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Contract No. TRIPS-22-CA-MB-LF-NBC

**Standard Cutaway and Minibus Chassis
Type Transit Vehicles**

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Florida Department of Transportation
Public Transit Office

TRIPS-22-CA-MB-LF-NBC
Standard Cutaway and Minibus
Chassis Type Transit Vehicles

CONTRACT # TRIPS-22-CA-MB-LF-NBC

GENERAL REQUIREMENTS & CONDITIONS, CONTRACTUAL PROVISIONS

This Contract shall be a Purchasing Schedule between the **Florida Department of Transportation** (the "FDOT") and **Nations Bus Corp** (the "Contractor") for the manufacture and delivery of 2023 model year vehicles as specified in the General Conditions ("**Exhibit 1**"). **Florida Transit Agencies** (the "Purchasers"), shall have the right to purchase said vehicles with a properly executed purchase order, the completed Order Packet ("**Exhibit 8**") and documented on the Order Concurrence Form ("**Exhibit 9**"). The FDOT, the Contractor and the Purchasers may hereinafter be referred to as a "Party" and collectively as the "Parties".

The Purchasers will be allowed to purchase this vehicle as long as current production year chassis' are available from the manufacturer or suppliers, under the same terms and conditions stated in this initial Contract.

The Contractor understands that acceptance in writing by any Purchaser of the offer to furnish any or all of the units therein, shall constitute a contract between the Contractor and that Purchaser only, and implies no duties or responsibilities on the part of the FDOT or Transportation Research Inspections Services (TRIPS) program. The terms and conditions of said contract are to be administered and enforced by and between the Purchaser and the Contractor. The Purchaser is responsible for: providing the dealer with the properly completed forms and order information; resolution of issues relating to liquidated damages, late payment penalties, etc; and adhering to the terms and conditions regarding Final Acceptance and Terms of Payment as stated in the Contract. The FDOT and the TRIPS are responsible, and have an obligation to, oversee the proper use of Federal and State grant monies; to ensure that all Federal, State and Contract requirements and certifications are met; monitor warranty and dealer services; conduct on-line and/or dealer inspections and intercede on behalf of the Purchasers.

I. Scope of Work

1. The Contractor hereby agrees to provide the scope of work, perform the services, and furnish the goods and materials (and provide all other items necessary, proper for, or incidental thereto and as set forth in the Solicitation) that are set forth in the Solicitation and General Conditions "**Exhibit 1**". Throughout this Contract, all references to the term "work" include all requirements of the specifications, regardless of whether it involves the provision of goods or services or both.
2. Performance of Services. All of the services shall be performed by the Contractor and its authorized subcontractors. Notwithstanding the use of one or more subcontractors by the Contractor, the Contractor acknowledges and

DocuSign Envelope ID: 45B4C42826430A4B61615E285CD9D3
Florida Department of Transportation
Public Transit Office

TRIPS-22-CA-MB-LF-NBC
Standard Cutaway and Minibus
Chassis Type Transit Vehicles

agrees that all of the services performed and to be performed hereunder shall be the sole responsibility of the Contractor, and Contractor hereby agrees that it warrants all such work as if such work had been performed directly by the Contractor.

3. Order of Precedence. All of the terms and conditions of the Solicitation are hereby incorporated herein in full. In the event of a conflict between the terms of any of the following, the more stringent requirement shall apply. If the conflict cannot be resolved by following the most stringent requirement, the following order of precedence shall govern: (1) Florida Administrative Code, Chapter 14-90, as amended ("**Exhibit 2**"); (2) Federal Clauses for FTA-Assisted Contracts ("**Exhibit 3**"), when applicable; (3) properly authorized written Contract Amendments; (4) properly authorized Purchase Orders; (5) this Contract; (6) the Specifications; (7) the Solicitation Addenda, if any; and (8) the Solicitation.
4. Review of Work. Any review of the work by the FDOT, its other suppliers, or its partner agencies, including the State of Florida, Federal Transit Administration (FTA), and the Purchasers is for the sole benefit of the FDOT. No such review, acceptance, or approval to proceed to the next level of service, nor the payment of any invoice (including the last invoice, release of retainage, or acceptance of final reports or plans and specifications) shall be deemed to constitute: (1) detailed review or checking of design, details, or accuracy of the Contractor's work; (2) a professional approval by the FDOT; or (3) a release of the Contractor from any of the Contractor's obligations or responsibilities under the Contract, including but not limited to, the accuracy of the plans and specifications. The FDOT's review, approval, acceptance of, or payment for any of the services under this Contract shall not constitute a waiver of any of the FDOT's rights under this Contract or any cause of action it may have arising out of this Contract.
5. Contract Amendment(s). If any modification to the Contract or a Purchase Order is required, the Parties shall execute an Amendment before the Contractor begins performing any additional or changed tasks associated therewith. Reference herein to the Contract includes all Amendments, if any. The Contractor will only be entitled to adjustments to compensation and/or contract time if such adjustments are included in a Contract Amendment. When possible, all Contract Amendments shall be based upon the previously agreed-to rates or unit costs.
6. Standard of Care and Quality of Goods. The Contractor shall perform (and cause all subcontractors to perform) all services in a manner that is consistent with the level of reasonable care, skill, judgment, and ability provided by

others providing a similar type of service in the same geographic area. The standard of care shall not be altered by the application, interpretation, or construction of any other provision of this Contract, or any document incorporated or referenced herein, including the Solicitation. Unless otherwise expressly allowed by the specifications, all items furnished by the Contractor in connection with the work performed hereunder must be completely new and free from defects.

7. Warranty. The Contractor shall unconditionally guarantee the materials and workmanship on all equipment and goods furnished by it as per the schedule listed in the Warranty Provisions (“**Exhibit 1 - Part 4**”). From date of acceptance of the vehicle(s) delivered. If, within the warranty period, any defects or signs of deterioration are noted, which, in the opinion of the Purchasers, are due to faulty design, installation, workmanship, and/or materials, upon notification, the Contractor, at its expense, shall repair or adjust the equipment or parts to correct the condition, or it shall replace the part or entire unit to the complete satisfaction of the Purchasers. Repairs, replacements, or adjustments will be made only at such times as will be designated by the Purchasers to be the least detrimental to the operation of the Purchaser’s business.

II. Delivery, Compensation, Invoices and Terms of Payments

1. Delivery And Acceptance.

- a. Completed units, for orders of zero to ten (0-10) are to be delivered to Purchaser within one hundred fifty (150) days from receipt of chassis or purchase order, whichever occurs last. Completed units, for orders of eleven (11) or more will be agreed upon at the time of completion of the Order Packet (“**Exhibit 8**”) and documented on the Order Concurrence Form (“**Exhibit 9**”). The Contractor and the Purchaser will digitally sign the Order Concurrence Form and upon full approval, it will then become an Attachment to the Purchaser’s purchase order and shall be binding under this Contract.
- b. Upon completion of a Pre-Delivery Inspection (PDI) by the licensed Florida dealer who is awarded this Contract, that Contractor will be required to deliver the vehicles to the Purchaser. The Contractor shall notify both the Purchaser and the FDOT District Office a minimum of 48 hours in advance to arrange a delivery time. See schedule titled FDOT District Offices (“**Exhibit 4**”).

Docu Envelope: D:\4-50-B-4-C-42826-420A-A661-615E2B5CD0D3
Florida Department of Transportation
Public Transit Office

TRIPS-22-CA-MB-LF-NBC
Standard Cutaway and Minibus
Chassis Type Transit Vehicles

- c. Failure to coordinate delivery may result in delay of vehicle being “signed for” as delivered. The vehicles shall be delivered clean and in first class condition, complete and ready for service. Workmanship throughout shall conform to the highest standard of commercially accepted practice for the class of work and shall result in a complete, neat, and finished appearance.
- d. The Contractor shall assume all costs and responsibility relative to said delivery to purchaser.
- e. The vehicle shall be delivered with all Contractor/manufacturer's quality control checklists including road test and final inspection (properly completed and signed by an authorized plant representative). Other documents/items required at delivery include:
 - A copy of the Manufacturer's Certificate of Origin
 - Application for Certificate of Title
 - Bill of Sale
 - Warranty Papers (forms, policy, procedures)
 - Maintenance Schedule
 - Operators' manual
 - Invoice (To include contract number, P.O. number, VIN#, and agency name)
- f. If any of the items listed above are missing, defective, altered, incorrect, incomplete, etc., the vehicle will be automatically rejected. Vehicle Delivery Checklist (**“Exhibit 6”**) contains a list of the minimum required items at delivery.
- g. Delivery to Purchaser is to be completed within ten (10) calendar days of receipt of vehicle at Contractor's site. Delivery shall be determined by signed receipt of the contact person or their designee, at the point of delivery. Further, since a common carrier is an independent concern, any delay in delivery resulting from the common carrier's operations, accident, or mechanical failures on route will be considered a cause beyond the control of the Contractor, provided vehicles were delivered to said carrier in ample time for delivery within normal operating conditions. Odometer readings cannot exceed 3,000 miles at time of final delivery of completed buses to agency(s). There will be one dollar (\$1.00) per mile charge for each vehicle with an odometer reading in excess of 3000 miles.
- h. In case delivery of completed units under this Contract shall be necessarily delayed because of weather, strike, injunctions, government

controls, or by reason of any cause or circumstances beyond control of the Contractor, the time for completion of delivery shall be extended by the number of days to be determined in each instance in writing and by mutual agreement between the parties.

- i. All units shall consist of new parts and materials and in no case will used components or reconditioned or obsolete parts be accepted. Any one part or component shall be an exact duplicate in manufacture and design as well as construction as all others proposed for each unit. Manufacturers must incorporate, in the units proposed, the newest technological advancement in order to achieve maximum service life and an attractive modern appearance.
- j. All vehicle data must be entered into the TRIPS DATACenter prior to its delivery by the Contractor. Vehicle Identification Numbers (VIN) shall be entered into the TRIPS DATACenter within 10 days after assignment of the VIN to the Purchase Order. Any vehicles arriving at the Contractor without the VIN entered in the DATACenter will not be inspected until this information is entered.

To schedule an inspection, the Contractor shall send an email to the TRIPS Program Manager, Carlton Allen at callen@usf.edu to set up an inspection appointment. Information in the email should include the following:

- Anticipated delivery date
- Number of vehicles
- Whether inspection is a drop off or to be inspected while you wait

The TRIPS Program Manager will schedule the inspection and provide confirmation to the Contractor via email. A copy of the sales order and build order should be sent to the TRIPS Program Manager once an inspection date has been established.

Each vehicle delivered shall have a complete set of “as built” wiring diagrams. The Contractor should see that all noted write-ups are corrected prior to the final delivery to the procuring agency. This inspection by TRIPS is not represented as being “all inclusive” and in no way relieves the Contractor from the required PDI.

- k. Any vehicle delivered by the Contractor that does not comply with specifications, conditions, and requirements shall be considered not accepted.

TRIPS-22-CA-MB-LF-NBC
Standard Cutaway and Minibus
Chassis Type Transit Vehicles

- l. If a vehicle is delivered incomplete or contains any defective or damaged parts, said parts shall be removed and new parts furnished and installed by the Contractor at no cost to the Purchaser. In the event work is involved, whether warranty or otherwise, in repairing or placing the vehicle(s) in proper condition, then such repairs shall be made by an approved firm.
- m. Delivery of vehicle(s) by the Contractor does not constitute acceptance by the Purchaser. Vehicle(s) shall be considered "accepted" upon inspection by the Purchaser and the issuance of a "Letter of Acceptance" to the Contractor. Purchaser will perform a post-delivery inspection and issue either a "Letter of Acceptance" or a "Letter of Rejection" to Contractor, stating areas found to be in non-compliance with the proposal specifications, within ten (10) calendar days from receipt of vehicle(s). Placing any new vehicle into revenue service will automatically constitute acceptance of vehicle by Purchaser. However, a Letter of Acceptance should still be sent to the Contractor prior to placing the vehicle into revenue service.
- n. Acceptance of the vehicles shall not release the Contractor from liability for faulty workmanship or materials.

2. Compensation

- a. Compensation under this Contract shall be Firm-Fixed Price with Economic Adjustment.
- b. The Contractor shall deliver invoices to the Purchaser upon delivery of the vehicle(s) in detail sufficient for a proper pre-audit and post-audit thereof.
- c. All invoices shall reflect the applicable Contract prices as referenced within the Order Packets ("**Exhibit 8**") and shall show details of the computation of the amount requested in a form satisfactory to the Purchaser.
- d. Firm Price and Price Escalation or De-Escalation. Following the Contract of the initial model production year, the FDOT will have an option to extend the Contract for four succeeding model production years. Extension of any options shall be subject to the same pricing, terms and conditions of the original Contract. However, a chassis model price increase will be considered when a model year change is specific to the automotive or bus industry. The Contractor shall provide a certification from the manufacturer to justify the chassis model price increase. The price may be adjusted only in the same amount as the price increase to

DocuSign Envelope ID: 45B4C42826430A4B61615E285CD9D3
Florida Department of Transportation
Public Transit Office

TRIPS-22-CA-MB-LF-NBC
Standard Cutaway and Minibus
Chassis Type Transit Vehicles

the Contractor. The Contractor must submit the request and all necessary documentation to the FDOT and TRIPS Program Administrator. The date found on the Manufacturer's letter, stating the new chassis cost, shall be the month used as the future recomputation month.

The FDOT reserves the right to:

1. Grant or decline any request for escalation or de-escalation with or without cause.
2. Request additional documentation from the referenced manufacturer justifying any requested increase. In the event of such request the FDOT will only allow the Contractor to increase its contract price by the amount of the actual increase as provided by the parts manufacturer.

Any decision of the FDOT to grant or decline a request for price adjustment will be at the FDOT's sole discretion and its decision shall be final. Annual rate adjustments for services will be at the discretion of the FDOT.

- e. The Contractor shall provide the Purchaser with Certificates of Origin for any and all steel, iron, and/or manufactured goods delivered or utilized by the Contractor in any work or Project contemplated herein, regardless of the individual value of such steel, iron, and/or manufactured goods, when the overall Contract value meets or exceeds One Hundred Fifty Thousand Dollars (\$150,000.00). The Contractor shall also provide separate Certificates of Origin for each component part contained in any and all manufactured goods delivered or utilized by the Contractor in any work or Project under this Contract. Certificates of Origin must accompany all related invoices that the Contractor submits to the FDOT for payment. If the Contractor fails to submit required Certificates of Origin with its invoices, the Purchaser may withhold payments due the Contractor until the Contractor has complied therewith.
- f. The general cost principles and procedures for the negotiation and administration, and the determination or allowance of costs under this Contract will be as set forth in the Code of Federal Regulations, Titles 23, 48, 49, and other pertinent federal and state regulations, as applicable, with the understanding that there is no conflict between state regulations and federal regulations in that the more restrictive of the applicable regulations will govern.
- g. Records of costs incurred under the terms of this Contract shall be maintained by the Contractor and upon written request, made available to

Doc Envelope ID: 1459B4C42826420A-A61-615E2B5CD0D3
Florida Department of Transportation
Public Transit Office

TRIPS-22-CA-MB-LF-NBC
Standard Cutaway and Minibus
Chassis Type Transit Vehicles

the FDOT and/or Purchaser at all times during the period of this Contract and for five (5) years after final payment is made for the work pursuant to this Contract. Copies of these documents and records shall be furnished to the FDOT and/or Purchaser upon request.

- h. Records of costs incurred will include: (1) the Contractor's general accounting records and Project records; (2) supporting documents and records of the Contractor and all subcontractors within the scope of this Contract; and (3) all other records related to the Contract that are considered necessary by the FDOT and/or Purchaser for a proper audit of costs.
- i. The Purchaser will have the right to retain, out of any payment due the Contractor under this Contract, an amount sufficient to satisfy any amount due and owing to the Purchaser by the Contractor on this Contract or any other agreement between the Contractor and the Purchaser. The Purchaser may withhold the amount of its actual damages when the Contractor is in default under any provision of this Contract, or when the Purchaser determines that the schedule cannot be met and an extension of time is not warranted. The Purchaser may also withhold payment when payment from the Contractor is due in connection with indemnification or any other agreement between the Contractor and the Purchaser. This right to withhold payments will continue until such time as the Purchaser has been made whole.
- j. All invoices requesting payment for subcontractor's services, Contractor's services, reimbursable items, or expense items, must have copies of actual invoices or receipts attached which support the amounts invoiced, in such form and with such supporting detail as the Purchaser may require.
- k. The Purchaser shall have the right, but not the obligation, based upon sworn statements of accounts from the subcontractors, and in accordance with the Contractor's written request, to pay a specific amount directly to a subcontractor. In such event, the Contractor agrees that any such payments shall be treated as a direct payment to the Contractor's account.
- i. The Purchaser shall make payments to the Contractor based upon the approved invoices and supporting documentation and deliverables within Sixty (60) days of the receipt by the Purchaser of a complete invoice. Invoice payment requirements do not start until a properly completed invoice is provided to the Purchaser. If an invoice is not

approved, in whole or in part, the Purchaser will inform the Contractor of the issue within ten (10) days of receipt and Contractor will not be paid until the issue has been resolved to the satisfaction of the Purchaser.

- ii. All compensation for services under a particular Purchase Order is subject to and contingent upon the availability of the federal, state, and/or local funding source that is applicable to the work or Purchase Order.
- iii. The acceptance of final payment by the Contractor shall be a full release of the Purchaser and its members, officers, agents, and employees for any and all claims arising out of or relating to this Contract. The Contractor hereby waives all indirect, incidental, special, and consequential damages in any proceeding arising out of or relating to this Contract.

3. Federal And State Tax

The Purchasers are exempt from payment of Federal Excise Tax and Florida State Tax. Said taxes must not be included in the Contract price. Any other sales tax, use tax, imports, revenues, excise or other taxes which may now or hereafter be imposed by Congress, by the State, or any political subdivision thereof and applicable to the sale and delivery of the product as a result of this proposal, and which by terms of the tax law, may be passed directly to a Purchaser, will be paid by the Purchaser. Such taxes, as may be included, must be identified as to amount(s) and type of tax.

4. On-Line Inspections

The TRIPS reserves the right to perform an on-line inspection of any vehicles procured as a result of this Contract. If any defective or non-compliance items are found during the on-line inspection, the TRIPS may choose to perform subsequent on-line inspections at a date agreeable to both parties.

5. Indemnification

Proposer must agree to save, keep, and bear harmless and fully indemnify any Purchaser and any of its officers, or TRIPS personnel from all damages, costs, or expenses in law or equity, that may at any time arise or to be set up, for any infringement of the patent rights of any person or persons in consequence of the use by a Purchaser or by any of its officers or proposal coordinators, of articles supplied under contract, arising from proposals submitted and which a Purchaser gives the

Docu Envelope ID: 145B41C42826420AAB61615E285CD9D3
Florida Department of Transportation
Public Transit Office

TRIPS-22-CA-MB-LF-NBC
Standard Cutaway and Minibus
Chassis Type Transit Vehicles

Contractor notice in writing of any such claims or suit and provides necessary cooperation for the defense of said claim or suit.

III. Federal Motor Vehicle Safety Standards

All vehicles covered by these specifications shall be in compliance with applicable Federal Motor Vehicle Safety Standards (FMVSS) established by the National Highway Traffic Safety Administration. If compliance with applicable FMVSS is required, the Contractor shall ensure that the FMVSS sticker is affixed to all vehicles delivered. Vehicles must be in compliance with all the requirements of the laws of the State of Florida as to lighting equipment, and all warning and safety devices. In the event there are changes in the Federal Motor Vehicles Safety Standards between date of this Contract and date of manufacture, any new requirements applicable at time of manufacture will be considered separately and the price for same determined by mutual agreement. In granting this, the Contractor is not relieved of the responsibility of providing the Purchaser with all available information relative to the engineering structure, and design change so affected and the impact (if any) these changes may have on the durable-useful life and attractive appearance of the vehicle to be provided per these specifications.

IV. Liquidated Damages

In the event of delay in completion of the delivery of vehicles beyond the date specified, in addition to any granted extensions agreed to in writing by the Purchaser, any affected Purchaser shall assess as liquidated damages, twenty-five dollars (\$25.00) per calendar day per vehicle.

V. Parts And Manuals

A supply of replacement parts for the vehicles specified must be guaranteed by the Contractor for a ten-year period from date of purchase. The Contractor shall provide Purchaser with complete "as built" wiring diagrams for the entire vehicle, a current service manual and a current parts manual (*"as-built" drawings, service manual and parts manual may be on a digital or web based platform as determined by the Purchaser*). These should be provided for each vehicle with a maximum of two (2) sets per Purchaser if they are purchasing more than two (2) vehicles. One (1) Operator's Manual shall be provided for each vehicle, regardless of the number of vehicles ordered by a given Purchaser. A list of any special tools or equipment will also be provided. The supplied operator's and maintenance manuals and wiring diagrams shall incorporate the options ordered on purchaser's vehicles.

VI. Altoona Test

Either a final report from the Altoona Bus Testing Center or documentation from the Federal Transit Administration stating that the vehicles are not required to undergo Altoona testing must be submitted with each proposal.

VII. Titling Vehicles

Unless specified otherwise, Vehicles shall be titled to the Purchaser with the Florida Department Transportation, 605 Suwannee Street, Mail Station 26, Tallahassee, Florida 32399-0450 listed as the only lien holder.

The Contractor shall be responsible for applying for Title and purchasing a license tag on behalf of the Purchaser.

VIII. Contract Term and Termination

1. Contract Term

The Purchasers will be allowed to purchase this vehicle as long as current production year chassis are available from the manufacturer or suppliers, under the same terms and conditions stated in this initial Contract.

Following award of the initial model production year, the FDOT will have an option to extend the Contract for four succeeding model production years via a properly negotiated and executed Contract Amendment. Any Contract Amendments shall be subject to the same pricing, terms and conditions of the original Contract. However, a chassis model price increase will be considered when a model year change is specific to the automotive or bus industry. The Contractor shall provide a certification from the manufacturer to justify the chassis model price increase. The price may be adjusted only in the same amount as the price increase to the Contractor. The Contractor must submit the request and all necessary documentation to the TRIPS Program Administrator.

The Contractor may request an increase in the second stage production costs after, or in conjunction with, the chassis increase request being received by the TRIPS Program Administrator. The TRIPS will compute the second stage costs utilizing the formula explained in Second Stage Price Escalation/De-Escalation Formula (“**Exhibit 7**”). A final annual adjustment will then be authorized after combining the chassis increase with the second stage increase, if any.

2. Termination for Cause

The Contractor shall be considered in default of the Contract and such default will be considered as cause for the FDOT to terminate the Contract, in whole or in part, for any of the following reasons, if the Contractor:

Docu Envelope: D:\4-50-B\4-C\42826-420A-AP61-615F2B5CD0D3
Florida Department of Transportation
Public Transit Office

TRIPS-22-CA-MB-LF-NBC
Standard Cutaway and Minibus
Chassis Type Transit Vehicles

- a. Fails to begin the work under the contract within the time specified in the "Notice to Proceed," or
- b. Fails to perform the Work, or fails to maintain adequate progress towards completion of the work, or fails to provide sufficient workers, equipment and/or materials to assure completion of work in accordance with the terms of the Contract, or
- c. Performs the work unsuitably or neglects or refuses to remove materials or to perform anew such Work as may be rejected as unacceptable and unsuitable, or
- d. Discontinues the execution of the work, or
- e. Fails to resume work which has been discontinued within a reasonable time after notice to do so, or
- f. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or
- g. Allows any final judgment to stand against the Contractor unsatisfied for a period of 10 days, or
- h. Makes an assignment for the benefit of creditors, or
- i. Fails to carry out the requirements of the FDOT's DBE Participation Program, or
- j. If at any time the Surety executing the bond is determined by the FDOT to be unacceptable and the Contractor fails to furnish an acceptable substitute Surety within ten (10) days after notice from the FDOT. This ten (10) day notice and cure period is in lieu of the seven (7) day period set forth below, or
- k. For contracts that exceed One Million Dollars (\$1,000,000.00), FDOT may terminate this Contract if the Contractor is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or
- l. For any other cause whatsoever, fails to carry on the work in an acceptable manner, or
- m. For any other cause explicitly provided for in this Contract as a cause for termination.

Docu Envelope ID: 145B4C42826430A4B61615E285CD0D3
Florida Department of Transportation
Public Transit Office

TRIPS-22-CA-MB-LF-NBC
Standard Cutaway and Minibus
Chassis Type Transit Vehicles

Should the FDOT consider the Contractor in default of the Contract for any reason above, the FDOT shall immediately give written notice to the Contractor and the Contractor's surety as to the reasons for considering the Contractor in default and the FDOT's intentions to terminate the Contract. If the FDOT terminates the Contract for one of the reasons stated above, the Contractor shall not be entitled to receive further payment until the terminated work is completed.

If the Contractor or Surety, within a period of 10 days after such notice, does not proceed in accordance therewith, then the FDOT will have full power and FDOT without violating the Contract, to take the execution of the terminated work out of the hands of the Contractor. The FDOT may appropriate or use any or all materials and equipment that have been mobilized for use in the work and are acceptable and may enter into an agreement for the completion of the terminated work according to the terms and provisions of the Contract, or use such other methods as in the opinion of the FDOT or the FDOT's authorized representative will be required for the completion of the terminated work in an acceptable manner, including, but not limited to accepting assignment of any or all Subcontracts and finishing the terminated Work by whatever reasonable method the FDOT may deem necessary.

If the Contractor is found to have submitted a false certification or has been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, the FDOT may terminate this Contract for cause and without the opportunity to cure, or for Contracts of One Million Dollars (\$1,000,000.00) or more, the FDOT may terminate this Contract for cause and without the opportunity to cure if the Contractor is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or is engaged in business operations in Cuba or Syria.

All costs and charges incurred by the FDOT, together with the cost of completing the work under the Contract, including compensation for the any designer's or the FDOT's authorized representative's services and all other expenses made necessary thereby, will be deducted from any monies due or which may become due the Contractor. If such expense exceeds the sum which would have been payable under the Contract, then the Contractor and the Surety shall be liable and shall pay to the FDOT the amount of such excess. Termination of the Contract, or a portion thereof, shall neither relieve the Contractor of its responsibility for the completed work nor shall it relieve its Surety of its obligation for and concerning any claim arising out of the work performed. If only a portion of the work is

terminated, the Contractor shall continue to complete the remaining portions of the work that was not terminated in accordance with the Contract. The Contractor's obligations to the FDOT arising from the Contractor's improper acts, omissions, or defaults shall survive the termination of this Contract. The duties and obligations imposed by the Contract and the rights and remedies available hereunder are in addition to, and not a limitation of, any duties, obligations, rights, and remedies otherwise imposed or available by law.

3. **Termination for Convenience.**

- a. The FDOT may, by written notice, terminate this Contract or the work performed hereunder, in whole or in part at any time, for the FDOT's convenience or because of failure to fulfill the Contract obligations. Such action will be without prejudice to any other right or remedy of the FDOT. Upon receipt of such notice, all services, work, and orders for materials or services associated with the terminated work must be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing the terminated work, whether completed or in progress, shall be delivered to the FDOT.
- b. If the termination is for the convenience of the FDOT, an equitable adjustment in the Contract price will be made the portion of the work that was terminated as set forth in this Section, and, the Contractor shall be paid for:
 1. the reasonable actual cost for the portion of all Work that was terminated and which was fully completed under the Contract and accepted by the FDOT, based upon the approved Schedule of Values and/or Unit Price Schedule.
 2. the reasonable actual cost for the portion of all Work that was terminated, and which was fully completed under the Contract and accepted by the FDOT, based upon the Offeror's Proposal if the Proposal contained line-item pricing for all or a portion of the terminated Work. The amount of equitable adjustment for such Work shall not exceed the amount for that line item.
 3. at the sole option of the FDOT, the reasonable actual cost of acceptable materials or equipment obtained or ordered by the Contractor for the portion of the Work that was terminated prior to the date notice of FDOT's termination for convenience is served and which are not incorporated in the Work, as shown by receipted bills

Design Envelope: D-14-50-B-4-C-42826-420A-A661-615E2B5CD0D3
Florida Department of Transportation
Public Transit Office

TRIPS-22-CA-MB-LF-NBC
Standard Cutaway and Minibus
Chassis Type Transit Vehicles

and actual cost records at such points of delivery as may be designated by the FDOT.

4. at the sole option of the FDOT, the reasonable actual cost of bonafide irrevocable orders made for the portion of the Work that was terminated prior to the date notice of FDOT's termination for convenience is served for materials and equipment but not yet delivered to the Project site. However, such materials and equipment must be delivered to the FDOT to a site or location designated by the FDOT prior to release of payment for such materials and equipment.

Any request for equitable adjustment shall be subject to the limitations of the Scope of Work and supported by actual invoices, time sheets, and other documentation of the actual costs incurred. The Contractor shall substantiate its request for payment in accordance with the requirements of the Contract.

There is no entitlement to anticipatory profits or revenue or other economic loss arising out of or resulting from FDOT's termination, for any reason, unless explicitly agreed to, in writing, by the FDOT as part of a final Contract Amendment that fully resolves all outstanding issues on the Project.

- c. If the termination is due to failure to fulfill the Contractor's obligations, the FDOT may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Contractor is liable to the FDOT for any additional cost occasioned to the FDOT thereby.
- d. If, after notice of termination for failure to fulfill Contract obligations, it is determined that the Contractor had not so failed, the termination will be deemed to have been affected for the convenience of the FDOT. In such event, adjustment in the Contract price will be made as provided in **Paragraph "b"** of this clause.
- e. The rights and remedies of the FDOT provided in this clause are in addition to any other rights and remedies provided by law or under this Contract. The Contractor shall proceed to complete any part of the Work, as directed by the FDOT, and shall attempt to settle all Subcontractor/Contractor claims and obligations under the Contract with the FDOT. Subject to the limitations in the Scope of Work, the Contractor shall be compensated by the FDOT for the Contractor's reasonable costs actually expended and profit earned on Work that has been fully completed and accepted by the FDOT.

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Florida Department of Transportation
Public Transit Office

TRIPS-22-CA-MB-LF-NBC
Standard Cutaway and Minibus
Chassis Type Transit Vehicles

- f. If only a portion of the Work is terminated, whether for convenience or for cause, the Contractor shall continue to complete the remaining portions of the Work that were not terminated in accordance with Contract. Termination of the Contract, or a portion thereof, shall neither relieve the Contractor of its responsibility for the completed Work nor shall it relieve its Surety of its obligation for and concerning any claim arising out of the Work performed.

IX. Breaches And Dispute Resolution

Disputes arising in the performance of this Purchasing Agreement which are not resolved by agreement of the parties shall be decided by the Florida Department of Transportation. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Florida Department of Transportation. Any appeal of decisions of the Florida Department of Transportation shall be filed and administered by the "Administrative Procedures Act," Chapter 120, Florida Statutes.

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

Unless this Purchasing Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between the TRIPS and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Florida.

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

X. Disadvantaged Business Enterprise (DBE)

It is the policy of the FDOT that Disadvantaged Business enterprises as defined in 49 CFR 26.49 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR 26.49 applies to this agreement.

The TRIPS Program Administrator on behalf of the FDOT and/or Purchasers, or their Contractor, agree to ensure Disadvantaged Business Enterprises as defined in 49 CFR 26.49 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, the Purchasers, or their Contractors, shall take all necessary and reasonable steps in accordance with 49 CFR 26.49 to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. The TRIPS Program Administrator on behalf of the Purchasers and their Contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT assisted contracts.

XI. State And Local Law Disclaimer

The use of many suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on state law. Before the suggested clauses are used in the grantees procurement documents, the grantees should consult their local attorney.

XII. Conflict of Interest

1. The Supplier shall not promise any employee of the FDOT, whose duties include matters relating to or affecting the subject matter of this Contract, compensation of any kind or nature from the Supplier, while such employee is employed by the FDOT, or for one (1) year thereafter.
2. The Supplier affirms that it will not take part in any activities that will be a conflict of interest with the FDOT or that would appear to compromise the integrity of the FDOT. The Supplier shall provide written notice to the FDOT immediately upon occurrence or first identification of any potential conflict-of-interest situation.
3. Upon request by the FDOT, the Supplier shall execute any Conflict-of-Interest Certification that may be required.

XIII. Debarred Bidders

The Supplier has a continuing obligation to inform the FDOT whether it is or has been placed on any debarred, suspended, or excluded parties list maintained by the United States Government or the State of Florida. Should the Supplier, including any of its officers or holders of a controlling interest, be included on such a list during the performance of this Contract, the Supplier shall immediately inform the FDOT. This obligation must be included in all subcontracts.

XIV. Public Entity Crimes

The FDOT reserves the right to terminate this Contract effective immediately upon written notice in the event that the Supplier or any of its affiliate(s) are placed on the State of Florida convicted vendor list pursuant to Section 287.133, Florida Statutes. For purposes hereof, "affiliate" shall have the meaning set forth in Section 287.133(1)(a), Florida Statutes. The Supplier shall advise the FDOT promptly after conviction of any "public entity crime" as defined in Section 287.133(1)(g), Florida Statutes, applicable to the Supplier or any of its affiliate(s).

XV. Non-exclusive Contract

This Contract is not exclusive. The FDOT expressly reserves the right to contract for performance of services such as those described herein, and in the Solicitation, with other Suppliers.

XVI. No Waiver

Failure by either Party to insist upon strict performance of any of the provisions herein; failure or delay by either Party in exercising any rights or remedies provided herein or by law; the FDOT's payment in whole or in part for services hereunder; or any purported oral modification or rescission of this Contract by an employee or agent of either Party shall not: (1) release either Party of any of its obligations hereunder; (2) be deemed a waiver of the rights of either Party to insist upon strict performance hereof; (3) be deemed a waiver of any of either Party's rights or remedies under this Contract or by law; or (4) operate as a waiver of any of the provisions hereof or constitute acquiescence therein. No waiver of any default or breach hereunder shall extend to or affect any subsequent or existing default or breach.

XVII. Counterparts and Electronic Signatures

This Contract may be executed in one or more counterparts, each of which will be deemed an original, but all such counterparts will together constitute one and the same instrument, binding on all the parties hereto even though all the parties

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Florida Department of Transportation
Public Transit Office

TRIPS-22-CA-MB-LF-NBC
Standard Cutaway and Minibus
Chassis Type Transit Vehicles

are not signatories to the original or the same counterpart. The counterparts of this this Contract and all Ancillary Documents may be executed by providing an electronic signature under the terms of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001 et. seq., and Chapter 668, Florida Statutes and delivered by email or other electronic delivery method which will have the same force and effect as a written signature.

XVIII. Exhibits

The following Exhibits are hereby incorporated into this Contract as part hereof as though fully set forth herein.

Exhibit 1: General Conditions

Part 1: Technical Specifications

Part 2: Options

Part 3: Quality Assurance

Part 4: Warranty Provisions

Part 5: Paint Schemes

Part 6: Negotiated Point of Clarifications

Exhibit 2: Florida Administrative Code, Chapter 14-90

Exhibit 3: Federal Clauses for FTA-Assisted Contracts

Exhibit 4: Required Forms

Exhibit 5: FDOT District Offices

Exhibit 6: Vehicle Delivery Checklist

Exhibit 7: Second Stage Price Escalation/De-Escalation Formula

Exhibit 8: Order Packets with Pricing

Exhibit 9: Order Concurrence Form

For Agreement exhibits, refer to the following hyperlink:

[TRIPS-22-CA-MB-LF Contract-EXECUTED-NBC.pdf \(tripsflorida.org\)](https://tripsflorida.org/docs/camblf/TRIPS-22-CA-MB-LF_Contract-EXECUTED-NBC.pdf)

or

https://tripsflorida.org/docs/camblf/TRIPS-22-CA-MB-LF_Contract-EXECUTED-NBC.pdf

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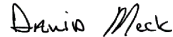
TRIPS-22-CA-MB-LF-NBC
Standard Cutaway and Minibus
Chassis Type Transit Vehicles

OFFER

By execution below, Nations Bus Corporation hereby offers to furnish equipment and services as specified in Florida Department of Transportation Request for Proposal #TRIPS-22-CA-MB-LF-RFP, and agree to abide by the final negotiated Contract, TRIPS-22-CA-MB-LF-NBC, including all General Requirements, Conditions, Contractual Provisions and Exhibits:

OFFEROR(S):

Nations Bus Corporation
555 Outlet Mall Blvd.
St. Augustine, FL 32084

DocuSigned by:

583BD9B7A0BC42D...

Contractor Authorized Signature

David Meck
Printed Name

Chief Financial Officer
Title

7/19/2023 1 09:55 PDT
Date

AWARD

By Execution below, the Florida Department of Transportation accepts Offer as indicated above.

Tony Brandin
Transit Operations Manager

DocuSigned by:

D622C7583FA8454...

Signature

7/28/2023 1 13:40 EDT
Date