

GREATER PORTLAND TRANSIT DISTRICT (METRO)

FURNISH DIESEL MOTOR FUEL
Notice and Specifications

Sealed bids for supplying METRO with its requirements of refined dyed diesel fuel, for use in METRO vehicles, **for 24 months**, from **September 1, 2019 through August 30, 2021**, will be received at the METRO offices, 114 Valley Street, Portland, Maine 04102, until 1:00 P.M., Wednesday, July 3, 2019.

Bids shall be submitted on the METRO provided Proposal Pages (including Schedules A and B), and returned *EITHER* in sealed envelopes clearly identified with the bid's number and title, or via email to esanborn@gpmetro.org. Late bids shall not be accepted.

All questions shall be directed, in writing and be received at least two business days prior to the bid opening date (e-mail esanborn@gpmetro.org). Questions received after this time will not be addressed. Responses from the METRO that substantially alter this bid will be issued in the form of a written addendum to all registered bid holders. Oral explanations or interpretations given before the award of the contract will not be binding.

Vendors must be registered to bid with METRO; receipt of this document directly from METRO indicates registration. Vendors can also register by emailing esanborn@gpmetro.org. Should a vendor receive this Invitation from a source other than the METRO, please contact Metro to ensure that your firm is listed as a vendor for this bid.

METRO receives operational funding through the Federal Transit Administration, and purchases are therefore subject to federal procurement and contracting requirements. Bidders should familiarize themselves with these requirements. This includes, but is not limited to, Contractor's full compliance with the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998, as amended (WIA, 29 CFR part 37); the Nontraditional Employment for Women Act of 1991; title VI of the Civil Rights Act of 1964, as amended; section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; title IX of the Education Amendments of 1972, as amended; and with all applicable requirements imposed by or pursuant to regulations implementing those laws, including but not limited to 29 CFR part 37 and all other applicable laws, including the Maine Human Rights Act, ordinances and regulations regarding equal opportunity and equal treatment. Contractor shall at all times comply with Federal Transit Administration ("FTA") Circular 4220.1F, as may be amended from time to time. **Attachment A** for third-party contracts attached and is included in the final contract between METRO and the vendor. Vendor shall at all times comply with Federal Transit Administration ("FTA") Circular 4220.1F, as may be amended from time to time. **Bidders must fill out and submit all Bid Proposal forms, including Schedules A and B Certifications.**

PRODUCT and DELIVERY REQUIREMENTS

METRO has one 10,000 gallon, in-ground diesel fuel tank. Per-delivery quantity is +/-7,500 gallons of diesel, delivered on an on-call basis, and the estimated use over the 24-month period is 384,000 gallons. The delivery location is 114 Valley Street, Portland, Maine, 04102.

Bidders, by submitting a bid, understand and agree that the quantities listed in this bid are **estimates only of anticipated usage**, with stated quantities being based on current and projected consumption. It is understood and agreed that the successful vendor shall supply the actual quantities ordered for delivery during the term of the contract, whether more or less than those estimated.

Deliveries are to be in accordance with all governmental regulations. They are to be made in metered tank trucks to the storage tank at METRO, in quantities as required. Each delivery shall be accompanied by a pre-numbered and dated metered ticket showing the number of gallons delivered. Vendor shall verify by dip stick before and after drop.

Delivery times are Monday through Friday, 7:00 a.m. to 3:00 p.m., unless other arrangements are made at time of order. It is understood that products delivered shall be based on all current and/or future government regulations, restrictions, etc., as to quality and quantities. Contracted vendors shall notify METRO immediately should any such changes/restrictions impact METRO's requirements.

Bidders must supply, if and when requested, an analysis of the product bid. The analysis shall be a definite certified analysis currently made and not approximate or typical. After award of any contract and during the contract period, deliveries which are found not conforming to the specifications may be required to be replaced. Continued delivery of inferior product shall be considered just cause for contract termination.

BID AWARD

Bids are requested for a **net fixed price** on dyed diesel motor fuel. Pricing shall be offered and remain in effect for each 12-month period.

The METRO is exempt from all taxes levied by the State and Federal governments. Invoices shall not reflect charges for taxes of any kind. The supplier of the METRO's diesel fuel must state on all their shipping papers, bills of lading and invoices accompanying the sale of the fuel – “DYED DIESEL FUEL, NON-TAXABLE USE ONLY, PENALTY FOR TAXABLE USE”.

Bidders, in submitting a bid, certify that the product(s) supplied under the contract resulting from this bid will be as high of grade of product marketed by their company at public service stations throughout Maine.

METRO will award this bid based on the net fixed price offered, taking into consideration the net delivered price for quantities of 7,500 gallons.

INSURANCE and INDEMNIFICATION

The successful vendor(s) shall agree to save METRO harmless from all losses, costs or damages caused by his acts or those of his agents, and, before signing the contract, will produce evidence of Automobile and General Public Liability insurance coverage in the amount of not less than five hundred thousand dollars (\$500,000) per person, one million Dollars (\$1,000,000) per occurrence for bodily injury, death and property damage, naming METRO as an additional insured thereon, and shall also proof of Worker's Compensation Insurance coverage. The successful bidder shall furnish and thereafter maintain certificates evidencing such coverage, which certificates shall

guarantee thirty (30) day's notice of termination from insurance company or agent. METRO disclaims any and all responsibility for injury to vendors, their agents, their subcontractors, if any, or to others while examining the job sites or at any other time.

INVOICES AND PAYMENTS

Invoices must be furnished showing the date of delivery, the meter ticket number, the number of gallons delivered, the type of product delivered, the cost per gallon on date of delivery, the total price. Statements will not be accepted for invoices. Invoices for all deliveries must be sent to:

Greater Portland Transit District
Accounts Payable
114 Valley Street
Portland, Maine 04102

It is the custom of METRO to pay its bills within 30 days following delivery and acceptance of product and receipt of correct invoices. In submitting bids under these specifications, bidders should take into consideration all discounts, both trade and time, allowed in accordance with this payment policy, and quote a net price.

The contractor affirms that the equipment, or work, shall be in full compliance with any and all applicable O.S.H.A., D.O.T., ANSI, Federal, State and/or municipal regulations.

METRO reserves the right to inspect and audit the books and records of the successful bidder(s) pertaining to this contract and shall have the right to determine the correctness and propriety of the costs and charges billed by seller. If any such inspection or audit discloses any errors in the use of rates or in the improper application of rates specified in this contract, resulting in overpayment(s) by METRO, the amount thereof shall be refunded to METRO promptly, or METRO may as an option withhold such overpayment from any amounts due from METRO to the seller.

METRO reserves the right to cancel any unfilled portion of the contract immediately for cause if the vendor fails to provide product of the required grade, at the contract price, or in accordance with the specifications and detailed requirements outlined herein. Should the contract be terminated for cause by METRO, it shall be without any liability or waiver of any rights or recourse against the vendor.

METRO reserves the right to waive any informalities in bids, to accept any bid or portions thereof (bidders are advised to note this and quote accordingly) and to reject any or all bids should it be deemed for the best interest of METRO to do so. METRO reserves the right to substantiate the bidder's qualifications, capability to perform, availability, and past performance record

June 25, 2019

Ellen Sanborn
Finance Director

PROPOSAL

THIS SHEET MUST BE SIGNED AND RETURNED WITH PROPOSAL PACKAGE

The UNDERSIGNED hereby declares that he/she or they are the only person(s), firm or corporation interested in this proposal as principal, that it is made without any connection with any other person(s), firm or corporation submitting a proposal for the same.

The UNDERSIGNED hereby declares that they have read and understand all conditions as outlined herein, and that the proposal is made in accordance with same.

The UNDERSIGNED hereby declares that any person(s) employed by METRO, who has direct or indirect personal or financial interest in this proposal or in any portion of the profits which may be derived therefrom has been identified and the interest disclosed by separate attachment. (Please include in your disclosure any interest which you know of. An example of a direct interest would be a METRO employee who would be paid to perform services under this proposal. An example of an indirect interest would be a METRO employee who is related to any officers, employees, principal or shareholders of your firm or to you. If in doubt as to status or interest, please disclose to the extent known).

The bidder acknowledges the receipt of Addenda numbered _____

COMPANY NAME: _____

AUTHORIZED SIGNATURE: _____ DATE: _____

PRINT NAME & TITLE: _____

ADDRESS: _____

PHONE NUMBER: _____ FAX: _____

EMAIL: _____ WEBSITE: _____

FEDERAL TAX IDENTIFICATION NUMBER: _____

STATE OF INCORPORATION _____ (If incorporated in another state, businesses must be authorized to do business in the State of Maine).

NOTE: Bids must bear the handwritten signature of a duly authorized member or employee of the organization making the bid.

PROPOSAL (CONT'D)

Diesel Fuel

REFINED DYED ULTRA LOW SULFUR DIESEL FUEL

- 1. September 1, 2019 through August 30, 2020
 Estimated annual quantity 192,000 gallons

NET FIXED PRICE \$_____ per gal. \$_____ annual total

- 2. September 1, 2020 through August 30, 2021
 Estimated annual quantity 192,000 gallons

NET FIXED PRICE \$_____ per gal. \$_____ annual total

 24 Month Total \$_____

Please list Diesel supplier(s):

SCHEDULE A

THIS DOCUMENT MUST BE COMPLETED AND SUBMITTED WITH BID

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

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

The Respondent agrees to comply with the requirements of 2 CFR Part 180, Subpart C, as adopted and supplemented by U.S. DOT regulations at 2 CFR Part 1200, while this Request for Proposals (“RFP”) is pending and throughout the period of any contract that may arise from this RFP. The Respondent further agrees that it and its affected subcontractors will provide immediate written notice to Greater Portland Transit District (“GPTD”) if at any time the Respondent learns that his/her subcontractor’s certification was erroneous when submitted or has become erroneous because of changed circumstances.

By submitting this proposal and affixing a signature below, the Respondent certifies that the above statement is a material representation of fact upon which reliance is placed by GPTD. If it is later determined that the Respondent knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, GPTD may terminate this transaction for cause of default.

If the Respondent is unable to certify to any of the statements in this certification, the Respondent shall attach an explanation to this certification.

The Respondent 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. §§ 3801-3812 are applicable thereto.

Signature of Authorized Official

Date

Printed Name of Authorized Official

Company Name

THIS DOCUMENT MUST BE COMPLETED AND SUBMITTED WITH BID

**CERTIFICATION OF RESTRICTIONS ON LOBBYING
49 CFR PART 20**

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

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

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

Signature of Authorized Official

Date

Printed Name of Authorized Official

ATTACHMENT A

FTA THIRD PARTY CONTRACTING REQUIREMENTS

- A. Federal Requirements; Changes Thereto.** Contractor shall at all times comply with Federal Transit Administration (“FTA”) Circular 4220.1F, as may be amended from time to time, and all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in any grant agreement between FTA and GPTD and any standard terms and conditions attached thereto (“Grant Agreement”), 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. Anything to the contrary herein notwithstanding, all FTA mandated terms and conditions set forth in FTA Circular 4220.1F, as may be amended from time to time, and the Grant Agreement shall be deemed to control in the event of a conflict with other provisions contained in this contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with GPTD requests which would cause GPTD to be in violation of any FTA terms and conditions. Contractor agrees to include this contract term, as modified to apply to each subcontractor, in each subcontract issued pursuant to this contract.
- B. No Federal Government Obligations to Third Parties.** Contractor acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the Grant Agreement, absent the Federal Government’s express written consent, the Federal Government shall not be subject to any obligations or liabilities to Contractor or any other person or entity that is not a party to the Grant Agreement. Contractor agrees to include this contract term, as modified to apply to each subcontractor, in each subcontract issued pursuant to this contract.
- C. Conflict of Interest.** By entering into this contract with GPTD to perform or provide work, services, or materials, Contractor 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, it shall immediately disclose such interest to GPTD and take action immediately to eliminate the conflict or to withdraw from this contract, as GPTD may require.
- D. False or Fraudulent Statements or Claims.**
1. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801-3812, and U.S. Department of Transportation (“DOT”) regulations, “Program Fraud Civil Remedies,” 49 CFR Part 31, apply to Contractor’s activities in connection with this Project. Contractor certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Grant Agreement or the project for which the contract work is being performed. In addition to other penalties that may apply, Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim,

statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

2. Contractor further acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with this project or any other Federal law, the Federal Government reserves the right to impose on Contractor the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate.
3. Contractor agrees to include these contract terms, as modified to apply to each subcontractor, in each subcontract issued pursuant to this contract.

E. Access to Records. Contractor agrees to:

1. Provide to GPTD, the FTA Administrator, the U.S. Secretary of Transportation, and the U.S. Comptroller General or their duly authorized representatives access to all records to the extent required by 49 U.S.C. § 5325(g). Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed;
2. Maintain all books, records, accounts, and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract except in the event of litigation or settlement of claims arising from the performance of this contract. In such case, Contractor agrees to maintain same until GPTD, the FTA Administrator, the U.S. Secretary of Transportation, and the U.S. Comptroller General or their duly authorized representatives have disposed of all such litigation, appeals, claims, or exceptions related thereto, or until the end of the regular three-year period, whichever is later, pursuant to 49 CFR Part 18.42.
3. Comply with all applicable State of Maine record retention requirements and applicable provisions of the Maine Freedom of Access Law, 1 M.R.S.A. § 401, *et seq.*
4. Include these contract terms, as modified to apply to each subcontractor, in each subcontract issued pursuant to this contract.

F. Civil Rights. Contractor agrees to comply with all applicable civil rights laws and implementing regulations including, but not limited to, the following:

1. Nondiscrimination in Federal Public Transportation Programs. Contractor agrees to comply, and assures that each subcontractor will comply, with the provisions of 49 U.S.C. § 5332, which prohibits discrimination (including discrimination in employment or business opportunity), exclusion from participation in employment or business opportunity, or denial of program benefits in employment or business opportunity on the basis of race, color, creed, national origin, sex, disability, or age. Contractor further agrees to comply with FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," as amended, to the

extent consistent with applicable Federal laws, regulations, and guidance, and other applicable Federal guidance that may be issued.

2. Nondiscrimination—Title VI of the Civil Rights Act. Contractor agrees to, and assures that each subcontractor will, prohibit discrimination based on race, color, or national origin and comply with (i) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.*, (ii) DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of Civil Rights Act,” 49 CFR Part 21, (iii) U.S. Department of Justice (“DOJ”), “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 CFR § 50.03, and (iv) all other applicable Federal guidance that may be issued.
3. Nondiscrimination on the Basis of Sex. Contractor agrees to comply, and assures that each subcontractor will comply, with Federal prohibitions against discrimination on the basis of sex, including (i) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 *et seq.*; (ii) DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR Part 25; and (iii) Federal transit law, specifically 49 U.S.C. § 5332.
4. Nondiscrimination on the Basis of Age. Contractor agrees to comply, and assures that each subcontractor will comply, with Federal prohibitions against discrimination on the basis of age, including (i) the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, which prohibits discrimination on the basis of age; (ii) U.S. Equal Employment Opportunity Commission (“EEOC”) regulations, “Age Discrimination in Employment Act,” 29 CFR Part 1625, which implements the Age Discrimination in Employment Act; (iii) the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds; (iv) U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 CFR Part 90, which implements the Age Discrimination Act of 1975, and (v) Federal transit law, specifically 49 U.S.C. § 5332.
5. Nondiscrimination on the Basis of Disability. Contractor agrees to comply, and assures that each subcontractor will comply, with the following Federal laws and regulations against discrimination on the basis of disability: (i) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities; (ii) 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 individuals with disabilities; (iii) 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 individuals with disabilities; (iv) Federal transit law, specifically 49 U.S.C. § 5332, which includes disability as a prohibited basis for discrimination; (v) DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or

Benefiting from Federal Financial Assistance,” 49 CFR Part 27, and “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 CFR Part 39; (vi) Joint U.S. Architectural and Transportation Barriers Compliance Board (“ATBCB”) and DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38; (vii) DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 CFR Part 35, and “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 CFR Part 36; (viii) EEOC regulations, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630; (ix) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 CFR Part 64, Subpart F; (x) ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 CFR Part 1194; (xi) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 CFR Part 609; and (xii) all other applicable laws and amendments pertaining to access for seniors or individuals with disabilities, and applicable Federal civil rights and nondiscrimination guidance.

6. Equal Employment Opportunity. Contractor agrees to, and assures that each subcontractor will, (i) prohibit discrimination on the basis of race, color, religion, sex, or national origin and comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*; (ii) facilitate compliance with Executive Order 11246, “Equal Employment Opportunity,” as amended by Executive Order 11375, “Amending Executive Order 11246, Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note, and as further amended by Executive Order 13672, “Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity,” by ensuring that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their race, color, religion, national origin, disability, age, sexual origin, gender identity, or status as a parent; and (iii) comply with Federal guidance pertaining to Equal Employment Opportunity laws and regulations, and prohibitions against discrimination on the basis of disability. Contractor further agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor further agrees to comply with any implementing requirements that FTA may issue.
7. Contractor agrees to include these contract terms, as modified to apply to each subcontractor, in each subcontract issued pursuant to this contract.

G. Disadvantaged Business Enterprises. To the extent authorized by applicable Federal law and regulation, Contractor agrees to, and assures that each subcontractor will, facilitate participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as Disadvantaged Business Enterprises (“DBEs”), as follows:

1. Contractor agrees to comply with (i) Section 1101(b) of SAFTEA-LU, “Moving Ahead for Progress in the 21st Century” (MAP-21), 23 U.S.C. § 101; (ii) DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 CFR Part 26, and (iii) Federal transit law, specifically 49 U.S.C. § 5332.
2. Contractor will not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Contractor agrees to carry out applicable requirements of 49 CFR Part 26 in the administration of this contract and the award and administration of any subcontract issued pursuant to this contract. Failure by 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 GPTD deems appropriate, which may include, but is not limited to withholding monthly progress payments, assessing sanctions, liquidated damages, or disqualifying Contractor from future bidding as non-responsible.
3. Contractor agrees to include these contract terms, as modified to apply to each subcontractor, in each subcontract issued pursuant to this contract.

H. Small & Minority Businesses; Women’s Business Enterprises. Contractor agrees to take all necessary affirmative steps to assure that minority firms, women’s business enterprises, and labor surplus area firms are used when possible. Affirmative steps include: (i) placing qualified small & minority businesses and women’s business enterprises (“SMBWBEs”) on solicitation lists; (ii) assuring that SMBWBEs are solicited whenever they are potential sources; (iii) dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by SMBWBEs; (iv) establishing delivery schedules, where requirements permit, that encourage participation by SMBWBEs; and (v) using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce. Contractor agrees to include this contract term, as modified to apply to each subcontractor, in each subcontract issued pursuant to this contract.

I. Debarment and Suspension. This contract is a covered transaction for purposes of 49 CFR Part 29. Accordingly:

1. Contractor agrees to review, and assures that all subcontractors will review, the U.S. General Services Administration (“GSA”) “System for Award Management,” <https://www.sam.gov>, if required by DOT regulations, 2 CFR Part 1200, and the Excluded Parties Listing System at <http://epls.arnet.gov> before entering into any contracts. Contractor further agrees to and assures that all subcontractors will enter into no arrangement to participate in the development or implementation of this project with any party that is debarred or suspended, pursuant to DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Part 1200; U.S. Office of Management and Budget (“OMB”), “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR Part 180, including any amendments thereto; Executive Orders Nos. 12549 and 12689, “Debarment and Suspension,” 31 U.S.C. § 6101 note; and other applicable Federal laws, regulations, or guidance regarding participation with debarred

or suspended subcontractors. Contractor agrees to comply with said requirements throughout the period of this contract.

2. Contractor certifies that neither it nor its principals or subcontractors is presently debarred, suspended, proposed for debarment, declared ineligible, or involuntarily excluded from participation in this transaction by any Federal Department or Agency.
3. Contractor certifies that the above statement is a material representation of fact upon which reliance is placed by GPTD. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, GPTD may terminate this transaction for cause of default.
4. Contractor agrees to include these contract terms, as modified to apply to each subcontractor, in each subcontract issued pursuant to this contract.

J. Fair Labor Standards. Contractor agrees to comply, and assures that all subcontractors will comply, with the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*, to the extent that the FLSA applies to employees performing project work involving commerce, and as the Federal Government otherwise determines applicable.

K. Employee Protections—Wage and Hour Requirements. Contractor agrees to comply, and assures that all subcontractors will comply, with all applicable Federal laws and regulations providing wage and hour protections for nonconstruction employees, including (i) Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. Department of Labor (“DOL”) regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to Contract Work Hours and Safety Standards Act,” 29 CFR Part 5. Accordingly, Contractor shall comply with the following contract terms and insert said terms in full in any contract or subcontract, if the contract or subcontract may require or involve the employment of laborers or mechanics and if it is not contemplated that the contract or subcontract will be a contract for supplies, materials, or articles ordinarily available in the open market or any other type of contract exempt from the Contract Work Hours and Safety Standards Act, pursuant to 40 U.S.C. § 3701(b):

1. Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation; Liability For Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph (1) of this section, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, 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 work week of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. Withholding For Unpaid Wages And Liquidated Damages. GPTD 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 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 Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. Subcontracts. 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. 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.

L. 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. § 6321 *et seq.*

M. Environmental Protection. Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969 (“NEPA”), as amended, 42 U.S.C. §§ 4321-4335, 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, 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with NEPA, as amended, 40 CFR Part 1500 *et seq.*; joint Federal Highway Administration (“FHA”)-FTA regulations, “Environmental Impact and Related Procedures,” 23 CFR Part 771 and 49 CFR Part 622; and any other applicable State and Federal environmental laws and regulations.

N. Preference for Recycled Products. Contractor agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and EPA “Comprehensive Procurement Guidelines for Products Containing Recovered Materials,” 40 CFR Part 247.

O. Cargo Preference—Use of U.S. Flag Vessels or Carriers. Pursuant to U.S. Maritime Administration regulations, “Cargo Preference—U.S.-Flag Vessels,” 46 CFR Part 381, to the extent those regulations apply to the project, Contractor agrees to:

1. Use 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 Grant Agreement, to the extent such vessels are available at fair and reasonable rates to United States-Flag commercial vessels;
 2. Furnish within 20 days following the date of loading for shipments originating within the United States, or within 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 (1) above to the recipient (through Vendor in the case of a subcontractor's bill-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; and
 3. Include these contract terms, as modified to apply to each subcontractor, in each subcontract issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.
- P. Fly America.** Contractor agrees to comply with the "Fly America Act," 49 U.S.C. § 40118, in accordance with GSA regulations, 41 CFR Part 301-10, which provide that recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. If a foreign air carrier was used, Contractor shall submit an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor agrees to include this contract term, as modified to apply to each subcontractor, in each subcontract issued pursuant to this contract that may involve international air transportation.
- Q. Buy America Provision.** This bid and the resulting contract are subject to the Buy America requirements of 49 USC Section 5323(j) and the Federal Transit Administration's implementing regulations, found at 49 CFR Part 661. These regulations require, as a matter of responsiveness, that the bidder must submit a completed certification with their bid proposal.
- R. Lobbying Restrictions.** The Contractor agrees to comply with 49 CFR Part 20, "New Restrictions on Lobbying," imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995), which states that no Federal appropriated funds, received by the Contractor as part of this agreement, have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

This requirement extends to all subcontractors of this agreement, and the Contractor must include this language, and associated certification, in the award documents for all subcontracts. Certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of certification is a prerequisite for making or entering into this transaction. 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.

Contract Dispute Terms

Opportunity to Cure. GPTD in its sole discretion may, in the case of a termination for breach or default, allow Contractor 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 GPTD's satisfaction the breach or default or any of the terms, covenants, or conditions of this contract within 10 days after receipt by Contractor of written notice from GPTD setting forth the nature of said breach or default, GPTD shall have the right to terminate the contract without any further obligation to Vendor. Any such termination for default shall not in any way operate to preclude GPTD from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Termination for Convenience. The **GPTD** shall have the right to terminate this Agreement at any time for its convenience, in whole or from time to time in part, upon prior written Notice to **CONTRACTOR**. If Agreement is terminated by the **GPTD** for convenience, the **GPTD** shall pay the **CONTRACTOR** for any unpaid, unrecovered, or unrecoverable out-of-pocket costs for supplies, materials and/or services provided or amounts expended or incurred in reliance on this Agreement prior to the effective date of such notice.

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

- (i) stop work under the contract on the date and to the extent specified in the Notice of Termination;
- (ii) 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;
- (iii) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- (iv) assign GPTD, in the manner at the times, and to the extent directed by the GM, all of the rights, title, and interest of Contractor under the orders and subcontracts so

- terminated, in which case GPTD 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;
- (v) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the GM, to the extent he may require which approval or ratification shall be final for all the purposes of this clause;
 - (vi) transfer title to GPTD and deliver in the manner at the times and to the extent if any, directed by the 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 GPTD;
 - vii) 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 the 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 GPTD 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 “GPTD” shall be substituted in lieu thereof.

Dispute Resolution. Any dispute among the Parties arising out of or relating to this contract shall be resolved in accordance with this Section.

1. **Negotiation.** The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy, or claim arising out of or relating to this contract (“Dispute”) within 30 days after the date that a Party has given written notice of such Dispute to the other Party.
2. **Arbitration.** If the Dispute has not been resolved within 30 days, any Party may serve written notice on the other Party of a request for non-binding mediation. The mediation shall be conducted in Maine by a mediator mutually agreeable to the Parties, shall not exceed one full day or two half days in length, and shall be completed within 90 days from the date of receipt of notice of a request for mediation by the last Party to receive notice. In the event that the Parties are unable to agree on a mediator within 30 days, or to resolve the dispute through mediation within 90 days, the Parties reserve the right to file a civil action in a court of competent jurisdiction located in Cumberland County, Maine. This dispute resolution mechanism shall be binding upon the successors, assigns, foreclosing mortgagee, and any trustee or receiver of the Parties.
3. **Performance During Dispute.** Unless otherwise directed by GPTD, Contractor shall continue performance under this contract while matters in dispute are being resolved.
4. **Claims for Damages.** Should either Party suffer injury or damage to person or property because of any act or omission of the Party or of any of his employees, agents, or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other Party within a reasonable time after the first observance of such injury of damage.

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

FTA Vested Interest. The Parties acknowledge that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the project, and has the right to participate in any dispute resolution as it may choose to do.