

2.0 Terms and Conditions in Contract Form

To reduce paper consumption, the standard terms and conditions which shall apply to this procurement are not contained here. They can be found in a separate document entitled "Laketran Standard Contractual Terms and Conditions", which is available upon request. Laketran's Standard Terms and Conditions are hereby incorporated by reference into and made a part of this IFB/RFP just as if they were reproduced in their entirety here. Further, Laketran's Standard Terms and Conditions are extremely important, and are applicable to and binding upon each bidder/proposer and will become contractual to and binding upon each successful bidder/proposer to whom a contract is awarded. It is the bidder's/proposer's responsibility and obligation to have read and understood Laketran's Standard Terms and Conditions. A summary of these terms and conditions follows:

2.1	Independent Contractor	2.42	Davis Bacon Act (Prevailing Wage Rates for Construction Contracts)
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2.3	Buyer's Obligation	2.44	Conflict of Interest
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Special Transit Terms & Conditions

2.0 Terms and Conditions in Contract Form

The successful bidder will be required to comply with these terms and conditions.

2.1 Independent Contractor

CONTRACTOR, for purpose of this agreement shall be considered as an independent CONTRACTOR who covenants and agrees to perform and/or deliver for the stated compensation herein, all of the services and/or equipment described under the section of this contract titled Scope of Work. CONTRACTOR agrees to complete the work in a workmanlike manner with a high degree of professionalism and to ensure the accuracy and timeliness of the services rendered herein under.

2.2 Contractor's Obligation

The general obligation of the successful bidder (hereinafter variously referred to as CONTRACTOR or successful bidder) shall be to transfer and deliver the goods and services specified in complete accordance with the terms, conditions and specifications of this Invitation-for-Bid.

2.3 Buyer's Obligation

The general obligation of LAKETRAN shall be to accept conforming delivery and conforming goods and services and to pay in accordance with the terms, conditions and specifications as bid upon.

2.4 Scope of Work

The scope of work to be performed by CONTRACTOR under this contract is based on LAKETRAN's Invitation-for-Bid and Addendum(s), if any, plus CONTRACTOR's proposal.

2.5 Contract Period

At all times during the contract period, the CONTRACTOR agrees to the following:

- A. CONTRACTOR agrees to commence work upon written receipt of its bid acceptance and approval along with the notice to proceed from LAKETRAN.
- B. CONTRACTOR agrees to commence performance of this contract as stated in the bid specifications and the bid award.

2.6 Cost

The cost of this contract shall be \$ _____ per item for a total price not to exceed \$ _____ as stated in LAKETRAN's bid award.

2.7 Performance Bond/Insurance

CONTRACTOR shall list LAKETRAN as an “also named” on its insurance bond.

2.7 Performance Guarantee

2.7.1 For Construction Projects only:

For construction projects, Contractor shall supply the payment and performance bond required by §153.57 of the Ohio Revised Code if he did not supply the combined bid, payment and performance bond required by §153.571 of the Ohio Revised Code with his bid.

2.7.2 For Non-Construction Projects of \$25,000 or more only

Only when specifically requested, a performance guarantee in the form of a certified check, performance bond, cashiers check or an irrevocable letter-of-credit, in an amount equal to 5% of the value of this contract shall be posted by Contractor with LAKETRAN within twenty-one (21) days of notice that it is required.

The guarantee is required to ensure the goods and/or services purchased via this procurement are built and/or delivered in accordance with LAKETRAN's specifications. It does not cover maintenance or warranty of the goods or any subcomponent thereof. It will be forfeited by Contractor as partial or complete settlement of damages, as determined by LAKETRAN, should Contractor fail to perform as contracted for.

Any performance bond must be written by a company authorized to write bonds in the State of Ohio and must be listed in the latest edition of U.S. Treasury Circular 570, or having a rating by A.M. Best of B+ or better, and must show sufficient bonding capacity to bond the performance required under this contract. The bond must meet the approval of LAKETRAN's Legal Counsel. Performance bond will be returned to manufacturer within thirty (30) days of contract completion.

2.8 Notice to Proceed

LAKETRAN will furnish CONTRACTOR written direction to commence delivery hereunder entitled "Notice to Proceed" within ten (10) days after receipt by LAKETRAN of the required performance bond, insurance certificates or such other documentation which CONTRACTOR is required to submit for LAKETRAN approval prior to performance under this Contract. LAKETRAN shall not be responsible for any costs of any type whatsoever incurred by CONTRACTOR prior to the issuance of the Notice to Proceed. The date of the Notice to Proceed shall be the official date from which all scheduled activities and requirements are computed.

2.9 Contract Modification

No change or modification of the terms and conditions of this agreement may be made unless:

- A. Any proposed change in this contract shall be submitted to LAKETRAN for its prior written approval. The General Manager may at any time, by written order only, make changes within the general scope of the contract. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under the contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or completion schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the CONTRACTOR for adjustment under this clause must be asserted within 30 days from the date of receipt by the CONTRACTOR of the notification of change; provided, however, that the General Manager, if he or she decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under the contract.
- B. Any modification made must be in writing and attached to the contract in the form of an amendment, and signed by both parties signifying agreement to the modification.
- C. Any contract modifications, if granted by LAKETRAN, will not operate as a release to the CONTRACTOR from the covenants and conditions of this contract outside of the nature of the expressed modification nor shall same be considered as a waiver for any breach of contract damage claim which may be made by LAKETRAN.
- D. Any modification agreed to by and between LAKETRAN and the CONTRACTOR must be in compliance with Section 306.43 of the Ohio Revised Code and is subject to Federal Transit Administration concurrence if needed.

2.10 Subcontract Approval

Any subcontract the bidder may wish to enter into must be approved by LAKETRAN prior to the execution of the subcontract, and all the requirements of these terms and conditions must be included within said subcontracts to gain approval of LAKETRAN.

2.11 Substitution of Subcontractor/Independent Contractor

Any substitution of a subcontractor or independent CONTRACTOR must be furnished in writing to LAKETRAN for the purpose of determining and maintaining the intent of LAKETRAN's disadvantaged business enterprise goals.

2.12 Disadvantaged Business Enterprise

It is the policy of the United States Department of Transportation that disadvantaged business enterprises, as defined in 49 CFR Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or part with Federal funds under this agreement. Consequently the United States Department of Transportation requirements of 49 CFR Part 26 apply to this agreement and same shall be incorporated into this contract by this reference.

The CONTRACTOR and/or any of its subcontractors must agree to ensure that disadvantaged business enterprises, as defined in 49 CFR Part 26, have the maximum opportunity to participate

in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard all recipients or CONTRACTORS shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. CONTRACTOR and/or its subcontractors shall not discriminate on the basis of race, creed, color, national origin, age, or sex in the award and performance of any Department of Transportation assisted contracts, be they Federal or state contracts.

The CONTRACTOR, including any of its officers or holders of a controlling interest, are obligated to inform LAKETRAN whether or not it or any of its subcontractors has been placed on any debarred bidder's list maintained by the United States Government. If the CONTRACTOR or its subcontractor should be included on this list during the performance of this contract, it shall so inform LAKETRAN in writing immediately upon receipt of such knowledge.

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

We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 49 CFR part 26.109. We also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

Invoicing for DBE firms must be separately identified on prime contractor's bills.

2.13 Equal Employment Opportunity (EEO)

CONTRACTOR shall comply with and have each of its subcontractors comply with the Department of Labor's regulation outlining "Equal Employment Opportunity", as supplemented in 41 CFR Part 60. CONTRACTOR shall comply with and have each of its subcontractors to have an affirmative action plan which declares that they do not discriminate on the basis of race, color, religion, national origin, sex, or age and which specifies goals and target dates to insure the implementation of any such plan.

CONTRACTOR further agrees that during the performance of this contract to comply with the Standard Title VI Assurances as listed below:

A. Compliance with Regulations

The CONTRACTOR shall comply with the regulations relative to non-discrimination in federally-assisted programs of the United States Department of Transportation

(hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, [29 U.S.C. § 623, 42 U.S.C. § 2000, 42U.S.C. § 6102, 42 U.S.C. § 12102, 42 U.S.C. § 12112, 42 U.S.C. § 12132, 49 U.S.C. § 5301, 49 U.S.C. § 5332, 29 CFR Part 1630, 41 CFR Parts 60 et seq.] as they may be amended from time to time (hereinafter referred to as the "Regulations") which are herein incorporated by reference and made a part of this contract.

B. Nondiscrimination

The CONTRACTOR, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, religion, sex, age, national origin, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the CONTRACTOR for work to be performed under the subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONTRACTOR of the CONTRACTOR's obligations under this contract and the regulations relative to nondiscrimination on the grounds of race, color, religion, age, sex, or national origin.

D. Information and Reports

The CONTRACTOR shall provide all information and reports required by the regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by LAKETRAN or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information is required of a CONTRACTOR and is in the exclusive possession of another who fails or refuses to furnish this information, the CONTRACTOR shall so certify to LAKETRAN, or the Federal Transit Administration, as appropriate and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance

In the event of the CONTRACTOR's noncompliance with the nondiscrimination provisions of this contract, LAKETRAN shall impose such contract sanctions as it or the Federal Transit Administration may determine to be appropriate, including, but not limited to:

1. Withholding of payment to the CONTRACTOR under the contract until the CONTRACTOR complies, and/or

2. Cancellation, termination or suspension of the contract, in whole or in part.

F. Incorporation of Provisions

The CONTRACTOR shall include the provisions of Paragraphs (a) through (f) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations, or directives issued pursuant thereto. The CONTRACTOR shall take such action with respect to any subcontract or procurement as LAKETRAN or the Federal Transit Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a CONTRACTOR becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, the CONTRACTOR may request LAKETRAN to enter into such litigation to protect the interests of LAKETRAN and, in addition, the CONTRACTOR may request the United States to enter into such litigation to protect the interest of the United States.

2.14 Noncompliance (EEO/DBE)

In the event of the CONTRACTOR's noncompliance with the Disadvantaged Business provisions of this contract, LAKETRAN shall impose such sanctions as it may determine to be appropriate, including, but not limited to:

- a. Withholding of payments under the contract until the CONTRACTOR complies, and/or
- b. Cancellation, termination, or suspension of the contract, in whole or in part.
- c. Suspension from participation in future LAKETRAN contracts.

2.15 Delivery

Throughout this project and in this contract, the terms delivery and completion are used interchangeably.

CONTRACTOR shall tender performance and/or completion of this project in the manner and at the place and time specified in the IFB. All deliveries are to be F.O.B. destination at LAKETRAN, 555 Lake Shore Blvd, Painesville Township, Ohio 44077 or as otherwise designated on the bid form by LAKETRAN. It is agreed that the bid prices include freight.

Laketrans does not have a loading dock. Laketrans can make available a 5,000 lb. forklift with 3' forks, provided it is operable and not otherwise engaged, plus an operator. If a delivery for Laketrans is mixed with other loads on the same truck, Laketrans's load shall be segregated so it can be reached from a ground-based forklift with 3' forks. Delivery can occur between 07:00 am and 4:00 pm. CONTRACTOR shall check with Laketrans's Maintenance Manager, at 440-350-1036.

2.16 Payment

Payment will be made against approved invoices within thirty (30) working days of acceptance. Payment will only be made for goods and services accepted. For goods and services accepted which acceptance is later revoked prior to payment, the payment will be withheld until defects in the nonconforming goods or services are cured and accepted. In the case of serial deliveries and serial invoicing, LAKETRAN reserves the right to deduct overpayments from current invoice amounts.

Payment does not waive the later revocation of acceptance. Payment terms and warranty coverage begin at time of acceptance.

All invoices shall be mailed to: Accounts Payable, LAKETRAN, 555 Lakeshore Blvd. Painesville Twp., OH 44077

Late payments will accrue no interest.

2.16.1 Prompt Payment (Prime Contractors)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from Laketran. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of Laketran. This clause applies to both DBE and non-DBE subcontractors.

2.17 Liquidated Damages

Time is of the essence in this contract. The CONTRACTOR will pay LAKETRAN the sum of \$100.00 per each calendar day, excluding weekends and statutory holidays, that the products solicited by this RFP are delayed beyond the delivery stipulated under Section 5 and as bid upon subject to extensions granted thereto in writing. The CONTRACTOR agrees to pay such liquidated damages herein provided commencing with any late delivery after the last date of delivery specified in CONTRACTOR's bid and continuing until the total order is complete and, in case the same are not paid, agrees that LAKETRAN shall deduct the amount thereof from any money due or to become due the CONTRACTOR under the contract.

The CONTRACTOR may be granted an extension of time and will not be assessed with liquidated damages or the cost of engineering and inspection for any portion of the delay in completion of the work beyond the time named in these specifications caused by acts of God, or of the public enemy, fire, floods, epidemics, strikes, labor disputes, and freight embargoes, or other causes beyond his/her reasonable control, provided that the CONTRACTOR shall notify LAKETRAN in writing of the causes of delay within 7 days from the beginning of any such delay. LAKETRAN's shall ascertain the facts and extent of the delay, and its findings thereon shall be final and conclusive. CONTRACTOR has the burden of proof that the delay was beyond his/her control.

2.18 Taxes

The contract price or prices for the commodities contained in the contract are subject to increase or decrease by the amount of any additional tax or taxes or reduction of such tax or taxes, as the case may be, affecting such commodity imposed by or under authority of the Federal government or the State of Ohio which may be enacted after receipt of bids for this contract and such changes shall continue in effect during the existence of such change in the tax or taxes; provided, however, that in the event of any increase in cost, a claim shall be presented by the CONTRACTOR within thirty (30) days of the imposition of such tax and such claims shall be supported by evidence of such additional tax, satisfactory to LAKETRAN. Reductions in taxes will be deducted from the contract price.

As a political subdivision of the State of Ohio, LAKETRAN is exempt from all sales, excise, federal gasoline, and transportation taxes, except State of Ohio gasoline and federal Superfund taxes. The price or prices bid, whether a unit price, lump sum price, lot price, or a trade discount from catalog list prices, shall be exclusive of all such taxes. Our tax exempt number is A-418662.

2.19 Inspection

LAKETRAN reserves the right and shall be at liberty to inspect all materials and workmanship at any time during the manufacturing process and shall have the right to reject all materials and workmanship which do not conform with the specifications; provided, however, LAKETRAN is under no duty to make such inspection and, if no such inspection is made, the CONTRACTOR shall not be relieved of any obligation to furnish materials and workmanship strictly in accordance with the specifications. FTA and ODOT shall be accorded the same inspection rights reserved by LAKETRAN in this clause. LAKETRAN will receive conforming deliveries for purposes of inspection. Acceptance of goods and services will not occur until after inspection or until a reasonable time for inspection has elapsed.

Except as otherwise provided in this contract, the CONTRACTOR shall be responsible for the supplies covered by this contract until they are delivered at the designated delivery point, regardless of the point of inspection. After delivery to LAKETRAN at the designated point and prior to acceptance by LAKETRAN or rejection and giving notice thereof by LAKETRAN, LAKETRAN shall be responsible for the loss, destruction of, or damage to the supplies. The CONTRACTOR shall bear all risks as to rejected supplies after CONTRACTOR retakes possession and/or control of such supplies.

LAKETRAN may test deliveries before or after acceptance for conformance with the specifications. Such tests may be performed by independent laboratories. Where test results indicate nonconforming goods, the delivery and the goods will be rejected and the cost of the test charged to CONTRACTOR. Where acceptance has preceded testing, acceptance is deemed conditional and subject to revocation. LAKETRAN may reject goods and services and may revoke its acceptance without testing.

2.20 Explanations (Written and/or Oral)

Should a proposer find a discrepancy in or omissions from these specifications, or should he/she be in doubt as to their meaning, he/she shall at once make inquiry of LAKETRAN.

2.21 Audit and Inspection of Records

Upon reasonable request, the bidder shall permit the authorized representative of LAKETRAN, the Auditor of the State of Ohio, their agents, plus the U.S. Department of Transportation and the Comptroller General of the United States to inspect and audit all work, material, payroll and other data and records relating to its performance under this contract. Results of such Audit or Inspection - plus information gained from same - will not be released by LAKETRAN except to the U.S. Department of Transportation or Controller General, or the Auditor of the State of Ohio.

2.22 Right to Adjust Cost

If LAKETRAN determines during the life of the contract that data submitted by the CONTRACTOR/bidder is not correct, incomplete, or inaccurate, LAKETRAN shall negotiate a downward adjustment in cost.

2.23 Failure to Meet Specifications

The delivery of any services, supplies or equipment hereunder which do not in all respects conform to specifications will be rejected and the CONTRACTOR (successful bidder) notified at once of such rejection and the reason therefore, which notice shall be confirmed in writing. If the said CONTRACTOR fails to effect immediate replacement of such rejected services, supplies or equipment meeting the requirements of the order and of these specifications, LAKETRAN will purchase in the open market supplies of the character required under the order up to the amount rejected, and the said CONTRACTOR and his surety shall be liable to the LAKETRAN for any excess cost and expense occasioned LAKETRAN thereby.

2.24 Quantity and Quality

CONTRACTOR agrees to deliver goods and services of the kind and quality specified and in the quantities specified. In the case of a requirements contract, the IFB specifies estimates of LAKETRAN's needs for the contract duration. It is agreed that such estimates are presented for bid evaluation purposes only and are not to be considered firm requirements. Actual requirements may exceed or be less than these estimates.

2.25 Warranties

CONTRACTOR warrants that for a period of one (1) year (or for such longer period as prescribed by the specifications) following acceptance of the goods and services delivered hereunder, the goods and services are free of defects in materials and workmanship and further warrants that such goods and service are suited for the purposes intended and are of merchantable quality. CONTRACTOR further warrants that it holds good and marketable title in

the goods delivered, and that such goods are free of all liens, security interests or other encumbrances. CONTRACTOR agrees that in the event the goods or services are not as specified herein and as warranted in these specifications, it will promptly cure the defect at its sole cost and expense. CONTRACTOR further agrees to indemnify LAKETRAN for all costs and damages, both incidental and consequential, resulting from the delivery of goods and services which fail to meet the aforesaid warranties. It is agreed that the goods and services provided hereunder are regarded as consumer goods and services.

2.26 Indemnification

1. To the fullest extent permitted by law, the CONTRACTOR shall, at his sole cost and expense, indemnify, defend, satisfy all judgements, and hold harmless the LAKETRAN and its agents, representatives, and employees from and against all claims, actions, judgements, costs, penalties, liabilities, damages, losses and expenses, including but not limited to attorney's fees and worker's compensation benefits arising out of or resulting from the performance of this contract, provided that any such claims, action, judgement, cost, penalty, liability, damage, loss or expense is:
 - A. Attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the goods) including the loss of use resulting therefrom, and
 - B. Caused in whole or in part by a negligent act or omission of the CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them, or anyone to whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.
 - C. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.
2. In any and all claims against the LAKETRAN or any of its agents, representatives or employees by any employee of the CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any subcontractor under worker's compensation acts, disability acts or other employee benefits acts. As between CONTRACTOR and LAKETRAN, CONTRACTOR waives its immunities under O.R.C. Chapter 4123.
 - A. LAKETRAN will notify CONTRACTOR within five working days of it making a claim against that CONTRACTOR or within five working days of LAKETRAN learning that a third-party has made a claim against the CONTRACTOR.
3. No provision of this paragraph shall give rise to any duties on the part of the LAKETRAN or its agents, representatives or employees.

2.27 Hold Harmless

The CONTRACTOR agrees to hold LAKETRAN harmless from liability resulting from the CONTRACTOR'S acts or omissions within the terms of this agreement; provided, however, the CONTRACTOR shall not hold LAKETRAN harmless from any claims, demands, or causes of action arising in favor of any person or entity, growing out of incident to, or resulting directly or indirectly from the negligence of LAKETRAN, its officers, agents, representatives, or employees.

2.28 Disputes

A. Except as otherwise provided in this solicitation, any dispute concerning a question of fact arising hereunder which is not disposed of by agreement shall be decided by LAKETRAN, who shall reduce its decision to writing and mail or otherwise furnish a copy thereof to the bidder or CONTRACTOR. The decision of LAKETRAN shall be final and conclusive. In the event of a dispute after award of a contract, the CONTRACTOR shall proceed diligently with the performance of the contract in accordance with LAKETRAN's decision.

B. The laws of the State of Ohio will prevail and remedy - if any - will be pursued in Lake County, Ohio.

2.29 Rights Upon Breach

In addition to any rights reserved to LAKETRAN hereunder, the rights of the parties hereto shall be governed by the law of the State of Ohio as set forth at Chapters 1301 and 1302 O.R.C. It is agreed that the rules therein shall have equal application to the delivery of services required by this agreement.

2.30 Notification of Proceedings

LAKETRAN will give the CONTRACTOR prompt notice in writing of the institution of any suit or proceeding and permit the CONTRACTOR to defend same and will give all needed information, assistance, and authority to enable the CONTRACTOR to do so. The CONTRACTOR will similarly give LAKETRAN immediate notice of any suit or action filed or prompt notice of any claims made against the CONTRACTOR arising out of the performance of this contract. The CONTRACTOR shall furnish immediately to LAKETRAN copies of all pertinent papers received by the CONTRACTOR.

The sending or giving of any notice, invoice, or statement by U.S. Mail, postage prepaid by either party hereto, addressed to the other at the respective addresses shown in the preamble to this contract.

2.31 Termination/Breach of Contract

A. For Cause

If, for any cause, the CONTRACTOR shall fail to fulfill its obligations under this contract within the time specified herein plus any extension thereof, or if the CONTRACTOR shall violate any of the terms and conditions of this contract, or CONTRACTOR so fails to make progress as to endanger performance of this contract in accordance with its terms and if CONTRACTOR does not cure such failure within ten (10) days of receiving notice from Laketran, Laketran will therefore have the right to terminate this contract by giving written notice to the CONTRACTOR of such termination specifying the effective date thereof. Thereafter, Laketran may have the work completed and the CONTRACTOR shall be liable for any resulting cost to Laketran.

If, after serving the notice of termination for default, LAKETLAN determines that the CONTRACTOR had an excusable reason for non-performance (i.e., such as strike, flood, fire or other event that is clearly not the fault of and outside the control of the CONTRACTOR) LAKETLAN, at its sole discretion, may allow the CONTRACTOR to continue work on the contract. This continuance must be preceded by a written amendment to the contract, as discussed above under Contract Modification.

At its option, CONTRACTOR may attempt to remedy the deficiency within a 10-day period. Corrective measures shall be started within three (3) days of the notice-to-termination and completed within the 10-day period. LAKETLAN shall have the sole right to determine whether such measures are sufficient, adequate and acceptable.

If at any time it shall be found that any person, firm, or corporation to whom this contract has been awarded has, in presenting any proposal, was in collusion with any other party or parties hereto, then the contract so awarded shall be voidable by LAKETLAN; and the CONTRACTOR shall be liable to LAKETLAN for all loss or damage which LAKETLAN may suffer thereby.

B. For Convenience

If, at any time, the purchaser or the CONTRACTOR find that they cannot fulfill the terms and conditions set forth herein because of circumstances beyond their control, this contract may be terminated by giving written notice specifying the effective date of termination. Notification must be given at least ten (10) days prior to the effective date of such termination. Bankruptcy by the CONTRACTOR shall be grounds for termination for convenience. CONTRACTOR shall be paid for that portion of the work which has been performed up to the date of termination.

2.32 Assignment

Laketran reserves the right to assign all or any portion of the award under this contract including option quantities. Laketran's right of assignment will remain in force over proposed contract period or until completion of the contract to include options, whichever occurs first.

The CONTRACTOR shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title, or interest in or to the same or any part thereof without prior written consent of LAKETLAN endorsed thereon or attached thereto. Should said assignment be made

by Court order, all rights and obligations of the CONTRACTOR under this contract shall fall to and be incumbent upon CONTRACTOR's successors and assigns.

2.33 Covenant Against Contingent Fees

The CONTRACTOR warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission or bona fide established commercial or selling agencies maintained by the CONTRACTOR for the purpose of securing business. For breach or violation of this covenant, LAKETLAN shall have the right to annul this contract without liability or at its discretion, to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

2.34 Patent Rights

Contractor agrees to comply with 37 CFR Part 401 and 49 CFR Parts 18 and 19. Bidders are hereby notified that under no circumstances may a patent be applied for under work or services purchased within the scope of these specifications, and that any attempt to circumvent FTA's requirements and regulations under any contract which may be let for research and design will result in termination of any and all agreements.

2.35 Release of Information

CONTRACTOR agrees not to release data or information about the results of the agreed upon project to any person outside of LAKETLAN without first obtaining written authorization to release such information from LAKETLAN.

2.36 Ownership of Documents

LAKETLAN and FTA will become the sole and exclusive owners of all documents prepared by the bidder upon payment for same by LAKETLAN, except any documents which may be protected by patent, lease or other written documents which provide proof of ownership plus production drawings, bills of material, purchase orders, etc.

No reports, maps or other documents produced in whole or in part under this contract shall be the subject of an application for copyright by or on behalf of the CONTRACTOR.

The CONTRACTOR shall, at its own expense, defend all suits or proceedings instituted against LAKETLAN and pay any award of damages assessed against LAKETLAN in such suits or proceedings, insofar as the same are based on any claim that materials furnished or work performed under the contract constitutes an infringement of any patent, trade secret, copyright, or any other proprietary right to which LAKETLAN claims ownership.

2.37 Retention of Records

CONTRACTOR shall retain all records pertaining to this contract for a minimum of three (3) years from the date of all services to LAKETRAN and release of all retainage by LAKETRAN to CONTRACTOR.

2.38 Workmens' Compensation Act

The CONTRACTOR shall comply with the State law known as the Workmens' Compensation Act and shall pay into the State insurance fund the necessary premiums required by the Act.

Any and all of the employees of CONTRACTOR while engaged in the performance of any work required by CONTRACTOR under this agreement shall be considered to be employees of CONTRACTOR only and not of LAKETRAN, and any and all claims that may arise from the Workers Compensation Act on behalf of said employees while so engaged, and any and all claims made by any third party as a consequence of any act or omission on the part of CONTRACTOR's employees while so engaged in any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of CONTRACTOR.

The CONTRACTOR may provide certifications in lieu of the above if said is a qualified self-insurer of Workers Compensation.

2.39 Social Securities Act/Unemployment Compensation, Etc.

The CONTRACTOR shall be and remain an independent CONTRACTOR with respect to all services performed hereunder and agrees to and does hereby accept full and exclusive liability for payment of any and all contributions or taxes for social security, unemployment insurance and old age retirement benefits or annuities now or hereafter imposed under any State and Federal law which are measured by the wages, salaries or other remunerations paid to persons by the CONTRACTOR on work performed under the terms of this contract and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under said respective laws by any duly authorized State or Federal officials; and said CONTRACTOR also agrees to indemnify and save harmless LAKETRAN from any such contributions or liability therefor.

2.40 Federal Assistance

The procurements under this contract are supported in part by Federal assistance under grants made by the Department of Transportation, Federal Transit Administration, and the Ohio Department of Transportation, pursuant to the Federal Transit Act. When so funded, this contract shall be subject to all rules and regulations promulgated pursuant thereto.

2.41 Work Hours Act

Compliance with 40 USC 327 through 330. If the subject procurement should require the employment of laborers or mechanics on LAKETRAN premises, CONTRACTOR agrees to be bound by the provisions of Title 40, Section 327 through 330, United States Code, also known as the Work Hours Act of 1962. Each contractor must be required to compute the wages of every

mechanic and laborer based on 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

2.42 Davis Bacon Act (Prevailing Wage Rates, for Construction Contracts Only)

The requirements of the Davis Bacon Act [40 USC § 167; 276a - 276a-5, and 29 CFR § 5] will apply to all construction contracts exceeding the prevailing wage threshold levels established by the Ohio Wage and Hour Division.

Bidders are hereby notified that they will be required to pay minimum wages to all laborers and mechanics at a rate not less than the minimum wage specified in the wage determination made by the United States Secretary of Labor. The minimum wage so paid shall be that in effect ten (10) days before bid opening.

2.43 Interest of Members or Delegates to Congress

No member, or delegates to the Congress of the United States shall be admitted to any share of this contract or to receive any benefit arising therefrom.

2.44 Conflict of Interest

No officer, agent or trustee of CONTRACTOR shall participate in the selection or administration of this contract if a conflict of interest, real or apparent, would be involved or appear to be at issue.

2.45 False or Fraudulent Statements and Claims

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.

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.

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.

2.46 No Federal Government Obligations to Third Parties

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

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

2.47 Privacy

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.

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.

2.48 Procurement

The Contractor and its Subcontractors will not make any procurements using exclusionary or discriminatory specifications, state or local geographic preferences, and shall comply with Buy America regulations at 49 U.S.C. 5323(j), 49 C.F.R. Part 661, and Section 70901 of the Infrastructure Investment and Jobs Act and shall make contract awards to other than the lowest, responsive and responsible bidder only when such award meets the requirements of 49 CFR 53 and C4220.1F.

2.49 Special Requirements for Transit Service Contracts

If this contract is for transit service operated by Contractor on behalf of LAKETRAN, the following requirements will also apply:

- A. Contractor will not operate any charter service unless such service complies with 49 CFR 604.
- B. Contractor will not operate any school bus service unless such service complies with 49 CFR 605.
- C. Contractor shall maintain a Drug Free Workplace per 49 CFR 29 Subpart F; shall comply with random drug testing requirements at 49 CFR 653 (and section 48 of this contract).
- D. Contractor shall comply with alcohol abuse regulations at 49 CFR 654.

2.50 Contract Work Hours and Safety Standards Act as Amended (Construction Projects Only)

Sections 102 and 107 of the Contract Work Hours and Safety Standards Act, as amended, [40 USC §§ 327 through 333; 29 CFR Part 5; 29 CFR Part 1926] will apply to construction contracts.

The wages of every mechanic and laborer will be computed on the basis of a standard work week of 40 hours, and that each worker will be compensated for work exceeding the standard work week at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

2.51 Copeland "Anti-Kickback" Act, as amended (Construction Projects Only)

The Copeland "Anti-Kickback" Act, [40 USC § 276c, 29 CFR § 3, and 29 CFR § 5] will apply to construction contracts.

The Contractor agrees that it will not induce, 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 that employee is otherwise entitled.

2.52 Seismic Safety (Construction Projects Only)

Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this 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 on the project.

2.53 Hatch Act/Work Day and Work Week Standards (Construction Projects Only)

Bidders are hereby notified that under the terms of this specification, the standard work day is eight (8) hours and the standard work week is forty (40) hours. Any work in excess of these

standards must be compensated at time and one-half (1.5). Also no laborer or mechanic shall be required to work in any unsanitary, hazardous, or any area which may be dangerous to their health or safety.

2.54 Cargo Preference & Fly America (Where Applicable)

Bidders are hereby notified to utilize privately owned U.S. Flag Vessels to ship at least fifty percent (50%) of the gross tonnage involved in this agreement, to the extent such vessels are available at fair and reasonable rates (49 CFR 381).

The air transportation requirements of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 USC 40118, and US General Services Administration regulations, Use of United States Flag Air Carriers, 41 CFR 301-10.131 – 301-10.143.

2.55 Drug and Alcohol Testing

All contractors who employees engage in safety-sensitive functions for LAKETRAN (as defined in FTA's Drug and Alcohol regulations at 49 CFR 653 and 49 CFR 654) shall comply with those regulations and either (1) establish random testing procedures for their employees that comply with these regulations or (2) include their employees in LAKETRAN's random testing procedures and absorb the cost of same, if any. Generally, safety-sensitive employees are those who drive, maintain, control, repair, service, or inspect any revenue vehicle for LAKETRAN, or carry a firearm to provide security for LAKETRAN.

2.56 Clean Air

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. Contractor agrees to report each violation to LAKETRAN and understands and agrees that LAKETRAN will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or part with Federal assistance provided by FTA.

2.57 Clean Water

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 LAKETRAN and understands and agrees that LAKETRAN will, in turn, report each violation as require to assure notification to FTA and the appropriate EPA Regional Office.

Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or part with Federal assistance provided by FTA.

2.58 Energy Conservation

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.

2.59 Recycled Products

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.

2.60 Certifications

All bidders will be required to execute certifications pertaining to:

1. Non Collusion.
2. Delinquent personal property taxes in Lake County.
3. The Controller General's list of Ineligible Contractors.
4. Debarment, suspension and other responsibility matters.
5. Buy America.
6. Lobbying.
7. Affirmative Action.
8. Disadvantaged Business Enterprise.

Laketrans will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, Laketrans may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

2.61 Compliance with Laws and Regulations

All materials and supplies furnished pursuant to the specifications shall be in compliance with the laws and regulations of the U.S. Department of Transportation/Federal Department of Transportation and the State of Ohio. CONTRACTOR acknowledges Federal and/or State laws and regulations may change during the life of this contract and that the changed laws and regulations will apply to this contract unless otherwise determined by Federal and/or State governments. CONTRACTOR shall, if requested by LAKETRAN, supply certification and evidence of such compliance. The contract shall be construed pursuant to the laws of the State of Ohio.

2.62 Severability of Contract

If any term, provision, covenant or condition of this contract and agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and in no way shall be affected, impaired or invalidated.

2.63 Applicable Law and Jurisdiction

This agreement has been executed in Lake County, Ohio and shall be governed according to the laws of the State of Ohio. The parties agree that the Lake County Court of Common Pleas shall have exclusive jurisdiction to hear any dispute related to this contract.

2.64 Integrated Agreement

The Invitation for Bid, Addendum(s) (if any), LAKETRAN Resolution Awarding a Contract, Contract and Contract Amendment(s) (if any), shall constitute the entire agreement between the parties. Copies of the applicable FTA Part 1 and ODOT grant contracts and LAKETRAN Tax Exemption Certificates will be provided to the successful bidder upon request. No oral modifications or representations are enforceable unless reduced to written form, signed by both parties, and annexed hereto prior to performance of the modified work. Additional terms and conditions submitted by the CONTRACTOR with its bid are disregarded unless specifically accepted in writing.

Neither party to this agreement has been induced to make or enter into the agreement by reason of any promise, agreement, representation, statement or warranty other than is contained herein or in CONTRACTOR's proposal.

Should any part of this agreement be held unenforceable by any competent judicial body, such determination shall not affect the remainder thereof and the balance of this agreement shall remain in full force and effect.

2.65 Contractor's Representation

The CONTRACTOR represents and warrants that its proposal/bid is genuine and not sham or collusive or made in the interest or in behalf of any person not therein named, and that the CONTRACTOR has not, directly or indirectly, induced or solicited any other person to submit a sham proposal, or any other person, firm or corporation to refrain from submitting a proposal, and that the CONTRACTOR has not in any manner sought by collusion to secure itself an advantage over any other proposer.

2.66 LAKETRAN's Understanding

LAKETRAN enters this contract under the assumption of truth regarding all facts presented by CONTRACTOR, its bid proposal and the bid specifications. In the event that any information contained in that CONTRACTOR's bid proposal is found to be inaccurate, LAKETRAN may exercise its rights to void this contract as discussed under the section of this contract labeled Termination.

2.67 OEM Part Numbers

CONTRACTOR shall supply LAKETRAN with the OEM part numbers for all parts used in the equipment purchased under this project.

2.68 Options, Assignment by Laketran

This RFP includes an option to purchase additional quantities of the same vehicle at the prices tenders by the proposer. This options shall be executed by Laketran it its sole discretion taking available funding, proposer's price, need for the vehicles and Laketran's experience with the contractor. Any part of this tender including options that is not executed by Laketran shall be assignable by Laketran with vender's consent to another transit agency. Said options shall be executable or assignable by Laketran from award date to one year after the last vehicle in Laketran's initial order is delivered.

2.69 Non-Smoking Policy

LAKETRAN's entire facility - including offices, maintenance areas, bus storage, vehicle servicing lanes, parking lots and roadways - is a non-smoking facility. Smoking is prohibited everywhere. Contractor, its employees and sub-contractors shall adhere to this policy at all times. Any contractor or his/her employees found violating this policy will be removed from the property for the day and LAKETRAN will withhold payment for the subject time period.

2.70 Funding Agencies

The Federal Transit Administration is the federal agency through which funds may have been granted to LAKETRAN in support of this project. It is abbreviated "FTA" in this document and is located at:

Suite 320
200 West Adams Street
Chicago, Illinois 60606
(312) 353-2789

The Ohio Department of Transportation is the state agency through which funds are granted to LAKETRAN in support of this project. It is abbreviated "ODOT" in this document and is located at:

1980 West Broad Street
Columbus, Ohio 43223
(614) 466-8955

2.71 Jurisdiction

This procurement is governed by the latest versions of Section 306.43 of the Ohio Revised Code (ORC), Federal Transit Administration (FTA) Circular C4220.1, U.S. Department of Transportation's Uniform Administrative Requirements (2 CFR 200) and the Federal Acquisition Regulation (FAR). These are listed in descending order of application.

The Lake County Court of Common Pleas shall have exclusive jurisdiction to hear any dispute related to this procurement once the protest procedure identified in Section 1.32 is exhausted.

In witness whereof, LAKETRAN and CONTRACTOR have signed this agreement at the date and place hereinabove first mentioned.

2.72 Promoting COVID-19 Safety

The Centers for Disease Control and Prevention (“CDC”) Order of January 29, 2021, titled Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs (“CDC Mask Order”). One of the objectives of the CDC Mask Order is “maintaining a safe and operating transportation system.” All Third-Party contractors are required to comply, with the CDC Mask Order. The FTA may take enforcement action for non-compliance with the CDC Mask Order, including:

- (1) Enforcement actions authorized by 49 U.S.C. § 5329(g);
- (2) Referring the Recipient to the CDC or other Federal authority for enforcement action;
- (3) Enforcement actions authorized by 2 CFR §§ 200.339 – .340; and
- (4) Any other enforcement action authorized by Federal law or regulation.

2.73 Notification of Legal Matters that affect the Federal Government

For any contract with a value greater than \$25,000, if a current or prospective legal matter that may affect the Federal government emerges, the Contractor shall promptly notify Laketran and Laketran will notify the FTA Chief Counsel and FTA Regional Counsel. The Contractor shall include an equivalent provision in its sub-agreements at every tier, for any agreement that is a “covered transaction” greater than or equal to \$25,000 according to 2 CFR 180.220 and 1200.220.

1. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
2. Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.

2.74 Prohibition on certain telecommunications and video surveillance services or equipment.

Under 2 CFR 200.216, Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications

equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

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

In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment.

2.75 Solid Wastes

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