

Community Council of Southwest Texas, Inc.

P.O. Drawer 1709 | Uvalde Texas 78802-1709



Community Council of Southwest Texas Southwest Transit Interactive Voice Response System Request For Proposal (RFP) #09052011-1

Issue Date: January 16, 2012

Last Day to Submit Questions: February 13, 2012

Closing Date: February 27, 2012

Contact:

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1 Introduction

Southwest Transit provides transportation services for Community Council of Southwest Texas, Inc. Southwest Transit (SWT) is soliciting proposals, priced on a firm fixed price basis to provide and enhance their current Intelligent Transportation System (ITS). SWT desires to install and implement hardware and software for an IVR (Interactive Voice Response) technology to their current transportation system which uses the Shah Software. The IVR system will provide SWT the ability to meet their goals identified during a Needs Assessment Study performed by EPV Group (EPV).

The following goals were identified

- Reduce Paperwork (Trip Manifest, “No-Show/Cancellations” Reports, Vehicle Maintenance)
- Reduce Duplication of data entry (entered in application and hand-written)
- System Perform “Checks & Balances”
- System should provide visibility of vehicle locations, trip status, passenger scheduled, etc. to SWT system users
- System provides Integration to SWT contractors and other entities.
- Compliance with all MTP regulations and all other regulations for other funding sources.

The IVR system proposed shall provide a full-range of operating and management functions to support SWT’s Paratransit demand-response service. SWT is requesting proposals from qualified Proposer(s) to enhance their ITS Shah Software system as well as implementation and support services for the IVR system.

Vendor(s) will need to contact Shah Software Inc. to determine requirements for interfacing their IVR product to the Shah software. Upon contract award, a representative from the Shah Company will be directly responsible for ensuring the SWT requirements are met in accordance with interfacing with Shah Software. The IVR system must be able to coordinate the various types of services that are in operation, as well as accommodate any increase of ridership and number of vehicles, and produce data reports that provide information for federal and state reporting as well as planning and service adjustments for service improvements or enhancements. IVR system shall also have an open architecture that allows for future linkage to other technologies or other ITS systems.

While every effort has been made to ensure the accuracy and completeness of the information in this RFP, SWT recognizes that the information is not exhaustive in every detail and that all work and materials may not be expressly mentioned in the requirements of the RFP. Therefore, it is the responsibility of the Contractor to include in their proposal all software and hardware requirements, which are necessary for the full performance of the system requirements in accordance with the objective of SWT. The IVR system offered shall be complete in every respect inclusive of all design,

components, and recommendations for auxiliary equipment, and required maintenance or licensing, etc.

All proposals and related documents shall be subject to a financial assistance contract between SWT and the Federal Transit Administration, the Texas Department of Transportation, and other funding sources as applicable. Terms and conditions associated with these contracts shall be applicable to this solicitation. All proposer(s) will be required to certify they are not on the U.S. Comptroller General’s List of Ineligible Proposer(s). The proposer(s) will be required to comply with all applicable Equal Opportunity laws and regulations.

SWT hereby notifies all proposer(s) that in regard to any contracts entered into pursuant to this Request for Proposal, Disadvantaged Business Enterprises will be afforded full opportunity to submit bids in response and will not be subjected to discrimination on the basis of race, religion, color, creed, sex or national origin.

2 RFP Instructions to Proposer(s)

This solicitation, specifications and other referenced response documents associated with this solicitation are available electronically on:

<http://www.ccswt.org/>

NOTE: All information or changes related to this solicitation will be posted on the above website. **PROPOSERS SHOULD MONITOR THIS WEBSITE FOR ANY ADDENDUMS, ADDITIONAL DOCUMENTS, QUESTIONS AND RESPONSES OR CHANGES PRIOR TO RFP CLOSING DATE.**

2.1 Requirements and Additional Information

2.1.1 Procurement Schedule

Request for Proposal Posting	January 16, 2012
Deadline for Question Submission	February 13, 2012
SWT Response to Questions	February 21, 2012
Issuance of Addendum (if necessary)	February 24, 2012
Closing Date for Receipt of Proposal	February 27, 2012 @ 4:00 p.m. (CST)
Proposal Openings	February 29, 2012 @ 7:00 p.m. (CST)

Proposal Evaluations	March 1, 2012 – March 16, 2012
Notify Top 3 Proposers and provide sample data if required	March 19, 2012
Top 3 Proposers Interviews/Presentations/Demonstrations	April 3 – April 5, 2012
Final Selection	April 12, 2012
Contract Negotiations	TBD
Contract Award	TBD
Notice-to-Proceed	TBD
Installation of Software and Hardware (Dispatch Center)	TBD
Training at SWT Facilities (Dispatch Center Software)	TBD
Installation of Software and Hardware (Vehicles)	TBD
Training at SWT Facilities (Vehicles Hardware and Software)	TBD
Implementation / Transition	TBD
Testing	TBD
“Go” or “No-Go” Decision	TBD
Production Deployment	TBD

SWT reserves the right to adjust these time frames if a critical addendum is required or if the proposal deadline needs to be extended due to a critical reason in the best interest of SWT.

2.1.2 Submission Information

General Format: The Proposer(s) shall submit one signed and dated original (marked *Original*) and six copies (marked *Copy*). The submissions shall be in separate loose-leaf binders on one-sided 8-1/2 x 11 inch paper and shall be tab-indexed corresponding to the sections listed below.

Section 1 – Pricing Schedule and Licensing [Schedule 1]

Section 2 – Original, signed and dated Execution of Offer [Schedule 2]

Section 3 – Executive Summary
Section 4 – Company Qualifications and Experience [Schedule 3]
Section 5 – Key Personnel Qualifications and References [Schedule 4]
Section 6 – System Functionality and Requirements [Schedule 5]
Section 7 – Project Management Approach
Section 8 - Implementation Approach
Section 9 – Transition Plan
Section 10 – Warranties
Section 11 – Maintenance, Support and Upgrades Agreement
Section 12 – Business Continuity and Disaster Recovery Plan
Section 13 – Training Plan
Section 14 – Optional Hosting Service
Section 15 – HUB Subcontracting Plan

Each section is described in Section 8 of this document.

Due Date: In order to be considered, proposals must be received at SWT Administrative Office by 4:00 p.m. (CST) on February 27, 2012. Failure of the U.S. Postal Service or other delivery service, to deliver proposal packages on time shall result in the proposal not being opened or considered. The RFP number must appear on the outside of the envelope in which the proposal is submitted. Proposals without this identification number will be subject to disqualification and non-consideration. The RFP should be sent to:

Southwest Transit
ATTN: Sarah Hidalgo-Cook - Transit Director
713 East Main
Uvalde, Texas 79801
(830) 278-6268 x 3009
e-mail: scook@ccswt.org

Questions/Responses: All questions and the responses will be posted on the SWT website at: <http://www.ccswt.org/>

All questions and inquiries concerning this RFP should be submitted via e-mail to:

Sarah Hidalgo-Cook
E-mail: scook@ccswt.org

ANY PROPOSER THAT DIRECTLY CONTACTS SWT OR CONTRACTED PERSONNEL WORKING ON THIS PROJECT TO ASK QUESTIONS ABOUT THIS RFP INSTEAD OF CONTACTING THE SWT CONTACT PERSON WILL BE DISQUALIFIED.

2.1.3 On-Site Interviews/Presentations/Demonstrations

SWT reserves the right to conduct on-site interviews, at SWT facility in Uvalde, Texas, with the three top ranked proposer(s) as part of the contractor evaluation and selection process. Proposer(s) are advised that SWT has reserved Tuesday through Thursday, April 3-5, 2012 as the date for oral interviews and presentations. SWT further reserves the right to request demonstration of any software product or technology contained in the proposer’s offer, and to request the proposer(s) to demonstrate the capabilities of its software.

Each of Proposer(s) will demonstrate the capabilities of their system. The proposed system should demonstrate the following key areas specifically with SWT data:

- € Interactive Voice Response System Capabilities
- € Ability to import information to Shah System
- € Sample reports available for Interactive Voice Response System

All functionality demonstrations may be accomplished with Vendor sample data. Proposer(s) will be responsible for providing all hardware or software for demonstration.

2.1.4 Evaluation Criteria

SWT will use the following criteria for grading proposals received:

System’s ability to meet SWT needs and requirements	65%
Price Comparison	25%
Implementation Schedule	10%

2.1.5 Proposer’s Qualifications

The Proposer(s) shall provide a corporate profile indicating their qualifications to provide the required software and support necessary to achieve SWT’s objectives for the project. Proposer(s) must submit a list of other Agencies with ITS systems where the proposed solution has been installed. A separate list of the proposer’s last five (5) installations, along with a project customer name and address, telephone number, fax number, and e-mail address, implementation status, implementation timeframe, must be provided.

See Section 8.1.4 The Proposer(s) must be in good standing, current in payment of all taxes and fees such as state franchise fees.

2.1.6 Location of the Work

Services provided as a result of this RFP must be performed on site at SWT facility in Uvalde, Texas and Eagle Pass, Texas. However, the vendor may be able to perform some tasks remotely.

2.1.7 Mandatory FTA Clauses

Proposer(s) agrees to acknowledge that SWT is an FTA grant recipient and the Proposer(s) agrees to adhere to any and all terms and conditions of such a grant agreement as they relate to obligations the proposer(s) would assume under this contract.

Any obligation of any Proposer(s) to comply with governmental standards or regulations shall include the obligation to document such compliance.

A Proposer(s) shall supply and/or execute such documents as SWT may reasonably need to affect the purposes of this contract or to comply with federal applicable regulations.

All proposals or bids shall contain all certifications, duly executed, contained in the following FTA mandatory provisions. Failure to do so may result in SWT's refusal to consider the proposal or bid. These clauses are provided in **Attachment A**.

3 Proposal and Contract Conditions

3.1 Proprietary Information

Any information contained in this proposal that the Proposer(s) considers proprietary must be clearly identified as such. SWT will respect requests for non-disclosure of proprietary information to the extent that information so restricted conforms to the Freedom of Information Act. The proposing firm's attention is directed to the fact that all applicable Federal Laws, State Laws, Municipal Ordinances, and the rule and regulation of all authorities having jurisdiction over said item shall apply to the contract throughout. They will be deemed to be included in the contract the same as though herein written out in full.

3.2 Applicable laws and Standards

The Proposer(s) shall provide the specified service requirements in accordance with all federal, state and local applicable laws, standards and regulations necessary to perform the services.

3.3 Proposal Preparation Expenses

Proposer(s) are responsible for all proposal preparation related expenses incurred in the development and submission of their proposals and in participating in any demonstrations and negotiations related to this RFP. SWT assumes no obligation for any expenses incurred by the Proposer(s) as a result of the issuance of this RFP, the preparation or submission of a proposal or demonstration, the evaluation of a proposal, or the selection of the Proposer(s). SWT is not contractually bound until a written contract for the performance of the work is properly authorized and executed by the SWT and the duly authorized representative of the successful Proposer(s).

3.4 Rights to Proposal Document

All copies and contents thereof of any proposal, attachment, and explanation thereto submitted in response to this Request for Proposal, except copyright material, shall become the property of SWT. SWT reserves the right to use, at its discretion, and in any manner it deems appropriate, any concept, idea, technique, or suggestion contained therein.

3.5 Disclosure of SWT Records

All documents including, but not limited to, tracings, drawings, estimates, field notes, maps, investigations, design analysis, and studies which are provided or prepared in the performance of this proposal are to be, and remain the property of SWT. The Proposer(s) shall furnish SWT upon its request, originals or reproducible copies of all documents generated by this proposal. All documents generated by this proposal will be the property of the SWT. Any documentation, report samples, policies and procedures, surveys and interview results provided by SWT to Proposer(s) must be kept confidential by Proposer(s).

3.6 Confidentiality of Documents

All proposals and other material submitted becomes the property of SWT and therefore is a matter of public record, which is open to reasonable inspection, after such time as a contract is negotiated. All proposal information, including detailed price and price information, will be held in confidence during the evaluation process and prior to the time a Notice of Intent to Award is issued. Thereafter, proposals will become public information. Trade secrets and other proprietary data contained in proposals may be held confidential at the request of the Proposer(s) if clearly identified in the proposal along with a brief statement, which sets out the reasons for confidentiality. The Proposer(s) will be required to fully defend, in all forums, SWT's refusal to produce such information; otherwise, SWT will make such information public. All cost of such defense shall be borne by Proposer(s).

3.7 Proposal Pricing

It is anticipated that the contract award will be on a firm fixed price basis, therefore, proposals shall address the pricing with this in mind. No additional charges (e.g., for sales tax, transportation, container packing, installation, training, out-of-pocket expenses, consulting, etc.) will be allowed unless so specified in the proposal and accepted by SWT. All components required to meet contract requirements as proposed must be included in the base price. All price options shall be specifically stated and identified utilizing the Proposal Pricing Form (**Schedule 1**). In the event of a discrepancy between the unit price and the extended price, the unit price shall prevail.

3.8 Payment Terms

The payment terms for this project will be negotiated in the final contract between SWT and the Proposer(s). Proposer(s) are required to submit a progress payment schedule, based upon milestones, for consideration along with their proposal.

3.9 Right to Reject Proposal

SWT reserves the right to reject any part of any proposal, to waive minor defects or technicalities, or to solicit new proposals on the same project or on a modified project which may include portions of the originally proposed project as SWT may deem necessary and in its interest. Proposer(s) must comply with all the terms of the RFP and all applicable local, state, and federal laws, codes and regulations. SWT may reject any proposal that does not comply with all the material and substantial terms, conditions, and performance requirements of the RFP. Proposer(s) may not restrict the rights of SWT nor qualify their proposal. If a Proposer(s) does so, SWT may determine the proposal to be a non-responsive counter offer and the proposal may be rejected.

Minor items that do not affect responsiveness; that are merely a matter of form or format; that do not change the relative standing or otherwise prejudice other offers; that do not change the meaning or scope of the RFP; that are trivial, negligible, or immaterial in nature; that do not reflect a material change in the work; or, that do not constitute a substantial reservation against a requirement or provision may be waived by SWT.

3.10 Software Licenses

SWT reserves the right to protect its reputation and its investment in computer software/hardware by enforcing strong internal controls to prevent the purchase of unlicensed copies of software. Be aware that software piracy is subject to both civil and criminal penalties. These acts can produce serious impacts on the offending company's reputation and worst case, potential loss of customers. Therefore, if SWT suspects that any unauthorized pricing or unlicensed product is proposed, SWT will reject such proposal.

3.11 Prime Proposer's Responsibility

The Proposer(s) shall be responsible for meeting all requirements agreed to in the response to this RFP including system delivery, installation, training, maintenance, and integration of all software, hardware, and other related products. Further, SWT will consider the Proposer(s) to be the sole point of contact with regards to contractual matters, including the performance of services and the payment of any all charges resulting from contractual obligations. The Proposer(s) shall designate a project manager to serve as the point of contact for SWT and to work with SWT Project Management Contractor to manage the system implementation. The Proposer(s) cannot replace the project manager without SWT approval.

As provided in subsection 5307(c) of SAFETEA-LU, 23 U.S.C. 512 note, apart from certain exceptions, "Intelligent Transportation System projects carried out using funds made available from the Highway Trust Fund, including funds made available under this subtitle to deploy intelligent transportation system architecture, Proposer(s) solution shall conform to the national ITS architecture, applicable standards or provisional standards, and protocols developed under subsection (a) [of section 5307 of SAFETEA-LU]." To facilitate compliance with subsection 5307(c) of SAFETEA-LU, 23 U.S.C. 512 note, the Proposer(s) assures it will comply with all applicable provisions of Section V (Regional ITS Architecture) and Section VI (Project Implementation) of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," at 66 FR 1455 *et seq.*, January 8, 2001, and other FTA policies that may be issued in connection with any ITS project it undertakes financed with funds authorized under Title 49 or Title 23, United States Code, except to the extent that FTA expressly determines otherwise in writing.

3.12 Subcontractors Relationships

The Proposer(s) shall clarify its relationships with parties supplying portions of the solution, and shall specify what each party is providing. The Proposer(s) may not transfer or assign any portion of the contract without prior written approval from SWT. Subcontractors may be used to perform work under this contract. If a Proposer(s) intends to use subcontractors the Proposer(s) must identify, in their proposal, the names of the subcontractors and the portions of the work the subcontractors will perform. If a proposal with subcontractors is selected, the Proposer(s) must provide the following information concerning each prospective subcontractor within five working days from the date of SWT's request:

€ Complete name of the subcontractor

- € Complete address of the subcontractor
- € Type of work the subcontractor will be performing
- € Percentage of work the subcontractor will be providing
- € A written statement, signed by each proposed subcontractor, which clearly verifies that the subcontractor is committed to render the services required by the contract.

A Proposer's failure to provide this information, within the time set, may cause SWT to consider their proposal non-responsive and reject the proposal. The substitution of one subcontractor for another may be made only at the discretion and by prior written approval of the SWT.

3.13 Proposal Term

All submitted proposals must remain valid offers for at least sixty days from the proposal closing date.

3.14 Protest Procedures

Any protests by an interested party regarding this procurement shall be made in accordance with Community Council of Southwest Texas procedures set in this section. After such administrative remedies have been exhausted, an interested party may file a protest with the Federal Transit Administration (FTA) of the U.S. Department of Transportation pursuant to the procedures provided in FTA C 4220.1D. Alleged violations of certain federal requirements provide a separate complaint procedure. See, for example, Buy America Requirements, 49 CFR 661 (Section 661.15) and Participation by Disadvantaged Business Enterprise in Department of Transportation Programs, 49 CFR 23 (Section 23.73).

Any party aggrieved by a solicitation or award of a contract may protest to SWT's General Manager, in writing, within fifteen days after such aggrieved party knew or should have known of the facts giving rise thereto. Such protest shall include the detailed facts leading up to the protest. SWT's General Manager is authorized to settle and resolve any protest relating to the solicitation or contract award. In the absence of a settlement, SWT's General Manager shall make his or her decision known, in writing, within one week of receipt of the protest. Such decision shall respond, in detail, to each substantive issue raised in the protest.

A pending protest shall halt the procurement until the controversy is resolved, unless, in the opinion of SWT's Transit Director, the award of the contract without delay is necessary to protect the substantial interests of SWT. The written decision of SWT's General Manager shall be final, binding, and conclusive on the parties. Protests should be transmitted to:

SWT Contacts

Sarah Hidalgo-Cook
Transit Director
Southwest Transit
713 East Main

Uvalde, Texas 79801
(830) 278-6268 x 3009

Protests will only be entertained by the Federal Transit Administration if the aggrieved party is alleging that SWT does not have, or is failing to follow, written protest procedures. Pursuit of a protest beyond the decision of SWT's General Manager must take place in the appropriate State or Federal court holding jurisdiction.

Failure to comply with the above protest procedures will render a protest untimely and/or inadequate and shall result in its rejection

3.14.1 Protest of Award (or Proposed Award after Evaluation):

Protest of Award:

1. All unsuccessful Offerors shall be notified in writing by certified mail return receipt requested of the pending contract award. Protests to the award must be delivered to the SWT Transit Director, within seventy-two (72) hours after receipt of notice.
2. A protest must be in writing and clearly state the reason for the protest. Community Council of Southwest Texas shall review the protest and notify the protestor of a decision, in writing, by certified mail return receipt requested within five (5) days. No contract shall be awarded while a protest is pending. A protest that is untimely or fails to clearly state the reason for the protest is invalid.
3. The decision of Community Council of Southwest Texas disqualifying the protest for these reasons is final and cannot be appealed.

4 Terms and Acronyms

CAD – Computer Aided Dispatch

Transit agency dispatch center using computer systems to automate business processes

HUB – Historically Underutilized Business

HSP – HUB Subcontracting Plan

ITS – Intelligent Transportation System

By deploying technology, data and system integration and efficient business processes, an Intelligent Transportation System is developed.

Galaxy Tablet

A GPS-enabled mobile Android device used by drivers to receive and send information to dispatchers. Dispatchers can view and locate drivers and collect trip and route data in real time.

IVR – Interactive Voice Response

Passengers can automatically be notified on bus status through an automatic outbound calling system. The IVR will work with the Transit Management System to determine the bus schedule and status. Based on current information, the IVR system will be set-up to automatically call the passenger and notify them of the bus status. The IVR can also be set-up to automatically confirm scheduled trips.

MDD – Mobile Data Devices

MTP – Medical Transportation Program

Program is designed to assist Medicaid recipients who need transportation to their medical appointments

RFP – Request for Proposal

TMTS - Texas Medical Transportation System

TMHP – Texas Medicaid Healthcare Partnership

TSAP - Transportation Service Area Provider

5 SWT Background

SWT is currently using Shah Software for Customer and Trip Management and will be implementing the Scheduling Engine (ARC Logistic) as part of this implementation. SWT is looking to add hardware and software components to their existing system to meet their goals as listed below:

- Reduce Paperwork
 - Faxing is used to send trip information, schedules, and Medicaid trips.
 - Multiple printouts multiple times for record-keeping and checking reports
- Reduce Duplication of data entry (entered in application and hand-written)
 - Hand-written notes on reports that need to be entered into system
 - Trip requests are logged on forms and entered into Shah Application.
 - Schedules are created manually and entered into the Shah application
 - Trip information is captured on “marked-up” manifests and entered into Shah Application.
- System Perform “Checks & Balances”
 - Reduce having staff perform multiple checks
- Visibility
 - Schedulers/dispatchers and staff members do not have a view to current status of trips or vehicles locations
- Integration
 - No integration of information between Dispatcher/Schedulers and Drivers.
 - No integration of information between SWT and its sub-contractors.
 - No integration of information between SWT and HHSC Medicaid approved passengers.
- Compliant with all MTP regulations and all other regulations for other funding sources.
 - Continue to comply and follow all policies set forth by the Medical Transportation Program.

5.1.1 Current Hardware/Network Environment

As part of this proposal, Proposer(s) must supply all hardware and software specifications needed to optimally operate all components of the requested solution. SWT has their internal IT manager. The current IT infrastructure is documented in **Attachment B**. SWT has the following hardware configuration for the workstations:

Workstation

Component	Hardware	Operating System Version
Processor	Pentium D & 4 CPU	XP – Service Pack 3 (2002)
Memory	1.99 GB of RAM	
Hard Drive	80 GB	Windows 7 32/64 Bit
Video Card	Intel 82945G Express Chipset Family	
Network Card	Broadcom NetXtreme Gigabit Ethernet 1 & 2	
Monitor	Plug & Play-Intel-82915 G/GV/910GL Express Chip 20 in LCD	
UPS Battery Backup	APC - 500	

Note: The Proposer(s) should specify if the current hardware will fulfill system requirements. If not, Proposer(s) will provide any information on additional hardware required.

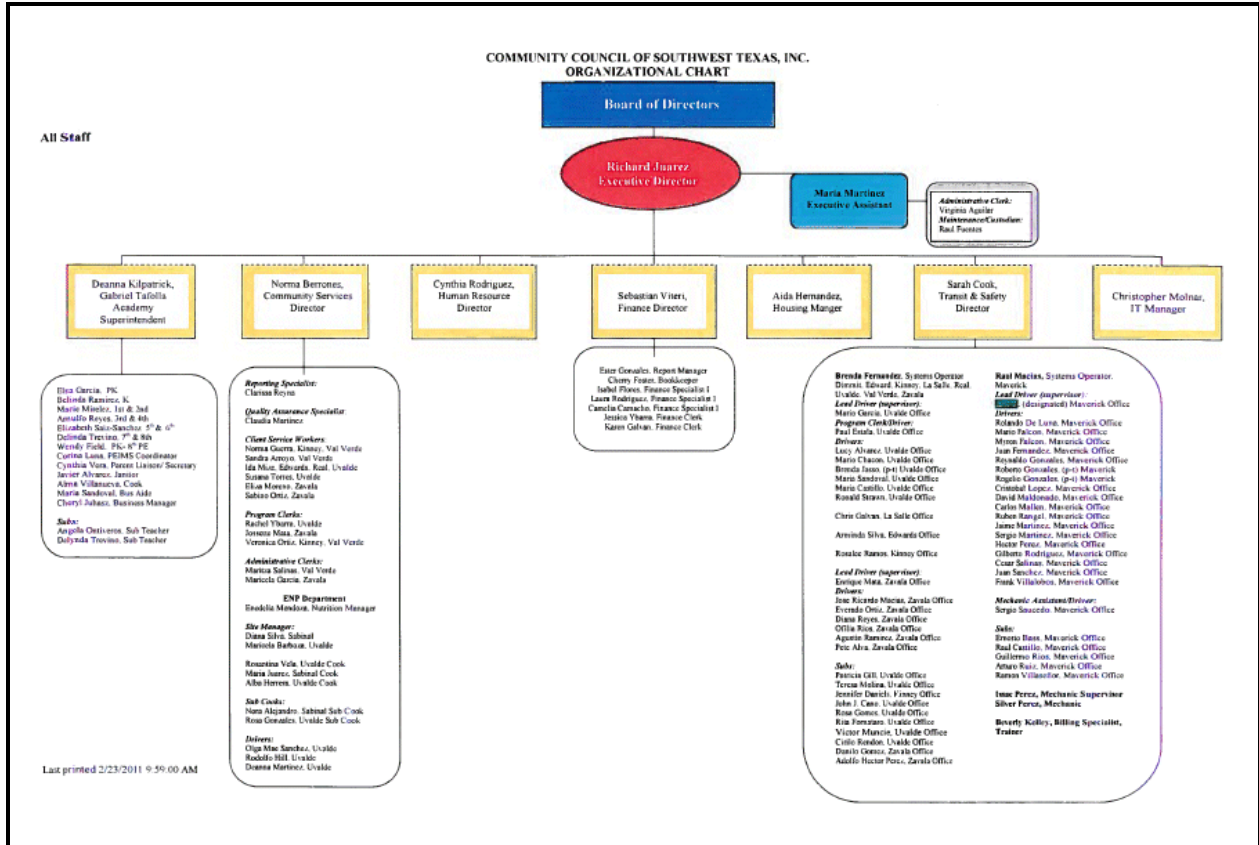
5.1.2 Communication Infrastructure

SWT utilizes the following communication technologies:

- 2-way Digital Radio (voice and data)
- Text Paging
- Satellite Communications
- AT&T Cellular Data Communications
- Internet

5.1.3 SWT Information

Community Council of Southwest Texas, Inc. located in Uvalde, Texas provides different services including transportation. Transportation services are provided by SWT.



SW Transit provides public and medical transportation, and serves the following counties:

- Dimmit
- Edwards
- Kinney
- La Salle
- Maverick
- Uvalde
- Zavala

There are multimodal facilities in Uvalde and Eagle Pass and one sub-station in Crystal City and Eagle Pass. Kinney, La Salle and Edwards are satellite offices. Currently SWT is a TSAP (Transportation Service Area Provider) for the Medical Transportation Program. City of Del Rio is a Subcontractor for the Medical Transportation Program.

SWT utilizes 65 vehicles (Type II/III/VII) and performs approximately 130,000 one-way trips annually. Miles traveled are approximately 1,300,000 annually.

SW Transit has several licenses to access the Shah Software hosted at Venture Technologies. The software is used for the following:

- Tracking customer information
- Booking trips with pertinent information including customer information, trip pick-up or drop-off times, fares, funding source
- Update Trip status such as Cancellations
- Determine and calculate driver mileage
- Report Generation

SWT serves a large diverse population of individuals of varying ages (children, teenagers, adults, and elderly), physical challenges, economic and financial status, and ethnic backgrounds.

Office hours are from 8:00 am to 6:00 pm. Vehicles are operational from 2:30 a.m. to 10:00 pm, Monday through Friday. SWT also provides Public and Medical Transportation on Saturdays and occasionally on Sundays.

A request for demand service should be made at least 24 hours in advance or up to 14 days prior. Request for same-day service will be accepted from 8:00 am to 3:00 pm Monday through Friday.

6 SCOPE

This solicitation is a Request for Proposal (RFP) for the installation, integration, implementation and support services of an IVR System.

SWT is assigning a representative from the Shah Software Corporation to be the responsible party and work with the other Contractor(s) to complete the following tasks:

- Interface to the Shah Software
- Implement the ITS solution according to SWT requirements and policies outlined in the RFP.
- Provide any type of necessary software or hardware integration required to provide a seamless solution.
- Develop and conduct training for system administrators, dispatchers, drivers, train the trainers, users, etc.
- Support (60) vehicles and provide the ability to increase scope with additional vehicles and functionality.
- Work closely with SWT Project Management Contractor to develop a Project Plan and provide any required documentation including Test/Acceptance Plan, Transition Plan, and “Go-Live” Plan.

- Provide ongoing support and maintenance for the proposed solution.

7 System Objectives

This project is in alignment with the Middle Rio Grande Region Transportation Plan goals. The ITS solution with its supporting technologies will automate and support SWT's ability to enhance and grow their transportation services.

8 Response Submission

Failure by the Proposer(s) to submit the documentation listed below will disqualify the Proposer(s) from further consideration. The response submission shall be submitted in the format described in Section 2.1.3.

8.1 Response

The response should include the following sections:

8.1.1 Section 1 – Schedule 1 - Pricing Schedule

The Proposer(s) shall include all costs associated with this proposal for the product/solution that the Proposer(s) is soliciting. A pricing schedule has been included in this solicitation (See Schedule 1). Proposer(s) should provide more than one option for any supported hardware e.g. MDC units versus Galaxy Tablets. Proposer(s) should also include hardware specifications and model numbers. The Proposer(s) can use their own pricing schedule format and include in this section.

8.1.2 Section 2 – Schedule 2 - Execution of Offer

The Proposer(s) will sign and date the Execution of Offer in Schedule 2.

8.1.3 Section 3 – Executive Summary

The Proposer(s) shall include an Executive Summary, limited to five pages, which contains the following:

- Concise summary of the products and services being offered to meet the requirements of this solicitation.
- Proposer's approach to providing the services.
- Proposer's approach to the following:

IVR

- Please describe the system capability and how customers interface with it.
- Please describe how many trips are supported and if trips are updated based on customer input.

- Please describe any phone requirements.
- Please describe reports that can be generated from system

Note: Brochures or marketing material will not be accepted for the Executive Summary.

8.1.4 Section 4 – Schedule 3 – Company Qualifications and Experience

The Proposer(s) will document in Schedule 3 successful past performance and relevant qualifications and experience. The Proposer(s) shall be a company in the business of developing components for Transit Management, integration and maintenance for advanced ITS systems for a minimum of three years within the last five years. Within the last five years, the company should have successfully completed projects that are similar in size and complexity. A list of the Proposer's last five (5) installations should be included. The installations should make reference to previous experience integrating to various ITS components.

8.1.5 Section 5 – Schedule 4 - Key Personnel Qualifications and References

The Proposer(s) will complete and return Schedule 4 – Key Personnel Qualifications and References for each proposed key personnel position including subcontractors.

8.1.6 Section 6 – Schedule 5 - System Functionality and Business Requirements

The Proposer(s) will use Schedule 5 to document and describe the approach to meeting the system functionality and business requirements as specified and fully described. Schedule 5 also contains hardware and software interfaces that the proposed ITS Solution must comply with.

8.1.7 Section 7 – Project Management Approach

The Proposer(s) will submit a project management plan and describe in this section their overall Project Management Approach. SWT's Project Management contractor will review the plan. The plan should include, but is not limited to:

- Project Management Approach
- Processes for managing project documentation
- Requirements Management

8.1.8 Section 8 – Implementation Approach

The Proposer(s) shall describe the approach to meeting the implementation, training, documentation, and transition requirements. The implementation approach should include the following:

8.1.8.1 Infrastructure Set-up and Specifications

The Proposer(s) shall provide specifications for all recommended hardware and software and shall continually assess requirements for the system environment and provide specifications for any

recommended changes to SWT environment. These specifications should include all hardware for each component that the Proposer(s) will be providing and software required for complete system integration.

8.1.8.2 Go-Live Plan

The Proposer(s) shall create a Go-Live Plan for deploying system in a pilot environment to test each aspect of the system including:

- Interface to Shah Software
- Report Generation

The Go-Live Plan should include the following:

- Prerequisite activities including training
- Deployment steps
- Test plan

8.1.8.3 Training

The Proposer(s) shall provide training to ensure all SWT users have the knowledge and capability necessary to effectively use the system. Training should be conducted at SWT facility in Uvalde, Texas and at other SWT facilities as agreed to. A training plan shall be developed by the Proposer(s) and reviewed and approved by SWT and SWT Project Management Contractor. Training shall be conducted from installation through implementation. The Proposer(s) shall provide user documentation including manuals, quick reference guides, tutorials, on-line and any configuration or customization documentation. **NOTE: All documentation should be provided in both English and Spanish.**

8.1.9 Section 9 - Transition Plan

The Proposer(s) shall provide a fully functioning system including transfer of knowledge, technical training, software, hardware, data migration and processes including installation of any software and hardware. SWT and SWT Project Management Contractor will approve the Transition Plan, which includes processes and responsibilities for transferring system to SWT.

8.1.10 Section 10 – Warranties

The Proposer(s) shall warrant each deliverable for a period of one year after the system is fully implemented and accepted. During the warranty period, the Proposer(s) shall be responsible for correcting any issues causing any portion of the system to be inoperable or any issues resulting in inaccurate results produced by the system when the system is used in accordance with product documentation provided by the Proposer(s) and without extraordinary actions on the part of the SWT or its users.

8.1.11 Section 11 – Maintenance, Support and Upgrades Agreement

The Proposer(s) shall provide a planned maintenance upgrade, and data management strategy. SWT will consider a multi-year agreement with volume discount pricing. The proposed maintenance agreement shall include at a minimum:

- Planned software and data upgrades and maintenance schedules. This should include any planned enhancements and any outstanding critical issues that are being addressed.
- Software upgrades procedures to ensure any software version upgrade is compatible with SWT system.
- In a hosted environment, procedures to notify SWT when the system must be halted to provide scheduled and unscheduled maintenance. Clearly defined roles, responsibilities and coordination processes should be provided.
- Document all customization or configuration to ensure reproducibility when SWT upgrades to a new release of the software.
- Include maintenance and support cost for first and second year.

8.1.12 Section 12 – Business Continuity and Disaster Recovery Plan

The Proposer(s) shall submit business continuity procedures and a disaster recovery plan which should include the following:

- Recommended hardware and software
- Documented Disaster Recovery Plan

NOTE: SWT will request Disaster Recovery Plan from Venture Technologies.

8.1.13 Section 13 - Training Plan

A training plan shall be developed by Proposer(s) during the early phase of the project and approved by SWT and SWT Project Management Contractor. The Proposer(s) will be responsible for providing user documentation for the system including manuals, quick reference guides, and tutorials.

8.1.14 Hosting Service

SWT's Shah Software is hosted at Venture Technologies Data Center.

8.1.15 Subcontracting Plan

Subcontractors providing service under this project shall meet the same service requirements and provide the same quality of service required of the Proposer(s). The Proposer(s) will be the primary contact for SWT and subcontractors.

The Proposer(s) shall manage all quality and performance, project management, and schedules for subcontractors. The Proposer(s) will be held solely responsible and accountable for the completion of all work for which the Proposer(s) has subcontractors.

SWT retains the right to check subcontractor's background and make a determination to approve or reject the use of submitted subcontractor(s). Any negative responses may result in disqualification of the subcontractor.

8.1.15.1 HUB Subcontracting

It is the proposer's determination if they choose to subcontract any of the work under this RFP with a Texas Certified Historically Underutilized Business (HUB). The required forms can be found at the following website:

<http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>

SCHEDULE 1

Cost Proposal

SWT expects the pricing to include all costs for software, hardware, integration and implementation.

Travel: All travel expenses, based on proposer’s estimate on number of trips, should be included in the fixed price in accordance with the latest U.S. General Services Administration and as published in the Federal Travel Regulations, specific funding sources, or rates established by the SWT Board of Directors.

Proposer Name: _____

Quantity	Deliverable	Total Price
	Software	
	IVR Application	\$
	Shah Interface to IVR Application	\$
	Hardware	
	IVR Hardware (if required)	\$
	Implementation Services	
	Software	\$
	Hardware	\$
	Training	
	User Training	\$
	System Admin	\$
	Maintenance and Support [1st and 2nd year]	
	IVR Application	\$
TOTAL Project Cost		\$

SCHEDULE 2

Execution of Offer (RFP)

By signature hereon, Proposer(s) certifies that: All statements and information prepared and submitted the response to this RFP are current, complete, and accurate.

Proposer(s) has not given, offered to give, nor intends to give at anytime hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response.

Under Government Code 2155.004, no person who prepared the specifications or this RFP has any financial interest in Proposer's Offer. If Proposer(s) is not eligible, then any contract resulting from the RFP shall be immediately terminated. Furthermore, "under Section 2155.004, Government Code, the Proposer(s) certifies that he individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

Proposer(s) represents and warrants that the individual signing this Execution of Offer is authorized to sign this document on behalf of Proposer(s) and to bind Proposer(s) under any contract resulting from this offer.

Proposer (Company):

Signature:

Name (Typed/Printed):

Title:

Date:

Address:

City/State/Zip:

Telephone:

Fax Number:

Employer's Identification Number (EIN):

SCHEDULE 3

Company Qualifications and Experience

Proposer Name: _____

Proposer (Company) Name:	
Addresses: City State	
Phone Number Fax Number	
Number of years in business	
Name and title of person signing the response	
Office Phone Number Cell Phone Number Email Address	
Describe experience and qualifications	
List of other ITS systems where the proposed solution has been installed.	
List of the proposer's last five (5) installations, along with a project contract address, telephone number, fax number, and e-mail address must be provided.	
1. Name Address	

Telephone Number Fax Number E-mail Address	
2. Name Address Telephone Number Fax Number E-mail Address	
3. Name Address Telephone Number Fax Number E-mail Address	
4. Name Address Telephone Number Fax Number E-mail Address	
5. Name Address Telephone Number Fax Number E-mail Address	

SCHEDULE 4

Key Personnel Qualifications and References

Proposer Name: _____

Proposer shall complete one profile for each individual or subcontractor working in key personnel positions for this solicitation. SWT reserves the right to reject the proposed key personnel if references or past working performance are questionable or unfavorable.

Key Personnel Information	
Full Name:	
Number of Years Employed by Proposer	
Title:	
Key Personnel Position Proposed for RFP	

Key Qualifications	# Years Experience	From	To

SCHEDULE 5

SWT System Functionality and Business Requirements

Req. #	Short Description	Standard Functionality	Customization Required	N/A	Future Release Date	Comments
IVR Functionality						
2.2.37	Automatically notifies passenger of any schedule changes or notifies passenger of vehicle status					
2.2.38	IVR System should have to capability for custom messages					
2.2.39	IVR System should allow passenger to confirm or cancel trip and update trips in Shah software					
2.2.40	IVR System should allow passenger to call for pickup					
2.2.41	IVR System should allow reports to be generated to show when calls were placed					
General Requirements						
2.2.67	Training Plan for all system components should be customized to meet SWT's needs					

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ATTACHMENT A
FTA MANDATORY CLAUSES

These clauses must be completed and included in all proposals submitted for this project. Failure to do so may result in SW Transit's refusal to consider the proposal.

2. BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j)

49 CFR Part 661

Applicability to Contracts

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

Flow Down

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The \$100,000 threshold applies only to the grantee contract; subcontracts under that amount are subject to Buy America.

Mandatory Clause/Language

The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA-funded contracts, but does not specify the language to be used. The following language has been developed by FTA.

Buy America - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

6. ENERGY CONSERVATION REQUIREMENTS

**42 U.S.C. 6321 et seq.
49 CFR Part 18**

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Flow Down

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

Model Clause/Language

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA:

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. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

Applicability to Contracts

The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

Flow Down

The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

Model Clause/Language

While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended, the following language developed by FTA contains all the mandatory requirements:

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. 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.

(2) 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.

10. LOBBYING

31 U.S.C. 1352

49 CFR Part 19

49 CFR Part 20

Applicability to Contracts

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

Flow Down

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

Mandatory Clause/Language

Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

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.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by

"Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

11. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325
18 CFR 18.36 (i)
49 CFR 633.17

Applicability to Contracts

Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

Flow Down

FTA does not require the inclusion of these requirements in subcontracts.

Model Clause/Language

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee 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 pertaining to 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 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to 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 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. 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.

6. 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. FTA does not require the inclusion of these requirements in subcontracts.

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<u>I State Grantees</u>						
a. Contracts below SAT	None	Those imposed on state pass thru to	None	None	None	None

(\$100,000)		Contractor				
b. Contracts above \$100,000/Capital Projects	None unless ¹ non-competitive award		Yes, if non-competitive award or if funded thru ² 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
<u>II Non State Grantees</u>						
a. Contracts below SAT (\$100,000)	Yes ³	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
b. Contracts above \$100,000/Capital Projects	Yes ³		Yes	Yes	Yes	Yes

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 18 CFR 18.36 (i)

12. FEDERAL CHANGES

49 CFR Part 18

Applicability to Contracts

The Federal Changes requirement applies to all contracts.

Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Model Clause/Language

No specific language is mandated. The following language has been developed by FTA.

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 so comply shall constitute a material breach of this contract.

14. CLEAN AIR

42 U.S.C. 7401 et seq

40 CFR 15.61

49 CFR Part 18

Applicability to Contracts

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

Flow Down

The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

Model Clauses/Language

No specific language is required. FTA has proposed the following language.

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. 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.

(2) 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.

15. RECYCLED PRODUCTS

42 U.S.C. 6962

40 CFR Part 247

Executive Order 12873

Applicability **to** **Contracts**

The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

Flow Down

These requirements flow down to all to all contractor and subcontractor tiers.

Model Clause/Language

No specific clause is mandated, but FTA has developed the following language.

Recovered Materials - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Background and Application

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, *et seq.* The Act applies to grantee contracts and subcontracts “financed at least in part by loans or grants from ... the [Federal] Government.” 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6). Although the original Act required its application in any construction contract over \$2,000 or non-construction contract to which the Act applied over \$2,500 (and language to that effect is still found in 49 CFR 18.36(i)(6)), the Act no longer applies to any “contract in an amount that is not greater than \$100,000.” 40 USC 3701(b)(3) (A)(iii).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ “laborers or mechanics on a public work.” These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed “commercial items.” 40 USC 3707, 41 USC 403 (12). A grantee that contemplates entering into a contract to procure a developmental or unique item should consult counsel to determine if the Act applies to that procurement and that additional language required by 29 CFR 5.5(c) must be added to the basic clause below.

The clause language is drawn directly from 29 CFR 5.5(b) and any deviation from the model clause below should be coordinated with counsel to ensure the Act’s requirements are satisfied.

Clause Language

Contract Work Hours and Safety Standards

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

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

of the overtime wages required by the clause set forth in paragraph (1) of this section.

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

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

18. [RESERVED]

19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

Applicable to all contracts.

Flow Down

Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

Model Clause/Language

While no specific language is required, FTA has developed the following language.

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) pertaining to 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.

20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS

8.1.16 AND RELATED ACTS

31 U.S.C. 3801 et seq.

49 CFR Part 31 18 U.S.C. 1001

49 U.S.C. 5307

Applicability to Contracts

These requirements are applicable to all contracts.

Flow Down

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Model Clause/Language

These requirements have no specified language, so FTA proffers the following language.

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 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.

(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.

21. TERMINATION

49 U.S.C. Part 18 FTA Circular 4220.1F

Applicability to Contracts

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

Flow Down

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

Model Clause/Language

FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

a. Termination for Convenience (General Provision) Community Council of Southwest Texas 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 its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim Community Council of Southwest Texas to be paid the Contractor. If the Contractor has any property in its possession belonging to the Community Council of Southwest Texas, the Contractor will account for the same, and dispose of it in the manner the Community Council of Southwest Texas directs.

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply

with any other provisions of the contract, the Community Council of Southwest Texas 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 the Community Council of Southwest Texas 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, Community Council of Southwest Texas, 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 (General Provision) Community Council of Southwest Texas in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 30 days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to Community Council of Southwest Texas'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 Community Council of Southwest Texas setting forth the nature of said breach or default Community Council of Southwest Texas 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 Community Council of Southwest Texas from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that Community Council of Southwest Texas elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by Community Council of Southwest Texas shall not limit Community Council of Southwest Texas's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) Community Council of Southwest Texas, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment

under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, Community Council of Southwest Texas may terminate this contract for default. Community Council of Southwest Texas shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

g. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, Community Council of Southwest Texas may terminate this contract for default. Community Council of Southwest Texas shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the Community Council of Southwest Texas, protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and Community Council of Southwest Texas shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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

h. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract

or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, Community Council of Southwest Texas may terminate this contract for default. Community Council of Southwest Texas shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

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

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The contractor, within days from the beginning of any delay, notifies the Community Council of Southwest Texas in writing of the causes of delay. If in the judgment of the Community Council of Southwest Texas, the delay is excusable, the time for completing the work shall be extended. The judgment of the Community Council of Southwest Texas shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

i. Termination for Convenience or Default (Architect and Engineering) Community Council of Southwest Texas may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. Community Council of Southwest Texas shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

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

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

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

If, after serving a notice of termination for default, Community Council of Southwest Texas determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, Community Council of Southwest Texas, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Background and Applicability

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Clause Language

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer(s) certifies as follows:

The certification in this clause is a material representation of fact relied upon by Community Council of Southwest Texas. If it is later determined that the bidder or Proposer(s) knowingly rendered an erroneous certification, in addition to remedies available to Community Council of Southwest Texas, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or Proposer(s) 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 Proposer(s) further agrees to include a provision requiring such compliance in its lower tier covered transactions.

23. PRIVACY ACT

5 U.S.C. 552

Applicability to Contracts

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

Flow Down

The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

Model Clause/Language

The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA.

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

24. CIVIL RIGHTS REQUIREMENTS

**29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.**

Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Model Clause/Language

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shortened the lengthy text.

Civil Rights - 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 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. 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 reason 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 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 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.

25. BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18 FTA Circular 4220.1F

Applicability to Contracts

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down

The Breaches and Dispute Resolutions requirements flow down to all tiers.

Model Clauses/Language

FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

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 Community Council of Southwest Texas (see below). 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 the contacts listed below. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director or Assistant Director shall be binding upon the Contractor and the Contractor shall abide by the decision.

SWT Contacts

Sarah Hildago-Cook – Transit Director
Community Council of Southwest Texas
713 East Main
Uvalde, Texas 79801
(830) 278-6268 x 3009

Performance During Dispute - Unless otherwise directed by Community Council of Southwest Texas, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

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

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Community Council of Southwest Texas 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 the Community Council of Southwest Texas 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 the Community Council of Southwest Texas, 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.

27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

**49 U.S.C. § 5310, § 5311, and § 5333
29 CFR Part 215**

Applicability to Contracts

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

Flow Down

These provisions are applicable to all contracts and subcontracts at every tier.

Model Clause/Language

Since no mandatory language is specified, FTA had developed the following language:

Transit Employee Protective Provisions. (1) The Contractor agrees to comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

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

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

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

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

Background and Applicability

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (see section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

Clause Language

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

Disadvantaged Business Enterprises

a. 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 **1%**. A separate contract goal has not been established for this procurement.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of 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 Community Council of Southwest Texas deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the Community Council of Southwest Texas. In addition, the contractor may not hold retainage from its subcontractors.

d. The contractor must promptly notify Community Council of Southwest Texas, 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 Community Council of Southwest Texas.

29. [RESERVED]

30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1F

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Flow Down

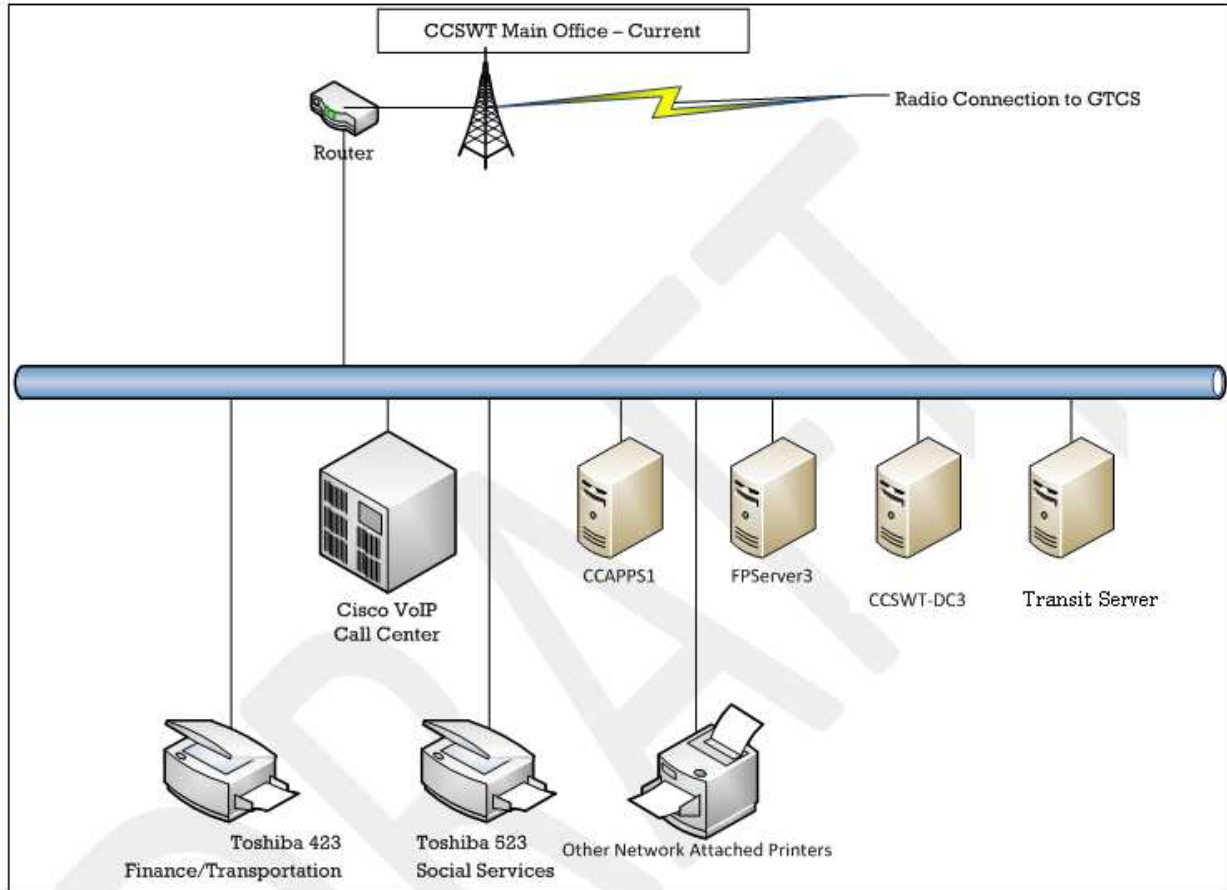
The incorporation of FTA terms has unlimited flow down.

Model Clause/Language

FTA has developed the following incorporation of terms language:

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 set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth 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 Community Council of Southwest Texas requests which would cause Community Council of Southwest Texas to be in violation of the FTA terms and conditions.

ATTACHMENT B SWT Infrastructure



ATTACHMENT C
Report Types

Utilization Reports

- Total Mileage
- Total Hours
- Revenue Mileage
- Revenue Hours
- Trips by funding source
- Trips by purpose
- Fare reports (cash, voucher, contract)
- Driver Utilization
- Client History
- Route History
- Sub-contractor utilization

Vehicle Reports

- Vehicle Repair History
- Vendor History
- Repair Costs per vehicle
- Repair Costs per vendor
- Pre-Trip/Post Trips
- Job Orders
- Repair History by Category (such as brake repairs, a/c repair, etc)
- Preventive Maintenance Tracking
- # of repairs per month and types

Internal Reports

- Timesheet
- Driver Training