



September 29, 2019

**PROJECT:** Expression of Interest / Request for Qualifications: Architectural & Engineering Services for Kingsport Area Transit Service Vehicle Storage/Maintenance Facility

Dear Representative:

The City of Kingsport, in conjunction with the Kingsport Area Transit Services (KATS) is seeking statements of qualifications from experienced firms that are TDOT pre-qualified with an unlimited status to provide architectural, survey, engineering design, cost estimating, bidding and construction contract administration services for a new Vehicle Storage/Maintenance Facility.

A copy of the Public Notice, Affidavits Form, and Request for Qualifications are attached. Please make certain you sign your Proposal letter and our Affidavits Form (must also be notarized) and include with your sealed proposal. Other items may be required to be included in your proposal so please read the documents thoroughly. No pricing structure is requested at this time.

A selection Committee will review all replies. This procurement will follow the qualifications-based competitive proposal procedures of the Brooks Act. As such, price will be excluded as an evaluation factor and proposer's qualifications will be evaluated/ scored based on the identified criteria.

The selection criteria will include an evaluation of:

- 1) Key Personnel/Capacity
- 2) Past Performance
- 3) Proposal/Technical Criteria
- 4) Design
- 5) DBE Participation

The evaluation committee will review their evaluations and make adjustments to the requirements scores based on the information obtained in the interview/presentation, demonstration, possible reference checks, and any other pertinent proposer information.

Based on the evaluation of the written proposal, the evaluation committee may require additional information from the top-scoring proposers to clarify or confirm proposal information.

Additional information obtained may be of any or all of the following; proposer interviews, reference reviews, proposer presentation/demonstration, on-site visits of proposer designed facilities.

Interested persons for firms should submit their sealed "Expression of Interest / Request for Qualifications", one (1) original and four (4) copies along with an electronic copy to:

Procurement Manager  
City of Kingsport  
225 West Center Street  
Kingsport, TN 37660

**REPLIES MUST BE RECEIVED NO LATER THAN 4:00 P.M. EASTERN TIME, OCTOBER 23, 2019. MARK THE OUTSIDE OF THE ENVELOPE, EXPRESSION OF INTEREST/REQUEST FOR QUALIFICATIONS – KATS VEHICLE STORAGE / MAINTENANCE FACILITY**.

*If hand delivered, they will be delivered to the City of Kingsport, 225 W. Center Street, Kingsport, TN.*

*All sealed Expression of Interest / Request for Qualifications received by the Procurement Manager shall be publicly opened by the Procurement Manager in the Council Room, City Hall, 225 W. Center Street, Kingsport, TN at 4:00 P.M., Eastern Time, October 23, 2019. Only the names of submitters will be read.*

*Replies received after 4:00 P.M., Eastern Time, October 23, 2019 will not be considered.*

*Any additional information concerning this request may be obtained from the Procurement Department at (423) 229-9419.*

Sincerely,



Brent Morelock, CPPO, CPPB  
Procurement Manager

## Request for Qualifications

The City of Kingsport, in conjunction with the Kingsport Area Transit Services (KATS) is seeking statements of qualifications from experienced firms that are TDOT pre-qualified with an unlimited status to provide architectural, survey, engineering design, cost estimating, bidding and construction contract administration services for a new Vehicle Storage/Maintenance Facility. These services are being sought in accordance with Federal Transit Administration, State of Tennessee, and City of Kingsport laws and statutes.

Qualifications may be mailed or delivered to the Procurement Manager, 225 West Center Street, Kingsport, TN 37660, but must be received no later than 4:00 P.M., Eastern Time, on October 23, 2019, at which time, will be publicly opened and only the names of the submitters will be read aloud in the Council Room, City Hall, 225 West Center Street, Kingsport, TN 37660. Proposal received after 4:00 P.M., Eastern Time, October 23, 2019 will not be considered.

By submission of a signed Request for Qualifications, the submitter certifies total compliance with Title VI and Title VII of the Civil Rights Act of 1994, as amended, and all regulations promulgated thereunder.

Qualified Disadvantaged Business Enterprises (DBEs) are encouraged to submit.

Documents for the above referenced project are available @ <https://www.kingsporttn.gov/city-services/purchasing/>

Interested parties may also contact the Procurement Department @423-229-9419.

All proposals shall be signed, sealed and addressed to the Procurement Manager, City of Kingsport, 225 West Center Street, Kingsport, TN 37660, and marked "RFQ for KATS Vehicle Storage/Maintenance Facility". The City by its governing regulations reserves the right to accept or reject any or all replies received, to waive any informalities and to re-advertise.

PUB IT: 09/29/19

Chris McCartt  
City Manager

**COMPLIANCE AFFIDAVIT(S) (TOTAL OF 2 PAGES)**

**THIS COMPLIANCE AFFIDAVIT MUST BE SIGNED, NOTARIZED AND INCLUDED WITH ALL BIDS – FAILURE TO INCLUDE THIS FORM WITH THE BID SUBMITTED SHALL DISQUALIFY THE BID FROM BEING CONSIDERED.**

**VENDOR:** \_\_\_\_\_

**CONFLICT OF INTEREST:**

1. No Board Member or officer of the City of Kingsport or other person whose duty it is to vote for, let out, overlook or in any manner superintend any of the work for the City of Kingsport has a direct interest in the award of the vendor providing goods or services.
2. No employee, officer or agent of the grantee or sub-grantee will participate in selection, or in the award or administration of an award supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer or agent, any member of their immediate family, his or her partner, or an organization, which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.
3. The grantee's or sub-grantees officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from vendors, potential vendors, or parties to sub-agreements.
4. By submission of this form, the vendor is certifying that no conflicts of interest exist.

**DRUG FREE WORKPLACE REQUIREMENTS:**

5. Private employers with five or more employees desiring to contract for construction services attest that they have a drug free workplace program in effect in accordance with TCA 50-9-112.

**ELIGIBILITY:**

6. The vendor is eligible for employment on public contracts because no convictions or guilty pleas or pleas of nolo contendere to violations of the Sherman Anti-Trust Act, mail fraud or state criminal violations with an award from the State of Tennessee or any political subdivision thereof have occurred.

**GENERAL:**

7. Vendor fully understands the preparation and contents of the attached offer and of all pertinent circumstances respecting such offer.
8. Such offer is genuine and is not a collusive or sham offer.

**IRAN DIVESTMENT ACT:**

9. Concerning the Iran Divestment Act ( TCA 12-12-101 et seq.), by submission of this bid/quote/proposal, each vendor and each person signing on behalf of any vendor certifies, and

in the case of a joint bid/quote/proposal, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each vendor is not on the list created pursuant to § 12-12-106.

**NON-COLLUSION:**

10. Neither the said vendor nor any of its officers, partners, owners, agents, representatives, employees or parties interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other responder, firm, or person to submit a collusive or sham offer in connection with the award or agreement for which the attached offer has been submitted or to refrain from making an offer in connection with such award or agreement ,or collusion or communication or conference with any other firm, or, to fix any overhead, profit, or cost element of the offer price or the offer price of any other firm, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against the City of Kingsport or any person interested in the proposed award or agreement.
11. The price or prices quoted in the attached offer are fair, proper and not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the firm or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

**BACKGROUND CHECK REQUIREMENT FOR SCHOOL SYSTEM SUPPLIERS:**

12. In submitting this bid/quote/proposal, you are certifying that you are aware of the requirements imposed by TCA § 49-5-413 (d) to conduct criminal background checks through the Tennessee Bureau of Investigation and the Federal Bureau of Investigation on yourself and any of your employees who may come in direct contact with students or who may come on or about school property anytime students are present. You are further certifying that at no time will you ever permit any individual who has committed a sexual offense or who is a registered sex offender to come in direct contact with children or to come on or about school property while students are present.

The undersigned hereby acknowledges and verifies that the response submitted to this solicitation is in full compliance with the applicable laws/listed requirements.

SIGNED

BY: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE: \_\_\_\_\_

BY (NOTARY PUBLIC): \_\_\_\_\_

MY COMMISION EXPIRES ON: \_\_\_\_\_

**PLEASE COMPLETE AND RETURN**  
**(See Note at Bottom)**  
**Optional Form**  
**Minority Status of Business Ownership**  
**Bidders/Proposers List Information**

The City of Kingsport is compiling a Bidders List with information about the minority status of firms bidding on contracts with the City. Please identify your business below, and then complete the Bidders List minority status and income information about your business, by checking ✓ on the applicable line. Information provided will be used only by the City of Kingsport to maintain bidders' records as required per 49 CFR Part 26.11.

Name of Business: \_\_\_\_\_

City/State of Business Location: \_\_\_\_\_

Type of Business: \_\_\_\_\_

Age of Business (years), Since Establishment: \_\_\_\_\_

1. Business owned (51% or more) by a minority? \_\_\_\_ Yes \_\_\_\_ No  
(Minorities include: Women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the Small Business Administration.)

2. Is business certified by the TNUCP as a Disadvantaged Business Enterprise, and on the current TNUCP Certified DBE Directory? \_\_\_\_ Yes \_\_\_\_ No

**Annual Gross Income of Business**

\_\_\_\_ Less than \$500,000

\_\_\_\_ \$500,000 – \$1 million

\_\_\_\_ \$1 million – \$2 million

\_\_\_\_ \$2 million – \$5 million

\_\_\_\_ \$5 million – \$10 million

\_\_\_\_ \$10 million – \$15 million

\_\_\_\_ \$15 million – \$19.5 million

\_\_\_\_ \$19.5 million or above

**IF YOU HAVE COMPLETED AND RETURNED THIS FORM TO THE CITY OF KINGSFORT WITHIN THE PAST THREE (3) YEARS, AND YOUR INFORMATION REMAINS UNCHANGED, ENTER ONLY YOUR BUSINESS NAME AND ADDRESS ABOVE and PLEASE CHECK HERE:**

## General Terms and Conditions

- A. Taxes – The City is exempted from Federal Excise Taxes, State of Tennessee and local sales taxes and Proposer must quote prices which do not include such taxes, unless by law the taxes must be a part of the price. Exemption Certificates will be furnished upon request.
- B. Indemnification – The City of Kingsport, its officers, agents and employees shall be held harmless from liability from any claims, damages and actions of any nature arising from the use of any service and/or materials furnished by the Proposer, provided that such liability is not attributable to negligence on the part of the using agency of failure of the using agency to use the materials in the manner outlined by the Proposer in descriptive literature or specifications submitted with the Proposal. The City will not indemnify the successful Proposer.
- C. Patent Liability – The successful Proposer, at his own expense, will defend any suit which may be brought against the City to the extent that it is based on a claim that the goods furnished through a contract/agreement infringes a United States patent, and in any such suit will pay those costs and damages which are attributable to such claims and finally awarded against the City.
- D. Limitation of Remedies – Any remedies in the Proposer's Proposal, to include Agreement, License Product Agreement, Terms and Conditions, Literature, etc., that may be considered in agreement to waive the legal rights of the citizens of the City of Kingsport may be considered cause for rejection.
- E. All agreements related to the purchase and sale of any product pursuant to this bid document will include the following conditions: "Notwithstanding anything in this section to the contrary, any provision of provisions of this Section will not apply to the extent they are (it is) finally determined by a court of competent jurisdiction, including Appellate review if pursued, to violate the laws or Constitution of the State of Tennessee."
- F. Insurance – During any work performed by the successful Proposer(s) on the premises of the City or otherwise, the successful Proposer(s) agrees to take such measures as to effectually prevent any accident to persons or property during or in connection with the work; and especially to indemnify and save harmless the City from all loss, costs, damages, expense and liability for property damage and for bodily injuries to, or death of, any persons, including without limitation, as to both property damage and bodily injury, and the Proposer and the City and their representative agents and employees, occasioned in any way by the acts or omissions of the Proposer, or the Proposer's agents, employees, during or in connection with said work, excepting only property damage, bodily injury or death caused by the sole negligence of the City, its agents or employees.

The successful Proposer shall maintain such insurance as will protect it from claims under Workers' Compensation Acts and from any claims for bodily injuries, including death, either to its employees or others, and from all claims on account of property damage, which may arise in connection from said work.

All Certificates of insurance and policies shall contain the following clause: "The insurance covered by this Certificate will not be canceled or materially altered, except after thirty (30) days written notice has been received by the City."

Insurance required with a minimum of One Million Dollars (\$1,000,000.00) limits are Comprehensive General Public and Professional Liability, Comprehensive Automobile Liability and Owner's Liability. Malpractice Insurance is required with a minimum limit of One Million Dollars (\$1,000,000.00) per occurrence, Five Million Dollars (\$5,000,000.00) aggregate.

This requirement will be effective for the life of any contract/agreement entered into by the Proposer and the City.

- G. F.O.B. – All prices will be quoted F.O.B. Kingsport, Tennessee, delivery to City of Kingsport's location shall be without additional charge.
- H. By submission of a signed Proposal, the Proposer certifies total compliance with Title VI and Title VII of the Civil Rights Act of 1964, as amended, and all regulations promulgated thereunder.
- I. Contracts and purchases will be made or entered into with the lowest, responsible, compliant Proposer meeting specifications for the particular grade or class of material, work or service desired in the best interest and advantage to the City of Kingsport. Responsible Proposer is defined as a Proposer whose reputation, past performance, and business and financial capabilities are such that he would be judged by the appropriate City authority to be capable of satisfying the City's needs for a specific contract or purchase order.
- J. The City reserves the right to determine the low Proposer either on the basis of the individual items or on the basis of all items included in its Request for Proposal, unless otherwise expressly provided in the Request for Proposal. The City reserves the right to accept any item or group of items of any kind and to modify or cancel in whole or in part, its Request for Proposal.
- K. All contracts or purchase orders issued for this award will be governed by the laws of the State of Tennessee. Arbitration is not permitted and if a dispute arises between the parties concerning any aspect of the contract or purchase order and it cannot be resolved by mutual agreement, any party may resort to resolution of the dispute by litigation in the state or federal courts for Kingsport, Sullivan County, Tennessee. The parties waive their right to a jury trial. Mandatory and exclusive venue and jurisdiction for any disputes shall be in state or federal courts for Kingsport, Sullivan County, Tennessee.
- L. The City, in accordance with its governing directives, reserves the right to reject any and all Proposals, to waive any informality or irregularities in Proposals and unless otherwise specified by the Proposer, to accept any item.
- M. All contracts, purchase orders, and any documents or material obtained by the City may be subject to disclosure in whole or in part pursuant to the Tennessee Open Records Act set out in T.C.A. 10-7-503 et seq. without regard to any provision contained in the document declaring information confidential.
- N. All contracts or purchase orders will include a provision that is not assignable by the Proposer without the written consent of the City.



**Request for Qualifications (RFQ)**  
**Architectural and Engineering Services**  
**for Kingsport Area Transit Service (KATS) Vehicle Storage/Maintenance Facility**  
**Proposals must be submitted**  
**No later than 4:00 PM, Eastern Time**  
**October 23, 2019**

The City of Kingsport, in conjunction with the Kingsport Area Transit Service (KATS), is seeking statements of qualifications from experienced firms that are TDOT pre-qualified with an unlimited status to provide architectural, survey, engineering design, cost estimating, bidding, and construction contract administration services for a new vehicle storage/maintenance facility. These services are being sought in accordance with Federal Transit Administration, State of Tennessee, and City of Kingsport laws and statutes. The purpose of the RFQ process is to identify the most qualified respondents.

KATS proposes to build a new vehicle storage/maintenance facility which would complete Phase 2 and will include construction of a transit vehicle storage building, parking, and a wash bay facility for transit vehicles with enclosed parking provided for 14 buses, 10 paratransit vehicles and 2 staff vehicles. The size of this storage/maintenance facility is estimated to be 18,000 square feet. Phase 2 of this project is critical for completing the comprehensive plan for this site and is necessary to operate efficiently and effectively. As public transit expands and grows, so too will the vehicle fleet. In addition to storing and maintaining our current fleet, the Phase 2 bus storage facility will be able to house larger buses and additional vehicles. KATS anticipates potential larger/longer bus styles for the future with transit expansion. The bus wash facility will increase the longevity and performance of the fleet. Having both vehicle storage and maintenance needs on the same site will greatly enhance the efficiency of our operations.

This project will require a firm or team that possesses the skills and experience necessary to design a vehicle storage/maintenance facility and a vehicle wash system. Successfully completing this project will require that the respondent demonstrate expertise and experience in the following areas, at a minimum:

- Expertise in structural, civil, environmental, geotechnical, transportation, mechanical & electrical engineering.
- Expertise in transit facility architecture and design (vehicle storage facility will need to aesthetically parallel the new transit facility).
- Experience and knowledge with FTA, TDOT, and local jurisdiction design requirements related to (but not limited to) geotechnical, environmental, traffic, and right of way standards.

- Understanding of procurement and construction management processes to provide a complete and workable project.
- Proficient in management of all project work and coordination of subconsultant's work.

The desire is to have this work completed by the end of June 2020 and to have the project bid in August 2020.

Because this project will be federally funded, the successful consultant(s) shall be subject to FTA's required certifications and assurances which include: overall federal regulation compliance, Fly America, energy conservation, clean water, lobbying, access to third party contract records, changes to federal requirement, bonding, clean air, recycled products, ADA access, no federal government obligation to third parties, false or fraudulent statements and claims, termination, debarment and suspension, civil rights, resolution of disputes, breaches and other litigation, disadvantaged business enterprises (DBE), seismic safety, incorporation of federal transit administration terms, small business participation, bidder's list form, and veterans employment.

#### **RFQ selection and award process**

This procurement will follow the qualifications-based competitive proposal procedures of the Brooks Act. As such, **no pricing** structure is to be included in the RFQ documents submitted.

#### **Evaluation committee**

An evaluation committee will consist of members who have been selected because of their special expertise and knowledge of the service(s) and/or product(s) that are the subject of this RFQ. Proposers may not contact members of the evaluation committee.

#### **Right to reject proposals**

The evaluation committee reserves the right to reject any and all proposals.

#### **Proposal scoring**

Accepted proposals will be reviewed by an evaluation committee and scored against the stated criteria. The evaluation committee's scoring will be tabulated and proposals ranked based on the numerical scores received.

#### **Additional factors for proposal consideration**

Based on the evaluation of the written proposal, the evaluation committee may require additional information from the top-scoring proposers to clarify or confirm proposal information.

Additional information obtained may be of any or all of the following; proposer interviews, reference reviews, proposer presentation/demonstration, on-site visits of proposer designed facilities.

The evaluation committee will make every reasonable attempt for scheduling interviews or site visits at a time and location that is agreeable to the proposer. Failure of a proposer to fulfill or accommodate additional information requests from the evaluation committee may result in rejection of that proposer's proposal. Any and all expenses incurred regarding this RFQ request will be the sole responsibility of the submitter.

### **Final evaluation**

The evaluation committee will review their evaluations and make adjustments to the requirements scores based on the information obtained in the interview/presentation, demonstration, possible reference checks, and any other pertinent proposer information.

### **Evaluation criteria**

This procurement will follow the qualifications-based competitive proposal procedures of the Brooks Act. As such, price will be excluded as an evaluation factor and proposer's qualifications will be evaluated/ scored based on the identified criteria:

The proposals will be scored using the following weighted criteria. A total of 40 points is possible:

#### **1 Key Personnel/Capacity: 25%**

The extent to which the firm has the personnel, equipment, capacity and facilities with the necessary experience and training to perform the work.

#### **2 Past Performance: 30%**

The extent to which the firm has demonstrated competence in performing similar work and/or the extent of former client satisfaction

#### **3 Proposal/Technical Criteria: 30%**

The extent to which the firm's proposal addresses the key technical areas of importance and tasks as listed in the scope of services and demonstrates a thorough understanding of the scope of the undertaking.

#### **4 Design: 10%**

The extent to which the proposer's past designs have fit into the aesthetics of the surrounding buildings and/or landscape.

#### **5 DBE Participation: 5%**

The extent to which the firm has utilized DBE firms as subconsultants to meet contractually assigned goals.

### **Proposal format**

Proposers shall remit five (5) copies of their statement. One copy must contain all seals and original signatures; all others may contain photocopies of the seals and signatures. Statement format is to be twelve (12) point Times New Roman font with one (1) inch borders on all sides. Proposers are to include a full electronic copy of their statement package (CD or flash drive) in a Microsoft Windows compatible format (Microsoft Word, Excel, PDF, etc.) Any alteration to the forms contained in the RFQ may be cause for the statement to be declared as non-responsive.

The proposal information should be divided as follows:

Cover Letter

Divider Tab 1: Qualifying Experience, Site Development, and Architectural Design in an Urban/Transit setting

Divider Tab 2: Key Personnel Qualifications

Divider Tab 3: Project Management and Approach to the Work

Divider Tab 4: Proven Quality of Similar Work

Divider Tab 5: DBE Participation & Affidavits Form

The proposer shall supply the data in the appropriate form. A proposer's failure to follow the format specified may be considered non-responsive.

## **Project background**

KATS began service in 1995 to serve the citizens of Kingsport and is located in downtown at 900 East Main Street. The service currently operates six fixed route bus routes and ten ADA Paratransit vehicles daily Monday through Friday from 7:30 AM until 5:30 PM. The service transported over 180,000 passengers last year. KATS is considered a small urban transit agency by the Federal Transit Administration (FTA). It serves 51,000 residents of the City and 107,000 in the urbanized area. KATS has retooled bus routes to provide better and more efficient service to new and growing areas of Kingsport.

In 2014, KATS conducted a transit facility needs assessment study, as well as an environmental assessment study to determine the best solution (renovate or construct new) for the transit facility. Based on the information collected, it was recommended that KATS construct a new comprehensive transit facility to serve the existing and future needs of KATS. The preferred location chosen for the project was the Kingsport Foundry Site located at 900 East Main Street in downtown Kingsport. This triangular site bordered by East Sullivan Street, East Main Street and Unicoi Street was the ideal location for the new transit facility which now serves as a gateway to downtown Kingsport. After 5 years of planning, researching, and accumulating funding, the Kingsport Area Transit Service began operations out of their new transit facility on June 10, 2019. KATS is extremely proud of this new facility; however, the transit center project is not complete until Phase 2 of the center has been implemented.

Phase 2 will include construction of a transit vehicle storage building, parking, and a wash bay system for transit vehicles with enclosed parking provided for 14 buses, 10 paratransit vehicles and 2 staff vehicles. The size of this storage/maintenance facility is estimated to be 18,000 square feet. Phase 2 of this project is critical for completing the comprehensive plan for this site and is necessary to operate efficiently and effectively. As public transit expands and grows, so too will the vehicle fleet. In addition to storing and maintaining our current fleet, the Phase 2 bus storage facility will be able to house larger buses and additional vehicles. KATS anticipates potential larger/longer bus styles for the future with transit expansion. The bus wash facility will increase the longevity and performance of the fleet. Having both vehicle storage and maintenance needs on the same site will greatly enhance the efficiency of our operations.

Currently, the KATS vehicles are stored near the prior transit center location at 141 Clay Street. This location is approximately 1 mile from the new transit center at 900 East Main Street. On the mornings of operation, employees are required to park their cars at the current location and shuttle down to the old facility. Upon reaching the garage, the employees pre trip their vehicles and return to the new facility to start the first 7:30 am run. At the end of the day, employees must return their vehicles to the parking garage in order to post trip. At this point, they will begin to shuttle back as they can to the new transit facility at 900 East Main Street in order to clock out and return to their own vehicles. This is only a temporary solution until the Phase 2 Transit Center vehicle storage/maintenance facility is built. By being co-located with the transit center, the bus storage will be in an ideal location; if a bus is needed, it will be a short distance to travel to obtain one in lieu of using excessive time and cost expended to retrieve stored vehicles from a remote location.

The preliminary project budget for the construction of Phase 2 Vehicle Storage/Maintenance facility is \$ 3.2 million.

KATS developed and submitted an Environmental Determination Report for FTA and received a Categorical Exclusion (CE) to further develop this project as currently scoped. Geotechnical work has recently been performed on the site. All project information will be made available to the successful consultant(s).

### **Submittals**

Qualifications may be mailed or delivered to the Procurement Manager, 225 West Center Street, Kingsport, TN 37660, but must be received no later than 4:00 P.M., Eastern Time October 23, 2019, at which time, will be publically opened and only the names of the submitters will be read aloud in the Council Room, City Hall, 225 West Center Street, Kingsport, TN 37660. Proposals received after 4:00 P.M., Eastern Time, October 23, 2019 will not be considered.

## **Federal Transit Administration Required Certifications and Assurances**

### **1. OVERALL FEDERAL REGULATION COMPLIANCE**

FTA Circular 4220.1F

All contractual provisions required by USDOT, as set forth in the FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement.

The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Recipient requests which would cause the Recipient to be in violation of the FTA grant terms and conditions.

### **2. FLY AMERICA REQUIREMENTS**

49 U.S.C. §40118 41 CFR Part 301-10

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

### **3. ENERGY CONSERVATION REQUIREMENTS**

42 U.S.C. 6321 et seq. 49 CFR Part 622 Subpart C

The Contractor agrees to comply with applicable mandatory energy efficiency standards and policies of applicable State energy conservation plans issued in accordance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6321 et seq., except to the extent that the Federal Government determines otherwise in writing. To the extent applicable, the Recipient agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, Subpart C.

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

#### 4. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251 -1387

Except to the extent the Federal Government determines otherwise in writing, the Contractor agrees to comply with all applicable Federal laws and regulations and follow applicable Federal directives implementing the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1387.

Specifically:

(1) The Contractor agrees to protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f through 300j-6.

(2) The Contractor agrees to comply with the notice of violating facility provisions of section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

#### 5. LOBBYING

31 U.S.C. 1352 49 CFR Part 20 2 C.F.R. § 200.450 2 C.F.R. part 200 appendix II (J)

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

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

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

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

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

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

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

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

## **6. ACCESS TO RECORDS AND REPORTS**

49 U.S.C. 5325 49 CFR 633.17 2 CFR 200.333

The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized



representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

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

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

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

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

## **7. FEDERAL CHANGES**

49 CFR Part 18 2 CFR 200

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

## **8. CLEAN AIR**

42 U.S.C. 7401 -7671q 40 CFR 15.61 49 CFR Part 18

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

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

## **9. NO GOVERNMENT OBLIGATIONS TO THIRD PARTIES**

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the

underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

## **10. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

31 U.S.C. 3801 et seq. 49 CFR Part 31 18 U.S.C. 1001 49 U.S.C. 5307

THESE REQUIREMENTS ARE APPLICABLE TO ALL CONTRACTS.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

## **11. TERMINATION**

2 CFR Part 200FTA Circular 4220.1E

a. Termination for Convenience: The Recipient may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Recipient to be paid the Contractor. If the Contractor has any property in its possession belonging to the Recipient, the Contractor will account for the same, and dispose of it in the manner the Recipient directs.

b. Termination for Default [Breach or Cause]: If the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the Recipient that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Recipient, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure: The Recipient in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to the Recipient's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from Recipient setting forth the nature of said breach or default, Recipient shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

e. Termination for Convenience: The Recipient, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default: If the Contractor fails to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the Recipient may terminate this contract for default. The Recipient shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for services performed in accordance with the manner or performance set forth in this contract.

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

i. Termination for Convenience or Default (Architect and Engineering): The Recipient may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Recipient shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the

Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

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

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

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

## **12. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

2 C.F.R. part 180 2 C.F.R part 1200 2 C.F.R. part 200.213 2 C.F.R. part 200 Appendix II (I) Executive Order 12549 Executive Order 12689

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the proposer is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by the Recipient. If it is later determined that the proposer knowingly rendered an erroneous certification, in addition to remedies available to the Recipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## **13. CIVIL RIGHTS REQUIREMENTS**

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

### **Nondiscrimination**

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition,

the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

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

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq ., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

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

#### **14. BREACHES AND DISPUTE RESOLUTION**

49 CFR Part 18 FTA Circular 4220.1F

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the Recipient. 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 Recipient. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Recipient shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the Recipient, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

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

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

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Recipient or Architect/Engineer shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **15. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

### 49 CFR Part 26

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Recipient deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)). c. Proposers are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following prior to contract award:

1. The names and addresses of DBE firms that will participate in this contract;
  2. A description of the work each DBE will perform;
  3. The dollar amount of the participation of each DBE firm participating;
  4. Written documentation of the proposer's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
  5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; or
  6. If the contract goal is not met, evidence of good faith efforts to do so.
7. Recipient is authorized to make the determination that contractor has made a good faith effort (GFE) to achieve the

required DBE participation. The contractor can demonstrate that it has made a good faith effort in meeting the assigned goal by doing either of the following:

- a. Shows evidence that it has met the DBE participation by submitting in writing all requirements in Section c (1-5) above.
  - b. Documents that it made good faith efforts to meet the DBE participation goal, even though it did not succeed in achieving it. In this case, the contractor must submit the Certificate of Good Faith Efforts (Exhibit A) and all relevant documentation to the Recipient for a GFE determination with its bid submittal.
8. The efforts employed by the contractor should be those that one could reasonably expect a contractor to take if the contractor were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE concession goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. (49 CFR §26.53 and Appendix A to 49CFR Part 26 provides guidance regarding GFE).
9. In the event that the Recipient determines that the contractor has failed to meet the GFE requirements, contractor is entitled to appeal this determination by submitting a written request. The provisions of 49 CFR §26.53(d) apply to such an appeal. A request for administrative reconsideration must be sent within three (3) calendar days of receiving written notice from the Recipient of the failure to meet the GFE requirement.
10. Proposers must present the information required above prior to contract award (see 49 CFR 26.53(3)).
- d. The successful proposer will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
  - e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 10 days after the contractor's receipt of payment for that work from the Recipient. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.
  - f. The contractor must promptly notify the Recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Recipient.

## **16. AMERICANS WITH DISABILITIES ACT OF 1990 REQUIREMENTS**

The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities;

with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

(3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38; (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

(5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

(6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

(7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

(8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;

(9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;

(10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

(11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

## **17. SEISMIC SAFETY REQUIREMENTS**

42 U.S.C. 7701 et seq. 49 CFR Part 41

The 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.



## **18. ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES**

The Contractor agrees to comply with the following requirements:

. 49 U.S.C. 5301(d), which states the federal policy that elderly persons and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy.

. Section 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C 12101 which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. 4151 which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. And any subsequent amendments thereto:

I. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37.

II. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

III. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

IV. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

V. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

VI. U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

VII. U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

VIII. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and

IX. U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; and

X. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; Any implementing requirements FTA may issue.

XI. Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

## **19. Bonding Requirements**

### **Applicability to Contracts**

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
  1. 50% of the contract price if the contract price is not more than \$1 million;
  2. 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  3. \$2.5 million if the contract price is more than \$5 million.
- d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

#### **Flow Down**

Bonding requirements flow down to the first tier contractors.

## **20. Breaches and Dispute Resolution**

### **49 CFR Part 18 FTA Circular 4220.1F**

#### **Applicability to Contracts**

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

#### **Flow Down**

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

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

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. 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 [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

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

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

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.