

REQUEST FOR BIDS

UNLEADED GASOLINE

No. 2 UTLTA LOW SULPHUR DIESEL FUEL

RFB# 2026-02

EASTERN PANHANDLE TRANSIT AUTHORITY

446 NOVAK DRIVE, MARTINSBURG, WV 25405

November 14, 2025

Table of Contents

SECTION 1 - INSTRUCTIONS TO BIDDERS	- 5 -
1-1 Introduction	- 5 -
1-2 Purpose	- 6 -
1-3 Bid Submission	- 6 -
1-4 Bid Requirement, Format, and Required Content	6
1-5 Bid Signature	- 7 -
1-6 Inquiries	- 7 -
1-7 Procurement Schedule	- 7 -
1-8 Award of Contract	- 7 -
1-9 Disadvantaged Business Enterprise (DBE) Participation	- 8 -
1-10 Examination of RFB and Contract Documents	- 8 -
SECTION 2 – SPECIFICATIONS	- 8 -
2-1 Unleaded Gasoline	- 8 -
2-1-1 – Diesel Fuel	- 8 -
2-2 Delivery	- 8 -
SECTION 3 – BID SUBMISSION PROVISIONS	- 9 -
3-1 Postponement, Amendment and/or Cancellation of Bid	- 9 -
3-3 Rejection of Bids	- 9 -
3-4 Clarification of Bids	- 9 -
3-5 Modification or Withdrawal of Bids and Late Bids	- 9 -
3-6 Errors and Administrative Corrections	- 10 -
3-7 Compliance with RFB Terms and Attachments	- 10 -
3-8 Collusion	- 10 -
3-9 Taxes and Interest	- 10 -
3-10 Single Bid Response	- 10 -
3-11 Exclusionary or Discriminatory Specifications	- 10 -
3-12 Protest Procedures	- 11 -
3-13 Insurance Requirements	- 12 -

3-12.1 General Requirements.....	12 -
3.12.2 Required Coverages	13 -
4-1 Contract Award.....	14 -
4-2 Execution of Contract and Notice to Proceed	14 -
4-3 Public Disclosure of Bids	14 -
5-1 Administration	14 -
5-2 Notification of Delay	15 -
5-3 Request for Extension.....	15 -
5-4 Contract Changes.....	15 -
5-5 Instructions by Unauthorized Third Persons	15 -
5-6 Lack of Funds	16 -
5-7 Force Majeure.....	16 -
5-8 Taxes, Licenses, Laws, and Certificate Requirements.....	16 -
5-9 Defective Work, Materials or Services.....	17 -
5-10 Assignment	17 -
5-11 Indemnification and Hold Harmless	18 -
5-12 Applicable Law and Forum.....	18 -
5-13 Attorney Fees.....	18 -
5-14 State Officials and Employees Ethics Act.....	18 -
5-15 Conflicts of Interest and Non-Competitive Practices	19 -
5-16 Conflicts of Interest – Current and Former Employees	19 -
5-17 Other Public Agency Orders.....	20 -
5-18 Severability	20 -
5-19 Non-waiver of Breach	20 -
6-1 Contract	20 -
6-2 Contract Documents and Precedence	20 -
6-3 Contract Term.....	21 -
6-4 Payment Procedures.....	21 -
6-5 Advance Payment Prohibited	21 -
6-6 Prompt Payment to Subcontractors	22 -
6-7 Price	22 -
6-8 Independent Status of Contractor	23 -
6-9 Notices	23 -

6-10 Non-Disclosure of Data	- 23 -
6-11 Public Disclosure Requests	- 24 -
6-12 Changed Requirements	- 24 -
6-13 Counterparts.....	- 24 -
6-14 Contractual Relationships.....	- 24 -
7-1 No Obligation by the Federal Government	- 25 -
7-2 Program Fraud and False or Fraudulent Statements or Related Acts	- 25 -
7-3 Access to Records and Reports.....	- 25 -
7-4 Changes to Federal Requirements.....	- 26 -
7-5 Termination	- 26 -
7-6 Civil Rights Requirements	- 28 -
7-7 Disadvantaged Business Enterprise (DBE) Participation.....	- 29 -
7-8 Incorporation of FTA Terms.....	- 29 -
7-9 Suspension and Debarment.....	- 30 -
7-10 Disputes, Breaches, Defaults, or Other Litigation.....	- 30 -
7-11 Disclosure of Lobbying Activities	- 31 -
7-12 Clean Air.....	- 31 -
7-13 Clean Water	- 31 -
7-14 Energy Conservation	- 32 -
7-15 Notification Related to Fraud, Waste, Abuse, or Other Legal Matters	- 32 -
ATTACHMENT A – Vendor Checklist	- 33 -
ATTACHMENT B – Bid Affidavit.....	- 34 -
ATTACHMENT C – Addendum Page	- 35 -
ATTACHMENT D – Affidavit of Non-Collusion	- 36 -
ATTACHMENT E– Certifications of Compliance with Federal Lobbying Regulations	- 37 -
ATTACHMENT F - Bid Form.....	-38-
ATTACHMENT G - Federal Clauses.....	-39-

SECTION 1 - INSTRUCTIONS TO BIDDERS

1-1 Introduction

The Eastern Panhandle Transit Authority (EPTA) is the public transportation provider for the Martinsburg, WV region. EPTA is a municipal corporation within the State of West Virginia. EPTA provides economic, social, and environmental benefits to the community through progressive, customer-focused transportation service by combining state-of-the-art equipment and facilities with professional, well-trained staff. EPTA employs approximately 47 full and part-time employees and operates 12 deviated fixed routes within the City of Martinsburg, Berkley County, Jefferson County, Ranson, Charles Town, and Harpers Ferry/Bolivar. EPTA maintains an active fleet of 27 buses. EPTA has an Administration Building and Maintenance Building located at 446 Novak Drive in Martinsburg, WV.

EPTA has two (2) above-ground fuel tanks at its current facility, located at 446 Novak Drive, Martinsburg, WV, and the future location of EPTA's Multimodal Transit Center, located at 412 W. Race Street, Martinsburg, WV. The capacity of the tanks located at the Novak Drive facility is 1000 gallons each. EPTA fleet uses approximately 80,000 gallons of gasoline annually.

EPTA's new Multimodal Transit Center will be located at the intersection of 412 W. Race Street and Raleigh Street in Martinsburg, WV. It is currently anticipated that the facility will be completed in 2026.

The two fuel tanks and dispensers located at the current Novak Drive facility are owned and maintained by the current fuel provider. The successful bidder on this contract will be required to provide and install tanks and dispensers at the current and new facility. The new facility will have one (1) 2,000-gallon above-ground tank for unleaded gasoline, one (1) 500-gallon, and one (1) 300-gallon above-ground tank for diesel fuel at the new facility. Dispensers for both tanks at the new facility will also need to be provided by the supplier and maintained as part of the contract.

The successful bidder will be provided with the design documents for the new fueling facility to coordinate activities with the general contractor.

Design documents are available for review by contacting:

Elaine Bartoldson

CEO/Executive Director
Eastern Panhandle Transit Authority
446 Novak Drive
Martinsburg, WV 25405

1-2 Purpose

EPTA Request for Bids (RFB) is to contract the services of a qualified, responsive, and responsible firm that will provide and deliver to the EPTA facility 87 octane gasoline for a period of 60 months. Upon completion and coordination with Myers Building Systems (Project General Contractor) for the new facility, the firm will provide and deliver No. 2 ultra-low sulfur diesel fuel.

1-3 Bid Submission

The bidder will submit the bid, **complete with all signed affidavits and certifications, and will be bound together.** The package containing the bid must be clearly marked with the words "**Bid for EPTA Gasoline RFB 2026-02**" and the time and date bids are due. EPTA will not accept responsibility for late bids that may be improperly routed in the mail or otherwise delivered after the prescribed date and time. EPTA shall not be responsible for the unintentional premature opening of a bid that has not been properly addressed and identified per the instructions included with this RFB.

All bids are due **NO LATER THAN 4:00 pm EST, January 12, 2026.**

1-4 Bid Requirement, Format, and Required Content

Bids will be acceptable only if a person, firm, or corporation meets the following qualifications:

- Adequate experience and verifiable history providing the work required as sought through this Invitation for Bid.
- Adequate equipment, personnel, and financial resources to fulfill the agreement satisfactorily within the time specified.

Sub-contracting work to others is allowed.

Bids shall be prepared in a clear, concise, and economical manner. Bids should be bound simply, and sections should be tabbed to coincide with the sections of the RFB, and pages should be numbered in each section. Bids that do not adhere to the required format and are difficult to read, or are deemed illegible by EPTA, may be rejected.

Bids shall adhere to the following format and contain the following items in the order outlined below:

The bidder shall select and disclose in the bid form a refiner's depot that will be used to supply fuel to the specified destinations.

The bidder should indicate in the space provided on the bid form the first and last names, and telephone number(s) of the source refinery employee(s) who may verify fuel prices for a given day and the location of the selected source refinery.

Failure to supply the above-requested information on the bid form may be grounds for bid disqualification or cancellation of the purchase order without further cause.

1-5 Bid Signature

The bid form shall be signed by a person authorized to bind the proposing firm to the terms of the Contract. Bids signed by an agent are to be accompanied by evidence of that person's authority.

1-6 Inquiries

The Bidder is required to show on all correspondence with EPTA the following: "**EPTA Fuel Bid RFB 2025-01**". Any communication with EPTA should be written and directed to: Elaine Bartoldson, CEO/Executive Director, EPTA, 446 Novak Drive, Martinsburg, WV 25405. Written communication may also be forwarded via email to ebartoldson@eptawv.com and lgrindle@eptawv.com. Correspondence will not be accepted by any other means or by any other EPTA staff member.

1-7 Procurement Schedule

The projected schedule for this procurement is:

Invitation for Bid available:	November 14, 2025
Deadline for questions and clarifications:	December 12, 2025
Deadline for responses to questions and clarifications:	December 19, 2025
Bids Due:	January 12, 2026
Bid Opening:	January 16, 2026
Recommendation to EPTA Board:	January 26, 2026
Anticipated start-up date:	March 1, 2026

1-8 Award of Contract

The contract will be awarded to the responsible bidder who submits the lowest responsive bid.

1-9 Disadvantaged Business Enterprise (DBE) Participation

There is no specific DBE goal for this project. EPTA requests that Bidders make every effort to contract DBEs.

1-10 Examination of RFB and Contract Documents

Bidders are expected to examine the Scope of Work, the scope of services required, specifications, schedules, compliance requirements, and all instructions. Failure to do so will be at the Bidder's risk. It is the intent of these specifications to provide service(s) of first quality. The service(s) proposed must be of high quality in all respects. No advantage will be taken by the Bidder in the omission of any part or detail, which goes to make the service(s) complete. All manner of services not herein contained or specified shall be of the industry standard and shall conform to the best practices known in the industry.

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

SECTION 2 – SPECIFICATIONS

2-1 Unleaded Gasoline

Unleaded Gasoline shall be a pump grade with an 87 Octane rating with no greater than 10% ethanol.

2-1-1 – Diesel Fuel

Diesel Fuel shall be No. 2 grade ultra-low Sulphur.

2-2 Delivery

The contractor shall deliver fuel to the fuel tanks provided by the supplier located at 446 Novak Drive, Martinsburg, WV. The delivery schedule shall be based on the tank quantities and usage indicated and shall ensure adequate fuel for EPTA's daily operations.

Delivery shall be made to the new EPTA facility location upon completion of the new facility and terminated at the Novak Drive location.

SECTION 3 – BID SUBMISSION PROVISIONS

3-1 Postponement, Amendment, and/or Cancellation of Bid

EPTA reserves the right to revise or amend any portion of this RFB before the date and time for the bid delivery. Such revisions and amendments, if any, shall be issued through addenda to this RFB. Copies of such addenda and/or amendments shall be placed on the EPTA website and will be furnished to all firms that have received an RFB package from EPTA. If the revisions or addenda require changes in requested information or the format for bid submission, the established date for submission of bids contained in this RFB may be postponed by such number of days as, in EPTA's opinion, shall enable Bidders adequate time to revise their bids. EPTA reserves the right to cancel this RFB at any time or change the date and time for submitting bids by announcing the same before the date and time established for bid submittal.

3-2 Submission of Bids

Bids shall be submitted no later than the day and time specified in the Request for Bids. Bids may be delivered to EPTA offices, mailed, emailed, or faxed

3-3 Rejection of Bids

EPTA reserves the right to reject any or all bids and waive any minor informalities or irregularities.

3-4 Clarification of Bids

EPTA reserves the right to obtain clarification of any point in a bid or to obtain additional information necessary to properly evaluate a particular bid. Failure of a Bidder to respond to such a request for additional information or clarification may result in the bid's rejection.

3-5 Modification or Withdrawal of Bids and Late Bids

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

3-6 Errors and Administrative Corrections

EPTA will not be responsible for any errors in bids. Bidders will only be allowed to alter bids after the submittal deadline in response to requests for clarification by EPTA. EPTA reserves the right to request an extension of the bid period from a Bidder or Bidders. EPTA reserves the right to allow corrections or amendments to be made that are due to minor administrative errors or irregularities, such as errors in typing, transposition, or similar administrative errors. Erasures or other changes or entries made by the Bidder must be initialed by the person signing the bid.

3-7 Compliance with RFB Terms and Attachments

EPTA intends to award a Contract based on the terms, conditions, and attachments contained in this RFB. Bidders are strongly advised not to take any exceptions. Bidders shall submit bids that respond to the requirements of the RFB. An exception is not a response to an RFB requirement. Bidders are cautioned that exceptions to the terms, conditions, and attachments may result in rejection of the bid.

3-8 Collusion

The Bidder guarantees that the bid submitted is not a product of collusion with any other Bidder, and no effort has been made to fix the bid price of any Bidder or to fix any overhead, profit, or cost element of any bid price (Affidavit of Non-Collusion). Failure to submit the signed affidavit at the time of bid opening shall be grounds for disqualification of the Bidder's offer. If EPTA determines that collusion has occurred among Bidders, none of the bids from the participants in such collusion shall be considered. EPTA's determination shall be final.

3-9 Taxes and Interest

All government taxes, duties, fees, licenses, permits, royalties, assessments, and charges shall be included in the proposed price. EPTA will not pay interest on unpaid or disputed invoices, whether due or overdue.

3-10 Single Bid Response

If only one Bid is received in response to the RFB, a cost/price analysis and/or audit may be performed of the cost bid in order to determine if the price is fair and reasonable.

3-11 Exclusionary or Discriminatory Specifications

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

3-12 Protest Procedures

Two types of protests may be filed regarding this procurement: pre-bid protests and post-award protests. Pre-bid protests are protests related to the content of the RFB, being overly restrictive, or alleged improprieties in the procurement procedure. Post-award protests are protests objecting to the award of a contract after the competitive procurement process, including an alleged violation of applicable law and/or agency policy or procedure relative to the seeking, evaluating, and/or awarding of a procurement contract under a solicitation.

Protest Requirements

A protest will not be considered valid unless it is submitted in writing within the time limits specified herein and contains at least the following information:

- a) Name, address, phone number, and email address of the protester
- b) Clear identification of the solicitation being protested
- c) Clear identification of the reason(s) for the protest
- d) A statement regarding the relationship of the protester to the procurement sufficient to establish a direct economic interest in the procurement or award (i.e., standing to protest)
- e) A statement of the specific relief being sought

Time Requirements

A pre-proposal/bid protest must be filed before the date set for bid opening or receipt of proposals. Post-award protests must be filed within ten (10) calendar days of notice of award (measured from the date EPTA e-mails the notice of award to all who submitted proposals). In the event a due date falls on a weekend or national holiday, the period ends at 5:00 p.m. local time on the next business day.

Protest Delivery

Protests shall be delivered to the same office and the same person to whom the bid or proposal documents were required to be delivered.

Receipt of Protest

The receipt of a protest will be acknowledged in writing to the protester. Notice of receipt of a post-award protest will also be given to the bidder or proposer recommended to receive the contract.

Intervention

An entity may intervene in a protest by written demonstration that the intervener has a direct economic interest in the procurement.

Response

The EPTA CEO/Executive Director shall respond to each valid protest with a written response. A protester may appeal the determination to the governing board by filing a written appeal with the Executive Director within ten (10) days of the mailing of the response to the protester. The Executive Director shall expeditiously refer the appeal to the governing board.

Effect of Judicial Proceedings

EPTA may refuse to decide any protest where the matter involved is the subject of litigation before a court of competent jurisdiction, or has been decided on the merits by such a court.

Appeal to the Federal Transit Administration

The Federal Transit Administration will only consider appeals based on the following:

- 1) EPTA failed to follow its protest procedures.
- 2) The protest alleges a violation of federal law.

3-13 Insurance Requirements

Contractor shall not commence work until all insurance required under this section has been obtained and the proper insurance verification has been provided to EPTA. The Contractor will maintain the minimum Insurance coverage standard for the type of services being provided throughout the contract.

3-12.1 General Requirements

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

There shall be no exclusions for punitive damages in the General or Business Automobile policies. Complete, certified copies of all insurance policies applicable to this agreement will be sent to EPTA within 60 days of each inception or anniversary date, so that these insurance policies may be reviewed by EPTA. Until copies of policies are received, Evidence of Coverage in the form of an original Certificate of Insurance shall be submitted to EPTA. The Contractor also agrees to have deficiencies in the insurance policies amended as per the directions of EPTA or its representative.

3.12.2 Required Coverages

The Contractor agrees to provide the following minimum coverages:

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

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

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

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

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

C. Workers' Compensation

- Part A Statutory

- Part B – Employers' Liability

- Bodily Injury by Accident \$500,000

- Bodily Injury by Disease (Policy Limit) \$500,000

- Bodily Injury by Disease (Each Employee) \$500,000

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

SECTION 4 – BID EVALUATION & CONTRACT AWARD

4-1 Contract Award

Contract award, if any, will be made by EPTA to the responsible Bidder who submits the lowest responsive bid. EPTA shall have no obligations until a Contract is signed between the Bidder and EPTA. Contract award will occur when EPTA signs the Contract or issues a purchase order. No other act of EPTA shall constitute a Contract award. The Contract will establish the Contract value and incorporate the terms of this document, but will not be the authorization for the Contractor to proceed.

4-2 Execution of Contract and Notice to Proceed

The Bidder to whom EPTA intends to award the Contract shall sign the Contract and return it to EPTA. Upon authorization by EPTA's Board of Directors, the Contract will be countersigned. Upon receipt by EPTA of any required documentation and submittals by the Bidder, a Notice to Proceed may be issued, if appropriate.

4-3 Public Disclosure of Bids

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

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

SECTION 5 – STANDARD CONTRACTUAL TERMS & CONDITIONS

5-1 Administration

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

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

5-2 Notification of Delay

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

5-3 Request for Extension

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

5-4 Contract Changes

Any proposed change in the contract will be submitted to EPTA for its prior written approval, and EPTA will make the change by a Change Order if agreed upon by both parties in writing. Each written Change Order will include any change in the Contract price or delivery schedule. No oral order or conduct by EPTA will constitute a Change Order unless confirmed in writing by EPTA.

5-5 Instructions by Unauthorized Third Persons

In accordance with subsection 5-4, Contract Changes, of the solicitation, EPTA's CEO/Executive Director or the authorized representative is the only person authorized to make changes within the general scope of the Contract. Any instructions, written or oral, given to Contractor by someone other than EPTA's Executive Director or the authorized representative, which are a change in the Contract, will not be considered as an authorized Contract change. Any action on the part of the Contractor taken in compliance

with such instructions will not be grounds for subsequent payment or other consideration in compliance with the unauthorized change.

5-6 Lack of Funds

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

5-7 Force Majeure

The timely receipt of EPTA's requirements is essential. If the requirements are not received on time in accordance with the delivery schedule, EPTA may cancel the unfilled portion of the contract for cause, purchase substitute requirements elsewhere, and recover from Contractor any increased costs, thereby incurred together with all resulting incidental and consequential damages. EPTA may also terminate for cause, purchase substitute requirements elsewhere, and recover costs and damages for breach of Contractor obligations. The Contractor shall be entitled to a reasonable extension of time from EPTA for the delays caused by damage to Contractor's and/or EPTA's property caused by fire, lightning, earthquakes, tornadoes, and other extreme weather conditions or acts of nature, power failures, riots, acts of civil or military authorities of competent jurisdiction, strikes, lockouts, and any other industrial, civil or public disturbances beyond the control of the Contractor and its subcontractors causing the inability to perform the requirements of this Contract. Any delay other than ones mentioned above shall constitute a breach of Contractor's contractual obligations.

5-8 Taxes, Licenses, Laws, and Certificate Requirements

Contractor shall maintain and be liable for all taxes, fees, licenses, and costs as may be required by federal, state, and local laws, rules, and regulations for the conduct of business by Contractor and any subcontractors and shall secure and at all times maintain any such valid licenses and permits as may be required to provide the services or supplies under this Contract. If, for any reason, Contractor's required licenses or certificates are terminated, suspended, revoked, lapsed, or in any manner modified from their status at the time this Contract becomes effective, Contractor shall immediately notify EPTA in writing of such condition. Contractor will give all notices and comply with all federal, state, local, and EPTA laws, ordinances, rules, regulations, standards, and orders of any public authority bearing on the performance of the Contract, including, but not limited to, the laws referred to in these General Provisions of the Contract and the other Contract Documents. If the Contract Documents are at variance therewith in any respect, any necessary changes shall be adjusted by appropriate modification. Omission of any applicable laws, ordinances, rules, regulations, standards, or orders by EPTA in the

Contract Documents shall be construed as an oversight and shall not relieve the Contractor from his obligations to meet such fully and completely. Upon request, Contractor shall furnish to EPTA certificates of compliance with all such laws, orders, and regulations. Contractor shall be responsible for obtaining all necessary permits and licenses required for performance under the Contract.

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

5-9 Defective Work, Materials, or Services

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

5-10 Assignment

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

EPTA may assign its rights and obligations under the Contract to any successor to the rights and functions of EPTA or to any governmental agency to the extent required by applicable laws or governmental regulations, or to the extent EPTA deems necessary or advisable under the circumstances.

5-11 Indemnification and Hold Harmless

Contractor/Bidder agrees to indemnify and hold harmless EPTA, its directors, officers, employees including EPTA contracted management service employees acting on behalf of EPTA from and against all claims and damages, including reasonable attorneys' fees and other costs and expenses incident thereto because of harm, injury or death to persons or loss, damage or destruction to property, including property of EPTA, the Agreement and third persons, resulting from the negligence of Contractor/Bidder or its directors, officers, agents or employees while such person is acting in the scope of this Agreement.

5-12 Applicable Law and Forum

All work done pursuant to any contract resulting from this RFB will be governed by and construed according to the regulations of the Federal Transit Administration and the laws of the State of West Virginia. Further, the successful Bidder shall abide by all federal, state, and local laws, codes, and ordinances governing any areas(s) in which a service is rendered and shall have all required permits, licenses, agreements, tariffs, bonding, and insurance required by the same. No claims for additional payment shall be approved for changes required to comply with any such requirements. Any actions arising here from shall be filed in the County of Berkeley, West Virginia, and the Federal Transit Administration, if applicable.

5-13 Attorney Fees

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

5-14 State Officials and Employees Ethics Act

It is a breach of ethical standards for any EPTA employee to participate directly or indirectly in a procurement when the employee knows:

- The employee, or any member of the employee's immediate family, has a financial interest in the procurement.
- A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest in the procurement; or
- Any other person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement. In addition,

any person acting as a member of an evaluation committee for any procurement shall, for the procurement, be bound by the conditions of this Section. Throughout the bid/bid evaluation process and subsequent contract negotiations, offerors shall not discuss or seek specific information about this procurement, including but not limited to, the contents of submissions, the evaluation process, or the contract negotiations, with members of any evaluation committee, the Board of Directors, or other EPTA employees other than the designated procurement officer.

5-15 Conflicts of Interest and Non-Competitive Practices

A. Conflict of Interest – Contractor by entering into this Contract with EPTA to perform or provide work, services, or materials, has thereby covenanted that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any interest, which conflicts in any manner or degree with the work, services, or materials required to be performed and/or provided under this Contract and that it shall not employ any person or agent having any such interest. If Contractor or its agents, employees, or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such interest to EPTA and act immediately to eliminate the conflict or to withdraw from this Contract, as EPTA may require.

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

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

5-16 Conflicts of Interest – Current and Former Employees

EPTA seeks to eliminate and avoid actual or perceived conflicts of interest and unethical conduct by current and former EPTA employees in transactions with EPTA. Consistent with this policy, no current or former EPTA employee may contract with, influence, advocate, advise, or consult with a third party about an EPTA transaction, or assist with the preparation of Bids submitted to EPTA while employed by EPTA or within one (1) year

after leaving EPTA's employment, if he/she participated in determining the work to be done or process to be followed while an EPTA employee.

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

5-17 Other Public Agency Orders

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

5-18 Severability

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

5-19 Non-waiver of Breach

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

SECTION 6 – SPECIFIC CONTRACTUAL TERMS & CONDITIONS

6-1 Contract

A Contract shall be issued referencing this solicitation. The contract shall define and authorize the work by the Contractor based on the negotiated fees agreed to by EPTA. The Contract issued by EPTA may reflect agreed-upon modification of Contract terms, funding, or other matters subject to subsection 5-4, Contract Changes.

6-2 Contract Documents and Precedence

The documents constituting the Contract between EPTA and Contractor are intended to be complementary so that what is required by any one of them shall be as binding as if called for by all of them. In the event of any conflicting provisions or requirements within

the several parts of the Contract Documents, the following order of precedence shall be applied:

- 1) Any required federal, state, or local regulations that may not be altered by EPTA.
- 2) Contract.
- 3) Contract amendments.
- 4) Solicitation and all issued addenda and approved equals.
- 5) Any optional federal regulations elected by EPTA as expressly set forth herein.
- 6) Clarifications of and amendments to Contractor's bid as accepted by EPTA.
- 7) Contractor's bid and Attachments, and all clarifications and amendments issued before contract award.

6-3 Contract Term

The term of the Contract shall be effective with the issuance of the Notice to Proceed. The Contract end date will be thirty-six (36) months from the date of the Notice to Proceed. EPTA may extend the contract for two years by exercising additional one-year option periods.

6-4 Payment Procedures

Payments shall be made after presentation of the Contractor's invoices, after delivery of fuel. Invoices should clearly identify any EPTA purchase order number and any prompt payment discount offered to EPTA for paying within ten (10) days of receipt. EPTA may, at any time, conduct an audit of any and/or all records kept by the Contractor for this project. Any overpayment uncovered in such an audit may be charged against the Contractor's future invoices. EPTA may withhold payment for services it believes were improper, failed to meet project specifications, or are otherwise questionable. Invoices should be submitted to:

Eastern Panhandle Transit Authority
CEO/Executive Director
446 Novak Drive
Martinsburg, WV 25405

6-5 Advance Payment Prohibited

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

6-6 Prompt Payment to Subcontractors

The Contractor is required to pay each first tier Subcontractor for all work that the Subcontractor has performed to the satisfaction of EPTA, no later than thirty (30) calendar days after the Contractor has received payment from EPTA for that work, and each tier of Subcontractors must likewise pay the next lower tier of Subcontractors within thirty (30) calendar days after receiving payment. If this Contract provides for retainage, the Contractor must remit to each first-tier Subcontractor its share of any retainage within thirty (30) days after receipt of such retainage from EPTA, and each tier of Subcontractors must likewise remit retainage to the next lower tier of Subcontractors within thirty (30) calendar days after receiving payment. If this Contract does not provide for retainage, then neither Contractor nor any Subcontractor may withhold retainage from a Subcontractor. The requirements of this paragraph must be stated in all of the Contractor's subcontracts.

A delay in or postponement of payment to a Subcontractor requires good cause and prior written approval by EPTA's General Manager or his/her designee. The Contractor is required to include, in each subcontract, a clause requiring the use of appropriate arbitration mechanisms to resolve all payment disputes.

EPTA will not pay the Contractor for work performed unless and until the Contractor ensures that each Subcontractor has been promptly paid under all previous payment requests, as evidenced by the filing with EPTA of lien waivers (if applicable), canceled checks (if requested), and the Contractor's sworn statement that it has complied with the prompt payment requirements. The Contractor must submit a prompt payment affidavit (form to be provided by EPTA), which identifies each Subcontractor (both DBE and non-DBE) and the date and amount of the last payment to such Subcontractor, with every payment request filed with EPTA, except for the first payment request. Failure to comply with these prompt payment requirements is a breach of the Contract, which may lead to any remedies permitted under law, including, but not limited to, Contractor debarment. In addition, Contractor's failure to promptly pay its Subcontractors is subject to the provisions of 50 ILCS 505/9.

6-7 Price

Contractor's Price shall be the price per gallon delivered as bid by the Contractor and accepted by EPTA.

Price Adjustments

The price per gallon paid by EPTA for gasoline and diesel fuel will be based on the unbranded average as published weekly by the posted terminal price as indicated by the contractor with its bid, plus applicable taxes, plus a constant fixed price differential

indicated in the bid. The fixed price differential should include the cost of freight per gallon for delivery, Superfund Recovery, and markup/markdown above the posted terminal price. Prices shall be freight prepaid, F.O.B. destination.

Posted Terminal Price:

Posted terminal price documentation, verifying posted terminal price shall be furnished with all invoices. The unbranded average shall be used as the basis for invoicing purposes. Documentation shall be from the Oil Price Information Service (OPIS), and shall bear the OPIS logo and/or letterhead, or shall be from the Data Transmission Network Corporation (DTNergy) Fast Rack.

6-8 Independent Status of Contractor

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

6-9 Notices

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

Eastern Panhandle Transit Authority
CEO/Executive Director
446 Novak Drive
Martinsburg, WV 25405

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

6-10 Non-Disclosure of Data

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

6-11 Public Disclosure Requests

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

6-12 Changed Requirements

New federal, state, and local laws, regulations, ordinances, rules, policies, and administrative practices may be established after the date this Contract is established and may apply to this Contract. To achieve compliance with changing requirements, Contractor agrees to accept all changed requirements that apply to this Contract and requires subcontractors to comply with revised requirements as well. Changed requirements will be implemented through subsection 5-4, Contract Changes/ Change Order Procedure.

6-13 Counterparts

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

6-14 Contractual Relationships

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

SECTION 7 - FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENTS

7-1 No Obligation by the Federal Government

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

7-2 Program Fraud and False or Fraudulent Statements or Related Acts

1. 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 about 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, about 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.
2. 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. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
3. 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.

7-3 Access to Records and Reports

The following access to records requirements applies to this Contract:

Where the Purchaser is not a State but a local government and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites about a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309, 5339, or 5311.

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

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

7-4 Changes to Federal Requirements

Federal Changes: Contractor shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including, without limitation, those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to comply with this shall constitute a material breach of this contract.

7-5 Termination

1. Termination for Convenience (General Provision) EPTA may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid for the work it has completed consistent with its contract requirements. No contract close-out costs and lost profits shall be paid to the Contractor. Termination will be affected by written notice at least ten (10) days before the termination date. If the Contractor has any property in its possession belonging to EPTA, the Contractor will account for the same and dispose of it in the manner EPTA directs.

2. Termination for Default [Breach or Cause] 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, EPTA may terminate this contract for default. Termination shall be affected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance outlined in the contract. If it is later determined by EPTA 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, EPTA, 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.

3. Opportunity to Cure EPTA, in its sole discretion, may, in the case of a termination for breach or default, allow the Contractor 10 business days in which to cure the defect. In such a 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 EPTA's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from EPTA setting forth the nature of said breach or default, EPTA 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 EPTA from also pursuing all available remedies against Contractor and its sureties for said breach or default.

4. Waiver of Remedies for any Breach If EPTA elects to waive its remedies for any breach by Contractor of any covenant, term, or condition of this Contract, such waiver by EPTA shall not limit EPTA's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

5. Termination for Convenience of Default (Cost-Type Contracts) EPTA 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 the convenience of EPTA 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 EPTA, or property supplied to the Contractor by EPTA. If the termination is for default, EPTA may fix the fee, if the contract provides for a fee, to be paid to 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 EPTA, and the parties shall negotiate the termination settlement to be paid to the Contractor.

If the termination is for the convenience of EPTA, the Contractor shall be paid as provided for in Section 8-5 (a).

7-6 Civil Rights Requirements

The following requirements apply to the underlying contract:

1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and 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, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

a. Race, Color, Creed, National Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, 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. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. 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, creed, national origin, sex, or age. Such action should 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

b. Age: In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reasons of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- c. Disabilities: In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of the U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, about employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

7-7 Disadvantaged Business Enterprise (DBE) Participation

1. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 2.3%. A separate contract goal for DBE participation has not been established for this procurement.
2. The contractor shall not discriminate based on race, color, national origin, or sex in the performance of this contract. The contractor shall carry out the applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. 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 EPTA deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
3. The contractor must promptly notify EPTA 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 EPTA.

7-8 Incorporation of FTA Terms

Incorporation of Federal Transit Administration (FTA) Terms: The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly outlined in the preceding contract provisions. All contractual provisions required by DOT, as outlined in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this

Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests that would cause (name of grantee) to violate the FTA terms and conditions.

7-9 Suspension and Debarment

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

The certification in this clause is a material representation of fact relied upon by EPTA. If it is later determined that the bidder knowingly rendered an erroneous certification, in addition to remedies available to EPTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment, and this will be grounds for EPTA to terminate the agreement. The bidder agrees to comply with the requirements of 49 CFR 29, Subpart C, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder further agrees to include a provision requiring such compliance in its lower-tier covered transactions.

7-10 Disputes, Breaches, Defaults, or Other Litigation

Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of EPTA's Executive Director. This decision shall be final and conclusive unless, within five (5) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Executive Director. In connection with any such appeal, the Contractor shall be allowed to be heard and to offer evidence in support of its position. The decision of the General Manager shall be binding upon the Contractor, and the Contractor shall abide by the decision. Performance During Dispute - Unless otherwise directed by EPTA, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages: Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies: Unless this contract provides otherwise, all claims, counterclaims, disputes, and other matters in question between EPTA and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which EPTA is located.

Rights and Remedies: The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by EPTA or the 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.

7-11 Disclosure of Lobbying Activities

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant, or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

7-12 Clean Air

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to ensure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

7-13 Clean Water

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

7-14 Energy Conservation

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

7-15 Notification Related to Fraud, Waste, Abuse, or Other Legal Matters

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify EPTA so that it can notify the Federal Government. The Contractor must include a similar notification requirement in its Third-Party Agreements and must require each Third-Party Participant to include an equivalent provision in its sub-agreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason. Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.

ATTACHMENT A – Vendor Checklist

(Verification that all necessary documents are included)

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

	Vendor Check-Off	EPTA Check-Off
Attachment A: Vendor Checklist		
Attachment B: Bid Affidavit		
Attachment C: Addendum Page		
Attachment C: Addendum Page		
Attachment E: Compliance with Federal Lobbying Regulations		
Attachment F: Bid Form		

ATTACHMENT B – Bid Affidavit

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

Signed: _____

Title: _____

Company Name: _____

Subscribed and sworn to before me this ____ day of _____, 20 ____

Notary Public: _____

My commission expires on _____

ATTACHMENT C – Addendum Page

The undersigned acknowledges receipt of the following addenda to this RFB.

(Include the number and date for each entry.)

Addendum Number _____ Dated _____

Addendum Number _____ Dated _____

Addendum Number _____ Dated _____

Addendum Number _____ Dated _____

Addendum Number _____ Dated _____

Addendum Number _____ Dated _____

Addendum Number _____ Dated _____

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

Signature

Title

____/____/____

Date

ATTACHMENT D – Affidavit of Non-Collusion

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

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

Signed: _____

Company Name: _____

Subscribed and sworn to before me this _____ day of _____, 20____

Notary Public: _____

My Commission expires _____, 20____

Bidder's Federal Employer Identification Number: _____

(Number used on Employer's Quarterly Federal Tax Return)

ATTACHMENT E– Certifications of Compliance with Federal Lobbying Regulations

The undersigned certifies to the best of his/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 any 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 influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with 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.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. 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.

By: _____
Signature of Company Official

Date: ____/____/____

Official's Title: _____

ATTACHMENT F-- Bid Form

BID FORM

TO: Eastern Panhandle Transit Authority, 446 Novak Dr., Martinsburg, West Virginia 25405
Attn: Elaine Bartoldson, Executive Director

The undersigned hereby agrees to furnish FUEL, listed below, in accordance with the specifications on file at the office of Eastern Panhandle Transit Authority (EPTA), which have been carefully examined and are attached.

Product	OPIS Benchmark	Source Refinery/Terminal Location for OPIS Benchmark	Price/Freight Per Gallon	Superfund Recovery	Markup / (Markdown) Per Gallon	Delivered Price/Gallon
87 Octane 10% Ethanol Gasoline	(Provide example: price per gallon, include date)					
No. 2 Ultra Low Sulphur Diesel Fuel	(Provide example: price per gallon, include date)					

Source Refinery Information

Name of Employee _____

Telephone Number _____

The undersigned understands that any condition to the above, clarifications made to the above, or information submitted on or with this form other than requested will render this bid unresponsive. All bids must remain valid and in effect for thirty (30) days from the date of bid opening.

Name of Individual, Partner, or Corporation

Address (including zip code)

Authorized Signature

Title

Date: ____/____/____

ATTACHMENT G – Federal Clauses

FEDERAL CLAUSES

(where applicable)

1. No Government Obligation to Third Parties

a. PURCHASER 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 PURCHASER, CONTRACTOR, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

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

a. 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.

b. 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) or other applicable federal law on the CONTRACTOR, to the extent the Federal Government deems appropriate.

c. 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.

3. Access to Records

The CONTRACTOR agrees to provide PURCHASER, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and

records of the CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. The CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. In accordance with 2 CFR 200.334, the CONTRACTOR agrees to 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 which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

4. Federal Changes

The CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Department of Transportation, Federal Transit Administration, Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. The CONTRACTOR's failure to comply shall constitute a material breach of this contract.

5. Civil Rights

The following requirements apply to the underlying contract:

a. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and 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, creed, national origin, sex, age, or disability. In addition, the CONTRACTOR agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

b. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(i) Race, Color, Creed, National Origin, Sex, Sexual Orientation, or Gender Identify - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, 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. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. 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, creed, national origin, sex, sexual orientation, or gender identity. Such action should 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. In addition, the CONTRACTOR agrees to comply with any implementation requirements FTA may issue.

(ii) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the CONTRACTOR agrees to refrain from discrimination against present and prospective age. In addition, the CONTRACTOR agrees to comply with any implementation requirements FTA may issue.

(iii) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementation requirements FTA may issue.

c. The CONTRACTOR also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

6. Disadvantaged Business Enterprises

a. It is the policy of the Department of Transportation and PURCHASER that Disadvantaged Business Enterprises (DBEs) as defined in 49 C.F.R. part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or part with federal funds under this contract. Consequently, the DBE requirement of 49 C.F.R. applies to this contract.

b. The CONTRACTOR or subcontractor shall not discriminate on the basis of race, color, natural 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 recipient deems appropriate.

c. The CONTRACTOR agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the prime contractor receives from PURCHASER. The prime contractor agrees further to return retainage payments to each subcontractor within ten (10) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above-mentioned time frame may occur only for good cause following written approval of the PURCHASER. This clause applies to both DBE and non-DBE subcontractors.

d. The CONTRACTOR or its subcontractors agrees to ensure that DBEs as defined in 49 C.F.R. have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or part with federal funds provided under this contract. In this regard, all contractors shall take all necessary and reasonable steps in accordance with 49 C.F.R. Part 26 to ensure that DBEs have the maximum opportunity to compete for and perform under this contract. Contractors shall not discriminate on the basis of race, creed, color, age, sex or national origin in the award and performance of DOT-assisted contracts.

e. DBEs will be encouraged and afforded full opportunity to actively solicit information concerning this project and to submit bids and or proposals.

7. Incorporation of FTA Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by U.S. DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by U.S. DOT, as set forth in FTA Circular 4220, 2 CFR 200.318, and subsequent revisions are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any PURCHASER request, which would cause PURCHASER to be in violation of the FTA terms and conditions.

8. Energy Conservation

The CONTRACTOR agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 *et seq.*

9. Termination

a. Termination of Convenience: PURCHASER may terminate this contract, in whole or in part, at any time by written notice to the CONTRACTOR. The CONTRACTOR shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The CONTRACTOR shall promptly submit its termination claim to PURCHASER to be paid by the CONTRACTOR. If the CONTRACTOR has any property in its possession belonging to PURCHASER, the CONTRACTOR will account for the same and dispose of it in the manner PURCHASER directs.

b. Termination for Cause: 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, PURCHASER 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 only be paid 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 PURCHASER 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 beyond the control of the CONTRACTOR, PURCHASER, 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.

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

10. Seat Belt Use

The CONTRACTOR agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by: 90 (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles.

11. Safe Operation of Motor Vehicles

The CONTRACTOR agrees to comply with: (1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225); (2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009; and (3) The following U.S. DOT Special Provision pertaining to Distracted Driving: (i) Safety. The CONTRACTOR agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle CONTRACTOR owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award; (ii) Recipient Size. The CONTRACTOR agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving; and (iii) Extension of Provision. The CONTRACTOR agrees to encourage its subcontractors to comply with this Special Provision and include this Special Provision in each third-party subcontract at each tier supported with federal assistance.

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

[Public Law 115-232](#), section 889, prohibits entering into a contract (or extending or renewing 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. 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.

13. Governmentwide Debarment and Suspension

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

The certification in this clause is a material representation of fact relied upon by PURCHASER. If it is later determined that the bidder or offeror knowingly rendered an erroneous certification, in addition to remedies available to PURCHASER, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or offeror agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer.

The bidder or offeror further agrees to include a provision requiring such compliance in its lower tier covered transactions.

14. Notification Related to Fraud, Waste, Abuse, or Other Legal Matters

If a current or prospective legal matter that may affect the Federal Government emerges, the CONTRACTOR must promptly notify PURCHASER so that it can notify the Federal Government. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason. Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

The CONTRACTOR agrees to include a similar notification requirement in subcontracts exceeding \$25,000 financed in whole or in part with federal assistance provided by FTA and must require each subcontractor to include an equivalent provision in its federally assisted subcontracts exceeding \$25,000.

15. Lobbying Restrictions

The CONTRACTOR agrees to:

- a. Refrain from using Federal assistance funds to support lobbying,
- b. Comply and assure the compliance of each SUBCONTRACTOR at any tier, with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352.

c. Comply with Federal statutory provisions to the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence Congress or a State legislature on legislation or appropriations, except through proper, official channels.

16. Clean Air

a. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

17. Clean Water

a. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Water Act, as amended, 33 U.S.C. §§1251 through 1377. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

18. Breaches and Disputes

a. Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of PURCHASER. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the CONTRACTOR mails or otherwise furnishes a written appeal to PURCHASER. In connection with any such appeal, the CONTRACTOR shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of PURCHASER shall be binding upon the CONTRACTOR, and the CONTRACTOR shall abide by the decision.

b. Performance During Dispute - Unless otherwise directed by PURCHASER, CONTRACTOR shall continue performance under this Contract while matters in dispute are being resolved.

c. Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

d. Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between PURCHASER and the CONTRACTOR arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of West Virginia or Ohio as applicable.

e. Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by PURCHASER, Architect or CONTRACTOR shall constitute a waiver of any right or duty afforded by 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.

19. Cargo Preference - Use of United States- Flag Vessels

To the extent applicable, the contractor agrees to comply with 46 U.S.C. §55305 and 46 C.F.R. Part 381 which includes, but is not limited to:

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

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

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

20. Fly America Requirements

The CONTRACTOR agrees to comply with 49 U.S.C. §40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. §§ 301-10, which provide that recipients and subrecipients 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. The CONTRACTOR shall submit, if a foreign air carrier was used, 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. The CONTRACTOR agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

21. 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 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 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 he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, 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 rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering 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 noncompliance with the nondiscrimination clauses of this contract or with any of the said 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 or federally assisted construction 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 portion of the sentence immediately preceding paragraph (1) and 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 the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

The PURCHASER further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the PURCHASER so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The PURCHASER agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The PURCHASER further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

22. Contract Work Hours and Safety Standards Act

The CONTRACTOR agrees to comply with and assure compliance by subcontractors and other project participants for construction employees with the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 et seq., specifically the wage and hour requirements of section 102 of that

Act at 40 U.S.C. § 3702, and implementing U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and safety Standards Act),” 29 C.F.R. Part 5; and the safety requirements of section 107 of that Act at 40 U.S.C. § 3704, and implementing U.S. DOL regulations, “Safety and Health Regulations for Construction,” 29 C.F.R. Part 1926.

The CONTRACTOR further agrees to comply with and assure compliance by other project participants for non-construction employees with the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 et seq., in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with implementing U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and safety Standards Act),” 29 C.F.R. Part 5.

23. Substance Abuse

To the extent applicable, the CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with FTA regulations 49 CFR Part 40, “Procedures for Transportation Workplace Drug and Alcohol Testing Programs” and 49 CFR Part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations" as well as any additional requirements which may be placed into effect during this project.