



ADDENDUM NO. 5

DATE: September 22, 2020

TO: All Prospective Bidders

FROM: Loveneet Kaur, Buyer II

SUBJECT: Addendum No. 5 - IFB P20125 – Gigabit Network Access Switches

Certain revision, additions, and modifications are hereby incorporated into the Invitation for Bid (IFB) documents. Bidder must sign BID FORM 1-A - ACKNOWLEDGMENT OF ADDENDA to indicate receipt of Addendum. Please list each Addendum received, sign, date and submit with your bid in order for your bid to be accepted.

The Change is as follows:

Replace the required Exhibit – Required FTA Clauses on page 28 for IFB P20125 to its entirety, and with an additional Exhibit A-3, NDAA S889 Self Representation for Contract P20125, attached hereto.

Please sign the Exhibit A-3, NDAA S889 Self Representation for Contract P20125 and make sure to submit it along with Exhibit A-1, Buy America Certification for IFB P20125, Exhibit A-2, Certification of Restrictions on Lobbying for IFB P20125 with your Sealed Bid and other documents listed on the Section 18, Solicitation Submittals. The copy of the FTA Certifications that you needed to submit with your Seal Bid Submittal are the last three (3) pages attached to this addendum.

If you have already emailed, mailed, dropped off your Seal Bid for IFB P20125 to VTA, please forward the copy of Addendum No. 5 and the signed Exhibit A-3 with your Company Name in addition to the Seal Bid that you have already submitted for IFB P20125.

EXHIBIT A - REQUIRED FTA CLAUSES PART 1

In its performance under the Contract, Contractor will comply with all of the Federal Transit Administration (“FTA”) clauses which are identified below as applicable (if the box next to the clause is checked, the clause is applicable). The substance of these applicable requirements is set forth on the following pages of this Exhibit (Revised 09/2020).

- A. ACCESS TO RECORDS AND REPORTS
- B. BONDING REQUIREMENTS
- C. BUS TESTING
- D. BUY AMERICA REQUIREMENTS
- E. CARGO PREFERENCE REQUIREMENTS
- F. CHARTER SERVICE
- G. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT
- H. CIVIL RIGHTS LAWS AND REGULATIONS
- I. DISADVANTAGED BUSINESS ENTERPRISE (DBE)
- J. EMPLOYEE PROTECTIONS
- K. ENERGY CONSERVATION
- L. FLY AMERICA
- M. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION
- N. LOBBYING RESTRICTIONS
- O. NO GOVERNMENT OBLIGATION TO THIRD PARTIES
- P. PATENT RIGHTS AND RIGHTS IN DATA
- Q. PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES
- R. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS
- S. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS
- T. RECYCLED PRODUCTS
- U. SAFE OPERATION OF MOTOR VEHICLES
- V. SCHOOL BUS OPERATIONS
- W. SEISMIC SAFETY
- X. SUBSTANCE ABUSE REQUIREMENTS
- Y. TERMINATION
- Z. VIOLATION AND BREACH OF CONTRACT
- AA. SPECIAL DOL EEO CLAUSE FOR CONSTRUCTION PROJECTS
- BB. CONFORMANCE WITH ITS NATIONAL ARCHITECTURE
- CC. ADA ACCESS
- DD. CHANGES
- EE. PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS OR VIDEO SURVEILLANCE SERVICES OR EQUIPMENT
- FF. INCORPORATION OF FTA TERMS

EXHIBIT A - REQUIRED FTA CLAUSES PART 2

These FTA terms and conditions (“FTA Clauses”) are required by the FTA pursuant to the Master Agreement between FTA and VTA, Section 16 (a copy of which may be viewed at <https://www.transit.dot.gov/>) and apply to all third party contracts awarded by VTA that are funded in whole or in part with FTA assistance. Unless specifically defined herein, the capitalized terms used in these FTA Clauses have the meanings as defined in the solicitation and/or Contract, as applicable. Contractor is responsible for its subcontractors’ compliance, as applicable, with these FTA Clauses (Revised 09/2020).

In the event that any of these FTA Clauses conflict with other terms of the Contract, these FTA Clauses will prevail.

A. ACCESS TO RECORDS AND REPORTS: In addition to any other audit and record retention requirements set forth in the Contract, Contractor will comply with the following:

1. **FLOW DOWN:** The requirements of this Section A apply to Contractor and its Contract subcontractors at every tier. Contractor will ensure compliance with this Section A by all of its subcontractors of every tier.
2. **RECORD RETENTION:** Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the Contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
3. **RETENTION PERIOD:** Contractor will comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of the Contract, except in the event of litigation or settlement of claims arising from the performance of the Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
4. **ACCESS TO RECORDS:** Contractor will provide sufficient access to the FTA and its contractors to inspect and audit records and information related to performance of the Contract as reasonably may be required.
5. **ACCESS TO THE SITE OF PERFORMANCE:** Contractor will permit FTA and its contractors access to the sites of performance under the Contract as reasonably may be required.

B. BONDING REQUIREMENTS: Contractor will comply with the bonding requirements set forth elsewhere in the Contract.

C. BUS TESTING: Contractor will comply with all bus testing requirements set forth elsewhere in the Contract.

D. BUY AMERICA REQUIREMENTS: If the Contract is for the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock, Contractor will comply with the following:

- 1. FLOW DOWN:** The requirements of this Section D apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section D.
- 2. COMPLIANCE WITH FEDERAL LAW:** Contractor will 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 all 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. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.
- 3. CERTIFICATIONS:** Contractor must submit to VTA the appropriate Buy America certification attached to the solicitation or otherwise provided by VTA with its (i) Bid (in the case of a sealed bidding procurement) or (ii) final offer or final revised Proposal (in the case of a negotiated procurement). Bids or Proposals (as applicable) that are not accompanied by a completed Buy America certification will be rejected as nonresponsive and cannot be considered by VTA.

E. CARGO PREFERENCE REQUIREMENTS: If the Contract involves equipment, materials, or commodities that may be transported by ocean vessels, Contractor will comply with the following:

- 1. FLOW DOWN:** The requirements of this Section E apply to Contractor and its Contract subcontractors at every tier involved with the transport of equipment, material, or commodities by ocean vessel. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section E.
- 2. UNITED STATES-FLAG COMMERCIAL VESSELS:** Contractor will use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.
- 3. BILL-OF-LADING:** Contractor will furnish within 20 business days following the date of loading for shipments originating within the United States or within 30 business days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to VTA (through Contractor in the case of a subcontractor's bill-of-lading).

F. CHARTER SERVICE: If the Contract is for the operation of transportation service, Contractor will comply with the following:

1. **FLOW DOWN:** The requirements of this Section F apply to Contractor as the first tier service contractor. The provisions of this Section F do not flow down to subcontractors.
2. **COMPLIANCE WITH FEDERAL LAW:** Contractor will comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:
 - a. Federal transit laws, specifically 49 U.S.C. § 5323(d);
 - b. FTA regulations, “Charter Service,” 49 C.F.R. Part 604;
 - c. Any other federal Charter Service regulations; or
 - d. Federal guidance, except as FTA determines otherwise in writing.
3. **VIOLATIONS:** If Contractor engages in a pattern of violations of FTA’s Charter Service regulations, FTA may require corrective measures or impose remedies on Contractor. These corrective measures and remedies may include:
 - a. Barring Contractor or any subcontractor operating public transportation under its award that has provided prohibited charter service from receiving federal assistance from FTA;
 - b. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA’s Charter Service regulations; or
 - c. Any other appropriate remedy that may apply.

G. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT: If the Contract has a total value of more than \$150,000, Contractor will comply with the following:

1. **FLOW DOWN:** The requirements of this Section G apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section G.
2. Contractor will:
 - a. Not use any violating facilities;

- b. Report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”
- c. Report violations of use of prohibited facilities to FTA; and
- d. Comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

H. CIVIL RIGHTS LAWS AND REGULATIONS: Contractor will at all times comply with the following requirements and will include these requirements in each subcontract entered into as part of the Contract:

1. **FLOW DOWN:** The requirements of this Section H apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section H.
2. **NONDISCRIMINATION:** In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*, U.S. Department of Transportation (“DOT”) regulations at 49 C.F.R. Part 21, and federal transit law at 49 U.S.C. § 5332, Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.
3. **RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX:** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, and federal transit laws at 49 U.S.C. §5332, Contractor will comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (“U.S. DOL”) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action will include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor will comply with any implementing requirements FTA may issue.
4. **AGE:** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (“U.S. EEOC”) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. Part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal

Financial Assistance,” 45 C.F.R. Part 90, and federal transit law at 49 U.S.C. § 5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

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

I. DISADVANTAGED BUSINESS ENTERPRISE (“DBE”): Contractor will comply with the DBE requirements set forth elsewhere in the Contract.

J. EMPLOYEE PROTECTIONS:

1. **FLOW DOWN:** The requirements of this Section J apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section J.
2. If the Contract is for construction, alteration, or repair in excess of \$2,000, Contractor will comply with the following:
 - a. **Prevailing Wage:** Contractor will comply with the prevailing wage requirements set forth in the Contract.
 - b. **Anti-Kickback:** Contractor shall comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by U.S. DOL regulations at 29 C.F.R. Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.
3. If the Contract (i) has a total value of more than \$100,000 and (ii) involves the employment of mechanics or laborers, Contractor will comply with the following:
 - a. **Contract Work Hours and Safety Standards:** Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the U.S. DOL regulations at 29 C.F.R. Part 5. Under 40 U.S.C. § 3702 of the Contract Work Hours and Safety Standards Act, Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and

a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

- 1) The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply if the Contract is for (i) the purchase of supplies or materials or articles ordinarily available on the open market or (ii) transportation or transmission of intelligence.
 - 2) In the event of any violation of this section, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and any such subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) 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 this clause 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 40 hours without payment of the overtime wages required by this section.
 - 3) The FTA shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor (i) under the Contract, (ii) under any other federal government contract with the same prime Contractor, or (iii) any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act and 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 this section.
 - 4) Contractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring all subcontractors to include these clauses in any lower tier subcontracts.
- b. Contract Work Hours and Safety Standards for Awards Not Involving Construction:** Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5.

- 1) Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Such records maintained under this paragraph shall be made available by Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and Contractor will permit such representatives to interview employees during working hours on the job.
- 2) Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

K. ENERGY CONSERVATION: Contractor will at all times comply with the following requirements and will include these requirements in each subcontract entered into as part of the Contract:

1. **FLOW DOWN:** The requirements of this Section K apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section K.
2. **MANDATORY STANDARDS AND POLICIES:** Contractor will 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.

L. FLY AMERICA: If performance of the Contract involves transportation of persons or property by air between a place in the U.S. and a place outside the U.S., or between places outside the U.S., Contractor will comply with the following:

1. **FLOW DOWN:** The requirements of this Section L apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section L.
2. **DEFINITIONS:**
 - a. **“International air transportation”** means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
 - b. **“United States”** or **“U.S.”** means the 50 States, the District of Columbia, and outlying areas.
 - c. **“U.S.-flag air carrier”** means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

3. **USE OF U.S.-FLAG AIR CARRIERS:** Pursuant to Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act), Contractor and all of its subcontractors at every tier must use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. Contractor understands that the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, will disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
4. **STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS:** In the event that Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, Contractor shall include a statement on vouchers involving such transportation essentially as follows:

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

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

[State reasons]: _____

5. **SUBCONTRACTS:** Contractor shall include the substance of this clause, including this paragraph (5), in each subcontract or purchase under the Contract that may involve international air transportation.
6. **CODE SHARE AGREEMENT:** Contractor is permitted to use transportation on a foreign air carrier when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number.
7. **AIR TRANSPORTATION AGREEMENT:** Contractor is permitted to use transportation by a foreign air carrier if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the U.S. DOT has determined meets the requirements of the Fly America Act.

M. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION: If the Contract has a total value of \$25,000 or more, Contractor will comply with the following:

1. **FLOW DOWN:** If Contractor and/or any of its subcontractors enter into covered transactions with a participant at the next lower level, Contractor and/or its subcontractor, as applicable, must require that participant to: (a) comply with subpart C of 2 C.F.R. Part 180, as supplemented by 2 C.F.R. Part 1200; and (b) pass the requirement to comply with subpart C of 2 C.F.R. Part 180 to each person with whom the participant enters into a covered transaction at the next lower tier.

2. **COMPLIANCE WITH FEDERAL LAW:** Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. Part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),” 2 C.F.R. Part 180. These provisions apply to the Contract and to (i) any subcontract at any tier of \$25,000 or more, and (ii) each contract at any tier for a federally required audit (irrespective of the contract amount), and (iii) each contract at any tier that must be approved by an FTA official irrespective of the contract amount.
3. **CERTIFICATION:** By executing this Contract, Contractor hereby certifies that its principals, affiliates, and subcontractors are eligible to participate in the federally funded Contract and are not presently declared by any federal department or agency to be:
 - a. Debarred from participation in any federally assisted award;
 - b. Suspended from participation in any federally assisted award;
 - c. Proposed for debarment from participation in any federally assisted award;
 - d. Declared ineligible to participate in any federally assisted award;
 - e. Voluntarily excluded from participation in any federally assisted award; or
 - f. Disqualified from participation in any federally assisted award.

This certification is a material representation of fact relied upon by VTA. If it is later determined by VTA that Contractor knowingly rendered an erroneous certification, in addition to remedies available to VTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

N. LOBBYING RESTRICTIONS: If the Contract has a total value of \$100,000 or more, Contractor will comply with the following:

1. **FLOW DOWN:** The requirements of this Section N apply to Contractor and its Contract subcontractors at every tier if such subcontract has a total value of \$100,000 or more. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section N.
2. **CERTIFICATION:** Contractor must submit to VTA the appropriate Restrictions on Lobbying certification attached to the solicitation or otherwise provided by VTA with its (i) Bid or Proposal, or (ii) prior to the execution of the Contract, whichever occurs earlier.

O. NO GOVERNMENT OBLIGATION TO THIRD PARTIES: Contractor will at all times comply with the following requirements:

1. **FLOW DOWN:** The requirements of this Section O apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section O.
2. **NO OBLIGATION:** Contractor acknowledges 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 the Contract and shall not be subject to any obligations or liabilities of VTA, Contractor or any other party (whether or not a party to the Contract) pertaining to any matter resulting from the underlying Contract.

P. PATENT RIGHTS AND RIGHTS IN DATA: If the Contract is for the performance of experimental, developmental, or research work, Contractor will comply with the following:

1. **FLOW DOWN:** The requirements of this Section P apply to Contractor and its Contract subcontractors at every tier if the relevant subcontract meets the definition of a research-type project under 37 U.S.C. § 401.2. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section P.
2. **INTELLECTUAL PROPERTY RIGHTS:** Certain Patent Rights and Data Rights apply to all subject data first produced in the performance of the Contract. Contractor grants VTA intellectual property access and licenses deemed necessary for the work performed under the Contract and in accordance with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of the Contract and shall, at a minimum, include the following restrictions: Except for its own internal use, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of the Contract, the term "subject data" means recorded information, whether or not copyrighted, that is delivered or specified to be delivered by the Contract.
3. The federal government reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described as follows:
 - a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
 - b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.

4. "Federal Government Purposes," means use only for the direct purposes of the federal government. The federal government may not extend its federal license to any other party without the copyright owner's consent.
5. Unless FTA determines otherwise, Contractor will permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the federal government may direct.
6. Unless prohibited by state law, upon request by the federal government, Contractor will indemnify, save, and hold harmless the federal government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Contractor will indemnify the federal government for any such liability arising out of the wrongful act of any employee, official, or agents of the federal government.
7. Nothing contained in this clause on rights in data shall imply a license to the federal government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the federal government under any patent.
8. Data developed by Contractor and financed entirely without using federal assistance provided by the federal government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that Contractor identifies those data in writing at the time of delivery of the Contract work.
9. Contractor will include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with federal assistance.

Q. PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES: If the Contract is for the purchase of revenue service rolling stock, Contractor will comply with the following:

1. **FLOW DOWN:** The requirements of this Section Q apply to Contractor as the first tier service contractor. The provisions of this Section Q do not flow down to subcontractors.
2. Contractor will comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. Part 663. Contractor shall comply with the Buy America certification(s) submitted with its Bid/Proposal. Contractor will participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. Part 663 and related FTA guidance.

3. For more information about pre-award and post-delivery audit requirements, please go to FTA's Buy America page on its website.

R. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS: Contractor will at all times comply with the following requirements:

1. **FLOW DOWN:** The requirements of this Section R apply to Contractor and its Contract subcontractors at every tier if the relevant subcontract involves the making, presenting, or submitting of covered claims and statements. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section R.
2. 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 the Contract. Upon execution of the Contract, 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 Contract or the FTA assisted project for which the Contract work is being performed. In addition to other penalties that may be applicable, 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 Contractor to the extent the federal government deems appropriate.
3. Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on Contractor, to the extent the federal government deems appropriate.
4. Contractor will include the above two clauses in each subcontract financed in whole or in part with federal assistance provided by FTA. Contractor will not modify the clauses, except to identify the subcontractor who will be subject to the provisions.

S. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS: If (i) Contractor is recognized by FTA to be a transit operator and (ii) the Contract is for transit operations, Contractor will comply with the following:

1. **FLOW DOWN:** The requirements of this Section S apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section S.
2. Contractor will comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

- a. **U.S. DOL Certification:** Contractor will complete a certification issued by U.S. DOL as a condition of the Contract.
- b. **Special Warranty:** U.S. DOL will provide a Special Warranty for the award associated with the Contract. The U.S. DOL Special Warranty is a condition of the Contract.
- c. **Special Arrangements:** The conditions of 49 U.S.C. § 5333(b) do not apply to Contractor in its provision of public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated into the Contract as required.

T. RECYCLED PRODUCTS: If (i) the Contract is for the purchase of items designated in guidelines of the U.S. Environmental Protection Agency (“EPA”) at 40 C.F.R. Part 247 and (ii) the purchase price of the relevant item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000, Contractor will comply with the following:

1. **FLOW DOWN:** The requirements of this Section T apply to Contractor and its Contract subcontractors at every tier if the subcontract involves the purchase of EPA-selected items valued at \$10,000 or more. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section T.
2. Contractor will provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6962, and EPA, “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. Part 247.

U. SAFE OPERATION OF MOTOR VEHICLES: Contractor will at all times comply with the following requirements and will include these requirements in each subcontract entered into as part of the Contract:

1. **FLOW DOWN:** The requirements of this Section U apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section U.
2. **SEAT BELT USE:** Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by Contractor or VTA.
3. **DISTRACTED DRIVING:** Contractor will adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging

while using an electronic device supplied by an employer, and driving a vehicle the driver owns, leases, or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under the Contract.

V. SCHOOL BUS OPERATIONS: If the Contract is for the operation of public transportation service, Contractor will comply with the following:

1. **FLOW DOWN:** The requirements of this Section V apply to Contractor as the first tier service contractor.
2. Contractor will comply with 49 U.S.C. 5323(f) and 49 C.F.R. Part 604 and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:
 - a. Federal transit laws, specifically 49 U.S.C. § 5323(f);
 - b. FTA regulations, “School Bus Operations,” 49 C.F.R. Part 605;
 - c. Any other federal school bus regulations; or
 - d. Federal guidance, except as FTA determines otherwise in writing.
3. If Contractor violates this Section V, FTA may:
 - a. Bar Contractor from receiving federal assistance for public transportation; or
 - b. Require Contractor to take such remedial measures as FTA considers appropriate.
4. When operating exclusive school bus service under an allowable exemption, Contractor may not use federally funded equipment, vehicles, or facilities.
5. Contractor should include the substance of this clause in each subcontract under the Contract that may operate public transportation services.

W. SEISMIC SAFETY: If the Contract is for the construction of new buildings or additions to existing buildings, Contractor will comply with the following:

1. **FLOW DOWN:** The requirements of this Section W apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section W.
2. Contractor will design and construct any new building or additions to existing buildings in accordance with the standards for Seismic Safety required in DOT Seismic Safety Regulations at 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. Contractor will ensure that all work performed under the Contract, including

work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued under the Contract.

X. SUBSTANCE ABUSE REQUIREMENTS: If the Contract requires Contractor or any of its subcontractors to perform safety-sensitive functions (as defined in 49 C.F.R. § 655.4), Contractor must comply with the following:

1. **FLOW DOWN:** The requirements of this Section X, along with VTA's Drug and Alcohol Policy, apply to Contractor and its Contract subcontractors at every tier that require the performance of a safety-sensitive function. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section X.
2. Contractor will establish and implement a drug and alcohol testing program that complies with 49 C.F.R. Part 655; produce any documentation necessary to establish its compliance with 49 C.F.R. Part 655; and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California or VTA, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. Part 655 and review the testing process.
3. **CERTIFICATION:** Contractor will certify annually its compliance with 49 C.F.R. Part 655 before December 15 and to submit the Management Information System (MIS) reports before March 10 to:

Linda Durham
Sr. Human Resources Analyst
3331 North First Street-Building B1, San Jose, CA 95134

To certify compliance, Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

Y. TERMINATION: Contractor will comply with the termination provisions set forth elsewhere in the Contract. The requirements of this Section Y apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section Y.

Z. VIOLATION AND BREACH OF CONTRACT: If the Contract has a total value exceeding the simplified acquisition threshold as defined by 48 C.F.R. 2.101(b) ("Simplified Acquisition Threshold"), Contractor will comply with the following:

1. **FLOW DOWN:** The requirements of this Section Z apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section Z.

2. **DISPUTES:** VTA and Contractor intend to resolve all disputes under the Contract to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the VTA's and Contractor's organization. In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with VTA's direction or decisions made thereof.
3. **PERFORMANCE DURING DISPUTE:** Unless otherwise directed by VTA, Contractor shall continue performance under the Contract while matters in dispute are being resolved.
4. **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 VTA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

AA. SPECIAL U.S. DOL EEO CLAUSE FOR CONSTRUCTION PROJECTS: If the Contract has a total value of \$10,000 or more and is for construction, Contractor will comply with the following:

1. **FLOW DOWN:** The requirements of this Section AA apply to Contractor and its Contract subcontractors performing construction work at every tier. Contractor is responsible for ensuring that all applicable lower tier contractors and subcontractors are in compliance with this Section AA.
2. Contractor will comply with (i) U.S. DOL regulations set forth in 41 C.F.R. Part 60-4, (ii) Executive Order 11246 "Equal Employment Opportunity," as amended (including by Executive Order 11375), and (iii) 42 U.S.C. § 2000 (e) note.
3. Contractor will comply with the equal opportunity clause set forth in 41 C.F.R. § 60-1.4(b), which is incorporated herein by reference pursuant to 41 C.F.R. § 60-1.4(d).
4. Contractor will comply with the "Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)" set forth in 41 C.F.R. § 60-4.3, which specifications are attached hereto (if applicable).

BB. CONFORMANCE WITH I.T.S. NATIONAL ARCHITECTURE: If the Contract is (i) for the implementation of Intelligent Transportation Systems ("ITS") and (ii) funded through the Federal Highway Trust Fund, Contractor will comply with the following:

1. **FLOW DOWN:** The requirements of this Section BB apply to Contractor and its Contract subcontractors performing ITS project work at every tier. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section BB.
2. Except as otherwise permitted or determined by FTA in writing, Contractor will conform to the National Intelligent Transportation Systems (“ITS”) Architecture and Standards of 23 U.S.C. § 517(d), as amended by MAP-21.
3. Contractor will comply with FTA Notice, “Federal Transit Administration National ITS Architecture Policy on Transit Projects,” 66 FR 1455, January 8, 2001.

CC. ADA ACCESS: Contractor will at all times comply with the following requirements and will include these requirements in each subcontract entered into as part of the Contract:

1. **FLOW DOWN:** The requirements of this Section CC apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section CC.
2. Contractor will operate public transportation services and will keep its facilities used in public transportation services in compliance with: (i) 42 U.S.C. § 12101 et seq.; (ii) DOT regulations, including “Transportation Services for Individuals with Disabilities (ADA)” set forth at 49 C.F.R. Part 37; and (iii) Joint Architectural and Transportation Barriers Compliance Board (ATBCB)/DOT regulations, including “Americans with Disabilities Act (ADA) Accessibility Guidelines for Transportation Vehicles” set forth at 36 C.F.R. Part 1192 and “Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles” set forth at 49 C.F.R. Part 38. If Contractor is a private entity, Contractor must comply with the requirements of 49 C.F.R. Part 37 applicable to public entities.

DD. CHANGES: Contractor will at all times comply with the following requirements and will include these requirements in each subcontract entered into as part of the Contract:

1. **FLOW DOWN:** The requirements of this Section DD apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section DD.
2. Contractor will 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 VTA and FTA, as they may be amended or promulgated from time to time during the term of the Contract. Contractor’s failure to comply will constitute a material breach of the Contract.

EE. PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

(a) *Definitions.* As used in this clause—

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (*e.g.*, connecting cell phones/towers to the core telephone network). Backhaul can be wireless (*e.g.*, microwave) or wired (*e.g.*, fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (*e.g.*, connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) Prohibition.

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits VTA on or after August 13, 2020, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to VTA any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR [4.2104](#).

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR [4.2104](#). This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

(c) *Exceptions.* This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement.

(1) In the event Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, Contractor must report the information in paragraph (d)(2) of this clause to VTA. For indefinite delivery contracts, Contractor must report to VTA for the indefinite delivery contracts that have any affected order(s).

(2) Contractor must report the following information pursuant to paragraph (d)(1) of this clause

(i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); brand; model number (original equipment manufacturer number,

manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts*. Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

FF. INCORPORATION OF FTA TERMS: Contractor will at all times comply with the following requirements and will include these requirements in each subcontract entered into as part of the Contract:

1. **FLOW DOWN:** The requirements of this Section FF apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section FF.
2. The preceding provisions include, in part, certain standard terms and conditions required by DOT, whether or not expressly set forth herein. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F and the Master Agreement or any revision thereto, are hereby incorporated by reference and made a part of the Contract, except to the extent FTA determines otherwise in writing. Anything to the contrary herein notwithstanding, all FTA-mandated terms are deemed to control in the event of a conflict with other provisions contained in the Contract. Contractor will not perform any act, fail to perform any act, or refuse to comply with any VTA requests which would cause VTA to be in violation of any FTA terms and conditions.

CERTIFICATION OF RESTRICTIONS ON LOBBYING - ATTACHMENT A-1
IFB 20125
GIGABIT NETWORK ACCESS SWITCHES

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 Contractor, 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 Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 3.** The undersigned Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contacts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

- 4.** 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. 3081 *et seq.*, apply to this certification and disclosure, if any.

NAME OF COMPANY

SIGNATURE OF CONTRACTOR'S AUTHORIZED OFFICIAL

PRINTED NAME/ TITLE OF CONTRACTOR'S AUTHORIZED OFFICIAL

DATE

**BUY AMERICA CERTIFICATION - ATTACHMENT A-2
IFB P20125
GIGABIT NETWORK ACCESS SWITCHES**

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

The Bidder hereby certifies that it will meet the requirements of 49 U.S.C. Section 5323(j)(1), and the applicable regulations in 49 CFR Part 661.5:

NAME OF COMPANY

SIGNATURE

PRINTED NAME/ TITLE

DATE

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

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

NAME OF COMPANY

SIGNATURE

PRINTED NAME/ TITLE

DATE

COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES REPRESENTATION

**IFB P20125
GIGABIT NETWORK ACCESS SWITCHES**

Pursuant to Public Law 115-232, Section 889, Proposer or Bidder or Contractor (referred to as “Offeror” in this document) must make the following representation to VTA:

- (a) *Definitions.* As used in this provision, “covered telecommunications equipment or services” means:
- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
 - (2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
 - (3) Telecommunications or video surveillance services provided by such entities or using such equipment; or
 - (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal funds for “covered telecommunications equipment or services”.

(c) *Representation.* The Offeror represents that it **does**, **does not** provide covered telecommunications equipment or services as a part of its offered products or services to VTA in the performance of any contract, subcontract, or other contractual instrument.

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____