit. Such audit shall be completed at Contractor's expense and delivered to GO Transit no later than 150 days after the end of Provider's fiscal year.

## **PART D - RESPONSIBILITIES OF GO TRANSIT**

### **Contract Administrator**

GO Transit's Transit Operations Manager shall act as contract administrator with respect to the work performed under this contract.

### **Maintenance Data**

GO Transit will notify the contractor when a bus is deadlined for unscheduled maintenance and will be out of service for an extended period of time.

### **Scheduling for Ad Installation**

Installation and removal of ads will be expected to be completed at GO Transit's garage located at 926 Dempsey Trail, Oshkosh, WI 54902, unless another location is necessary upon approval of GO Transit. GO Transit has the ability to hold in the garage a maximum of five (5) buses per day for installation of ads. Unforeseen mechanical issues can impact bus availability. The Contractor is required to provide GO Transit a minimum of a 24-hour advance notice to schedule ad installations.

The Contractor shall complete all advertising installation work in an expeditious manner, and shall not keep any bus out of service more than 2 hours, except for the installation of full bus wraps. The Contractor may keep a bus out of service for no more than two (2) days to install a full bus wrap advertisement.

The Contractor shall have access to buses during normal operating hours (6:30 am – 5:30 pm, M-F). The Contractor's installers must check in with GO Transit supervisory staff prior to servicing bus advertisements.

If needed, GO Transit can install interior ad cards after ads have been delivered to GO Transit.

## **PART E – ADDITIONAL SERVICES**

### **Creative Support**

GO Transit prefers a Contractor that can provide free creative design assistance and ad layout for interior and exterior ads placed by GO Transit.

## PART F – PROPOSAL REQUIREMENTS AND SUBMITTAL INSTRUCTION

### General Information

All proposals, sealed and marked “PROPOSAL FOR BUS ADVERTISING SERVICES”, must be received by the City Clerk, 215 Church Avenue, Oshkosh, WI 54901 DUE NO LATER THAN 10:00 AM, TUESDAY, MARCH 21, 2023. Any proposal received after this time will not be considered. Each proposal shall remain open for a period of 60 days from the date of the proposal opening.

Proposers must submit, in a sealed package, one original (identified) plus 2 copies of all materials required for acceptance of their proposal on or before the submittal deadline.

Proposals may be withdrawn prior to the date/time set for proposal opening. Proposals may be modified or withdrawn by the proposer’s authorized representative in person, or by written notice. If proposals are modified or withdrawn in person, the authorized representative shall make his identity known and shall sign a receipt for the proposal. Written notices shall be received in the office where proposal was submitted no later than the exact date/time for proposal opening.

Award of the contract shall be made to the most responsive and responsible proposer whose proposal meets the specifications and is most advantageous to the City of Oshkosh.

### Proposed Schedule

The following schedule provides information on events and deadlines for this proposal.

RFP Issued	February 23, 2023
Last day for submitting written questions	March 3, 2023
Email amendments to proposers, which includes answers to all questions submitted, supplements and/or revisions to RFP*	By March 10, 2023
Proposal submittal deadline	10:00 a.m., March 21, 2023
Anticipated contract award and start date	April, 2023

\*In the event that it becomes necessary to provide additional clarifying data or information, or to revise any part of this RFP, revisions/amendments and/or supplements will only be provided to all known recipients of this initial RFP. To ensure all supplemental information (if available) regarding the initial RFP is shared, interested parties should email their contact info to Jon Urben at [jurben@ci.oshkosh.wi.us](mailto:jurben@ci.oshkosh.wi.us) by 4:30 p.m. on March 2, 2023.

The City of Oshkosh reserves the right to reject any or all proposals, to waive any informalities in the process, or to accept any proposal deemed in the best interests of the City of Oshkosh.

## **Proposal Selection**

The proposals will be initially reviewed to determine if mandatory requirements are met. Failure to meet mandatory requirements may result in the proposal being rejected.

Based on the evaluation of the written proposal, additional information may be required to clarify or confirm proposal information. Additional information obtained may be of any or all of the following: proposer interviews, reference reviews, and proposer presentation/demonstration.

If additional information is needed, GO Transit will make every reasonable attempt for scheduling at a time and location that is agreeable to the proposer. Failure of a proposer to fulfill or accommodate additional information requests may result in rejection of that proposer's proposal.

## **Evaluation Criteria**

The following criteria are listed in priority order and will be followed to evaluate the information submitted in each proposal:

1. Revenue

Both the proposed percentage payment and proposed guaranteed minimum monthly payment will be evaluated.

2. Professional Competence & Experience

The extent to which the firm has demonstrated competence in performing similar work and/or the extent of former client/customer satisfaction. The extent to which the firm has personnel with the necessary experience and technical skills to perform the work.

3. Overall Methodology

The extent to which the firm's strategy maximizes sales and revenue throughout the term of the agreement.

4. Proposal

The extent to which the firm's proposal is organized, complete, and demonstrates a thorough understanding of the service described in this RFP. Elaborate proposals beyond that sufficient to present a complete and effective proposal, are not necessary or desired.

If only one proposal is received in response to the request for proposals, additional information may be requested of the single proposer to determine if the revenue proposed is fair and reasonable or if a negotiation is required.

## **Protest Procedure**

Protests to any sealed bid or bid award recommended by the Purchasing Authority or his or her designee may be made by any bidder as listed in subsection (1) and (2) of Section 12-10(A)(5)(3) of the Oshkosh Municipal Code found on the City of Oshkosh website [www.ci.oshkosh.wi.us](http://www.ci.oshkosh.wi.us).

## **Mandatory Proposal Requirements**

The following format includes the mandatory forms and documentation for the preparation and submittal of proposals.

Proposals should include the specified elements below to aid in evaluation:

- a. Transmittal/Cover Letter containing the statement of performance verification criteria listed below and signed by an authorized officer of the responding organization.
  - 1) The information contained in this submission is accurate and complete as of the date of submission.
  - 2) The responding organization understands and is willing to comply with all contractual requirements.
- b. Proposal Response Requirements
- c. Revenue Proposal Form
- d. Amendments/Addendums (if any)
- e. Certifications:
  - 1) Compliance with Contractor Requirements
  - 2) Non-Collusion Bidding Certification
  - 3) Contractor Certification Regarding Compliance with FTA Requirements
  - 4) Government Wide Debarment and Suspension Certification
  - 5) Certificate of Liability Insurance (see sample in Appendix 4)

### **Proposal Response Requirements**

Proposers shall answer the following with their proposal response. Each proposal shall limit their proposal to these elements and maintain the same order in their response.

- 1) Name of Organization
  - a. Business Address, Telephone Number, and Email address
- 2) Legal status of Organization
  - a. Sole proprietor, For-profit corporation or joint venture corporation, For-profit partnership, Non-profit corporation, Public agency, or Other (Identify)
- 3) Name of Chief Executive Officer (or Administrator) of Organization
- 4) Name of individual designated to represent organization in subsequent discussions or negotiations related to this solicitation
  - a. Name, Title, Telephone Number, & Email address
- 5) Describe the major business functions or activities of your organization
- 6) List three (3) references that most related to the services requested in this RFP. For each reference, include contact info, years of experience and type of work. GO Transit may check references outside of the submitted list.
- 7) Have any of your contracts been canceled or suspended due to inability to comply with the terms of the agreements? If yes, describe why each agreement was canceled or suspended.
- 8) Provide the ad sales strategy to be used under this contract that will maximize revenue for GO Transit. The strategy should not be more than one (1) page in length.
- 9) Provide a discussion that identifies each staff member assigned to the contract. Include experience, qualifications, and responsibilities. Identify which person will be GO Transit's main contact for the service provided under the contract. Include a resume for the main contact.
- 10) What ad material will be used (exterior and interior ads)? Will subcontractors or proposer staff perform the ad installation and removal work?
- 11) Briefly describe any additional information that you believe may be relevant to the evaluation of your organization's proposal. The response may include information regarding the "Optional Future Advertising Space" and "Additional Services" listed in this RFP.

**Revenue Proposal Form**

The proposer may recreate the form below, but must maintain the same required content in the same order.

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

Proposed revenue to GO Transit is as follows:

	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>2026</b> (option year)	<b>2027</b> (option year)
<b>Guaranteed Minimum Monthly Payment to GO Transit</b>	\$	\$	\$	\$	\$
<b>Percentage of Gross Sales</b>	%	%	%	%	%

I certify that all the information in this revenue proposal for bus advertising services is true and accurate.

\_\_\_\_\_  
Name (type or print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



**Compliance with Contractor Requirements Certification**

(Proposer certifies)

The proposer hereby certifies that it will comply with the contractor requirements issued by GO Transit in this RFP. The proposer warrants and certifies that of the following three paragraphs, paragraph A or B or C is true (√ check one):

- A. \_\_\_\_\_ The proposer hereby states that it will comply with the requirements in all areas. (This means that there are no exceptions to the requirements, no matter how minor. If you have any doubts, check paragraph C or call the procuring agency for assistance.)
  
- B. \_\_\_\_\_ The proposer hereby states that it will comply with the requirements in all areas except those where requests for clarification were approved prior to bid submission.
  
- C. \_\_\_\_\_ The proposer hereby states that it will comply with the requirements in all areas except those noted on the attached page. The proposer understands that those exceptions to the specifications may be considered non-responsive, and may be rejected.

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

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

\_\_\_\_\_ Date

**NON-COLLUSION BIDDING CERTIFICATION**

By submission of this proposal, each Contractor and each person signing on behalf of the Contractor certifies, and in the case of a joint proposal, each party certifies as to its own organization, under penalty of perjury, that to the best of knowledge and behalf:

1. The prices in this proposal have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition as to any other matter relating to such prices with any other proposer or with any other competitor.
  
2. Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the Contractor and will not knowingly be disclosed by the Contractor prior to opening, directly or indirectly, to any other proposer or to any competitor; and,
  
3. No attempt has been made or will be made by the Contractor to induce any other person, partnership, or corporation to submit or not to submit a proposal for the purpose of restricting competition.

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

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

\_\_\_\_\_ Date

**Compliance With FTA Requirements Certification**

**49 CFR Part 18**

The Contractor listed below hereby certifies that it 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 Federal Transit Administration (FTA) Master Agreement between the City of Oshkosh/GO Transit and the Federal Transit Administration, as they may be amended or promulgated from time to time during the term of this contract. The Contractor's failure to so comply shall constitute a material breach of this contract.

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

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

\_\_\_\_\_ Date

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## GOVERNMENT-WIDE DEBARMENT AND SUSPENSION CERTIFICATION

**2 CFR part 180**

**2 CFR part 1200**

**2 CFR § 200.213**

**2 CFR part 200 Appendix II (I)  
Executive Order 12549**

**Executive Order 12689**

### Instructions for Certification

- 1. By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.**
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the state of Wisconsin may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the state of Wisconsin if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier, covered transaction, participant, persons, lower tier covered transaction, principal, proposal and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 C.F.R. Part 29]. You may contact the State of Wisconsin for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this bid 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, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the state of Wisconsin.
6. The prospective lower tier participant further agrees by submitting this bid that it will include the clause title –Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-Procurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the state of Wisconsin may pursue available remedies including suspension and/or debarment.

**“Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction”**

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

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

Signature: \_\_\_\_\_

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

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

**APPENDIX 1**  
**CONTRACTOR AGREEMENT:**  
**PROJECT NAME**  
**CITY OF OSHKOSH**

THIS AGREEMENT, made on the XX<sup>th</sup> day of MONTH, YEAR, by and between the CITY OF OSHKOSH, party of the first part, hereinafter referred to as CITY, and CONTRACTOR NAME, ADDRESS, CITY, ZIP, STATE, hereinafter referred to as the CONTRACTOR,

WITNESSETH:

That the City and the Contractor, for the consideration hereinafter named, enter into the following agreement. The Contractor's proposal is attached hereto and reflects the agreement of the parties except where it conflicts with this agreement, in which case this agreement shall prevail.

ARTICLE I. COMPONENT PARTS OF THE CONTRACT

This contract consists of the following component parts, all of which are as fully a part of this contract as if herein set out verbatim, or if not attached, as if hereto attached:

- A. This Instrument
- B. Proposal Solicitation
- C. Contractor's Proposal

In the event that any provision in any of the above component parts of this contract conflicts with any provision in any other of the component parts, the provision in the component part first enumerated above shall govern over any other component part which follows it numerically except as may be otherwise specifically stated.

ARTICLE II. PROJECT MANAGER

- A. Assignment of Project Manager. The Contractor shall assign the following individual to manage the project described in this contract:

(NAME, CONTRACTOR FIRM, TITLE)

- B. Changes in Project Manager. The City shall have the right to approve or disapprove of any proposed change from the individual named above as Project Manager. The City shall be provided with a resume or other information for any proposed substitute and shall be given the opportunity to interview that person prior to any proposed change.

ARTICLE III. CITY REPRESENTATIVE

The City shall assign the following individual to manage the project described in this contract:

(NAME, TITLE)

ARTICLE IV. SCOPE OF WORK

The Contractor shall provide the services described in the City's (INVITATION FOR BID OR REQUEST FOR QUOTATION) for the Project titled "PROJECT TITLE" dated MONTH, DATE, YEAR, and the contractor's bid form and materials attached as Exhibit A. If anything in the Bid Form conflicts with the Bid Specifications, the provisions in the Bid Specifications shall govern.

The Contractor may provide additional products and/or services if such products/services are requested in writing by the Authorized Representative of the City.

ARTICLE V. CITY RESPONSIBILITIES

The City shall furnish, at the Contractor's request, such information as is needed by the Contractor to aid in the progress of the project, providing it is reasonably obtainable from City records.

To prevent any unreasonable delay in the Contractor's work the City will examine all reports and other documents and will make any authorizations necessary to proceed with work within a reasonable time period.

ARTICLE VI. TIME OF COMPLETION

The work to be performed under this contract shall be completed by no later than MONTH, DATE, YEAR

OR:

The work to be performed under this contract shall be completed within XX days of the purchase order issued for this project.

Any changes to this completion date must be agreed upon by both parties in writing.

ARTICLE VII. PAYMENT

- A. The Contract Sum. The City shall pay to the Contractor for the performance of the contract the sum of \$XX,XXX.00 adjusted by any changes hereafter mutually agreed upon in writing by the parties hereto.
- B. Fee schedules shall be firm for the duration of this Agreement.

- i. Method of Payment. The Contractor shall submit itemized monthly statements for services. The City shall pay the Contractor within 30 calendar days after receipt of such statement. If any statement amount is disputed, the City may withhold payment of such amount and shall provide to Contractor a statement as to the reason(s) for withholding payment.
- ii. Additional Costs. Costs for additional services shall be negotiated and set forth in a written amendment to this agreement executed by both parties prior to proceeding with the work covered under the subject amendment.

#### ARTICLE VIII. STANDARD PROVISIONS

The CONSULTANT agrees in all hiring or employment made possible by or resulting from this agreement, there will not be any discrimination against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

#### ARTICLE IX. CONTRACTOR TO HOLD CITY HARMLESS

The Contractor covenants and agrees to protect and hold the City of Oshkosh harmless against all actions, claims and demands of any kind or character whatsoever which may in any way be caused by or result from the intentional or negligent acts of the Contractor, his agents or assigns, his employees or his subcontractors related however remotely to the performance of this Contract or be caused or result from any violation of any law or administrative regulation, and shall indemnify or refund to the City all sums including court costs, attorney fees and punitive damages which the City may be obliged or adjudged to pay on any such claims or demands within thirty (30) days of the date of the City's written demand for indemnification or refund.

#### ARTICLE X. INSURANCE

The Contractor shall provide insurance for this project that includes the City of Oshkosh as an additional insured. The contractor's certificate of insurance for this project is attached as Exhibit B.

#### ARTICLE XI. TERMINATION

- C. For Cause. If the Contractor shall fail to fulfill in timely and proper manner any of the obligations under this Agreement, the City shall have the right to terminate this Agreement by written notice to the Contractor. In this event, the Contractor shall be entitled to compensation for any satisfactory, usable work completed.
- D. For Convenience. The City may terminate this contract at any time by giving written notice to the Contractor no later than 10 calendar days before the termination date. If the City terminates under this paragraph, then the Contractor shall be entitled to



compensation for any satisfactory work performed to the date of termination.

This document and any specified attachments contain all terms and conditions of the Agreement and any alteration thereto shall be invalid unless made in writing, signed by both parties and incorporated as an amendment to this Agreement.

Signatures. By placing their signatures below, each individual affirms that the entity they represent is authorized to enter into this Agreement, and further affirm that they are authorized by the entity they are representing to bind their respective parties to the terms and conditions of this Agreement.

In the Presence of:

CONTRACTOR /CONSULTANT

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
(Seal of Contractor if a Corporation)

\_\_\_\_\_  
(Specify Title)

By: \_\_\_\_\_

\_\_\_\_\_  
(Specify Title)

CITY OF OSHKOSH

By: \_\_\_\_\_  
Mark A. Rohloff, City Manager

\_\_\_\_\_  
(Witness)

And: \_\_\_\_\_  
Pamela R. Ubrig, City Clerk

\_\_\_\_\_  
(Witness)

APPROVED:

I hereby certify that the necessary provisions have been made to pay the liability which will accrue under this contract.

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Comptroller

## APPENDIX 2 – FEDERAL CONTRACT CLAUSES

*The following clauses will be attached to the awarded proposer's contract.*

### ACCESS TO RECORDS AND REPORTS

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

### AMERICANS WITH DISABILITIES ACT (ADA)

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

### CIVIL RIGHTS LAWS AND REGULATIONS

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

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

- a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
- b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

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

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

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

**Civil Rights and Equal Opportunity**

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

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

part thereof.

**1. Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

**2. Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**3. Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any Implementing requirements FTA may issue.

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

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

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

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

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Agency deems appropriate, which may include, but is not limited to:

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

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

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

## **ENERGY CONSERVATION**

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).

## **EQUAL EMPLOYMENT OPPORTUNITY**

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

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

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

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

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

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

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

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

States to enter into such litigation to protect the interests of the United States.

## **NOTICE TO THIRD PARTY PARTICIPANTS**

Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's

Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and Applicable changes to those federal requirements will apply to each Third Party Agreement and parties thereto at any tier.

## **FLY AMERICA**

a) Definitions. As used in this clause—

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

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

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

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

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

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

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

## **FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS**

(1) The contractor certifies that it:

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

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

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

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

## **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

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

## **NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

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

## **SOLID WASTES**

A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

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

## **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.**

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

d. See also § 200.471.

## PROMPT PAYMENT

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

The contractor must promptly notify the Agency, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not

terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency.

## SEVERABILITY

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

## TERMINATION

### Termination for Convenience (General Provision)

The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

### Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

### Opportunity to Cure (General Provision)

The Agency, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions

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

### Waiver of Remedies for any Breach

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

### Termination for Convenience (Professional or Transit Service Contracts)

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

### Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been

issued for the convenience of the Agency.

Termination for Default (Transportation Services)

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for

services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Agency goods, the Contractor shall, upon direction of the Agency, protect and preserve the goods until surrendered to the Agency or its agent. The Contractor and Agency shall agree on payment for the preservation and protection of goods.

Failure to agree on an amount will be resolved under the Dispute clause.

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

Termination for Default (Construction)

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

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

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and 2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract. 3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

Termination for Convenience or Default (Architect and Engineering)

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Agency's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the Agency, the Agency's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If the termination is for failure of the Contractor to fulfill the contract obligations, the Agency may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Agency

Termination for Convenience or Default (Cost-Type Contracts)

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

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

If, after serving a Notice of Termination for Default, the Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination



as a Termination for Convenience.

**TRAFFICKING IN PERSONS**

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

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

## **APPENDIX 3 – CITY OF OSHKOSH STANDARD TERMS AND CONDITIONS**



### **CITY OF OSHKOSH STANDARD TERMS AND CONDITIONS**

(Request for Bids/Proposals)

1) **SPECIFICATIONS:** The specifications in this request are the minimum acceptable. When specific manufacturer and model numbers are used, they are to establish a design, type of construction, quality, functional capability and/or performance level desired. When alternates are bid/proposed, they must be identified by manufacturer, stock number, and such other information necessary to establish equivalency. The City of Oshkosh shall be the sole judge of equivalency. Bidders/proposers are cautioned to avoid bidding alternates to the specifications which may result in rejection of their bid/proposal.

2) **DEVIATIONS AND EXCEPTIONS:** The bid/proposal shall be accepted as in strict compliance with all terms, conditions, and specifications and the bidders/proposers shall be held liable. Specific product types or manufacturers identified in specifications shall be interpreted to require bidding of those exact types and manufacturers. Specifications which allow for bids/quotes with “equal” materials must be fully supported with technical data, test results, or other pertinent information as evidence that the substitute offered is a sufficient alternate to the specification requirement. Failure to provide product information will result in disqualification of such requests.

- 3) **QUANTITIES:** The quantities shown on this request are based on estimated needs. The city reserves the right to increase or decrease quantities to meet actual needs.
- 4) **DELIVERY:** Deliveries shall be F.O.B. destination freight prepaid and included unless otherwise specified.
- 5) **ACCEPTANCE-REJECTION:** The City of Oshkosh reserves the right to accept or reject any or all bids/proposals, to waive any technicality in any bid/proposal submitted, and to accept any part of a bid/proposal as deemed to be in the best interests of the city. Only proposals which are made out on the bid/proposal form attached hereto will be considered. All bid/proposals forms must be completed in full compliance as specified. Failure to complete bid/proposals forms may result in disqualification and considered non-responsive.
- 6) **ORDERING:** Purchase orders or releases via purchasing cards shall be placed directly to the contractor by an authorized agency. No other purchase orders are authorized.
- 7) **GUARANTEED DELIVERY:** The contractor shall strictly adhere to delivery schedules as specified by the City and to promptly replace rejected or defective materials. The City retains the right to procure materials on its own when the Contractor's materials are not delivered, or replaced if necessary, according to the City's schedule. Contractor's failure to deliver, or replace when applicable, materials as required shall result in the contractor's liability for all costs in excess of the contract price when the City is required to procure materials necessary due to Contractor's failure to act. The City's excess costs shall also include the administrative costs.
- 8) **ENTIRE AGREEMENT:** These Standard Terms and Conditions shall apply to any contract or order awarded as a result of this request except where special

requirements are stated elsewhere in the request; in such cases, the special requirements shall apply. Further, the written contract and/or order with referenced parts and attachments shall constitute the entire agreement and no other terms and conditions in any document, acceptance, or acknowledgment shall be effective or binding unless expressly agreed to in writing by the contracting authority.

9) **APPLICABLE LAW:** This Contract shall be governed under the laws of the State of Wisconsin, and all disputes shall be resolved in the state or federal court jurisdiction within which Oshkosh, Wisconsin is located. The contractor shall at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct. The City of Oshkosh reserves the right to cancel any contract with a federally debarred contractor or a contractor which is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.

10) **STANDARD PROVISIONS:** The Contractor agrees in all hiring or employment made possible by or resulting from this agreement, there will not be any discrimination against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

11) **SAFETY REQUIREMENTS:** Contractor must follow all applicable federal, state and local standards.

12) **SAFETY DATA SHEET:** If any item(s) on an order(s) resulting from this award(s) is a hazardous chemical, as defined under 29CFR 1910.1200, provide one (1) copy of a Safety Data Sheet for each item with the shipped container(s).

13) **PUBLIC RECORDS ACCESS:** It is the intention of the City of Oshkosh to maintain an open and public process in the solicitation, submission, review and approval of procurement activities. Bid/proposal documents and openings are

public records and therefore subject to release unless excluded from release by Wisconsin Statutes. Those submitting information to the City that believe that their information is not subject to release must identify the applicable statute(s) and describe in detail how the information being submitted applies to the statute cited. The City's lack of response to assertions related to public records does not indicate any agreement with those assertions. Public records may not be available for public inspection prior to the opening of bids/quotes and/or the issuance of the notice of intent to award or the award of the contract.

14) **PRICING:** Unit prices shown on the bid/proposal or contract shall be the price per unit of sale (e.g., gal., cs., doz., ea.) as stated on the request or contract. For any given item, the quantity multiplied by the unit price shall establish the extended price; the unit price shall govern in the bid/proposal evaluation and contract administration. If the bid/quote clearly involves the City's desire to purchase a product or products, then all prices shall exclude any Federal Excise Tax or State of Wisconsin Sales Tax as the City of Oshkosh is exempt from such taxes and will furnish an exemption certificate, if requested by the successful bidder. If the bid/quote is for the purpose of completing a project involving both labor and materials, then the Contractor/Consultant, and not the City, will be purchasing the material directly and the bid/quote must include all material costs, including without limitation, taxes. If the bidder is eligible to provide tax exempt building materials pursuant to state law, all verification must be submitted with their bid or quote.

15) **WARRANTY:** Unless otherwise specifically stated by the bidder/proposer, equipment purchased as a result of this request shall be warranted against defects by the bidder/proposer for one (1) year from date of receipt, or the manufacturer's warranty, whichever is longer. The equipment manufacturer's standard warranty shall apply as a minimum and must be honored by the contractor.

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**APPENDIX 4 – CITY OF OSHKOSH INSURANCE REQUIREMENTS**