



September 11, 2022

PROJECT: Temporary Employment Services

Dear Prospective Submitter:

You are invited to submit a sealed price proposal for the above project. A copy of the Public Notice, Affidavits Form, Request for Proposal, and Federal Transit Administration documents are attached. Please make certain you sign your Proposal Letter, Affidavits Form (must also be notarized), Federal Requirements Check List Form, and various FTA Certification Forms and include with your sealed proposal. Other items may be required to be included in your proposal so please read the documents thoroughly.

If you have questions please contact me at (423) 229-9315 or email [brentmorelock@kingsporttn.gov](mailto:brentmorelock@kingsporttn.gov).

Regards,

A handwritten signature in blue ink that reads "Brent Morelock".

Brent Morelock, CPPO, CPPB  
Procurement Manager

## REQUEST FOR PROPOSAL

Sealed Price Proposals for the following will be received by the Procurement Manager until 4:00 P.M., Eastern Time, October 6, 2022, and at that time publicly opened in Conference Room #436, 4<sup>th</sup> Floor, City Hall located at 415 Broad St., Kingsport, TN. All proposals will be considered for award or rejection at a later date.

PROJECT: Temporary Employment Services

Documents for the above referenced item are available online at <https://www.kingsporttn.gov/city-services/purchasing/> . Interested parties may also contact the Procurement Department at (423) 229-9419.

A Pre-Proposal Conference will be held in Conference Room #307, 3<sup>rd</sup> Floor, City Hall, 415 Broad Street, Kingsport, TN at 2:00 P.M., Eastern Time, September 26, 2022.

By submission of a signed proposal bid, the bidder certifies total compliance with Title VI and Title VII of the Civil Rights Act of 1964, as amended, and all regulations promulgated thereunder.

No submitted proposals may be withdrawn for a period of sixty (120) days after the scheduled closing time of the receipt of proposals. All proposals shall be signed, sealed and addressed to the Procurement Manager, City of Kingsport, 415 Broad Street, Kingsport, TN 37660 and marked "Temporary Employment Services". The City by its governing regulations reserves the right to accept or reject any or all proposals received, to waive any informalities in bidding and to re-advertise.

PUB 1T: 09/11/22

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. Do you or any officers/part-owners/stake-holders/employees of this company have any relative(s) (relatives include spouse, children, stepchildren or any to whom you are related by blood or marriage) that are currently employed by the City of Kingsport, Tennessee, including the Kingsport City School System or serve on the Kingsport Board of Mayor and Aldermen or the Kingsport Board of Education?  
\_\_\_\_\_ Yes \_\_\_\_\_ No

If you answered yes please state the name and relationship of the employee or member of the Kingsport Board of Mayor and Aldermen or Kingsport Board of Education member  
\_\_\_\_\_

5. Are you or any officers/part-owners/stake-holders/employees of this company also employees of the City of Kingsport, including the Kingsport City School System or serve on the Kingsport Board of Mayor and Aldermen or Kingsport Board of Education? \_\_\_\_\_ Yes \_\_\_\_\_ No

If you answered yes please state the name of the employee or board member  
\_\_\_\_\_

6. By submission of this form, the vendor is certifying that no conflicts of interest exist.

DRUG FREE WORKPLACE REQUIREMENTS:

7. 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:

8. 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:

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

IRAN DIVESTMENT ACT:

11. 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:**

12. 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.
13. 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:**

14. 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.

**NON-BOYCOTT OF ISRAEL AFFIDAVIT**

15. Concerning the Non-Boycott of Israel Act (TCA 12-4-1 et seq.), by submission of this bid/quote/proposal, each supplier and each person signing on behalf of any supplier 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 supplier is not boycotting Israel pursuant to § 12-4-1 and will not during the term of any award. Note: Applicable only to contracts of \$250,000 or more and to suppliers with 10 or more employees.

The undersigned hereby acknowledges and verifies that the response submitted to this solicitation is in full compliance with the applicable laws/listed requirements. The undersigned also declares under penalty of perjury under the laws of the State of Tennessee that the foregoing is true and correct.

SIGNED

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

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

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

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

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

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



## **REQUEST FOR PROPOSALS**

### **TEMPORARY EMPLOYMENT SERVICES**

#### **PROPOSAL INSTRUCTIONS**

The intent of this proposal is to establish a contract for Temporary Employment Services for the City of Kingsport.

The specifications contained within this proposal package are the minimum requirements. Any omission shall not relieve the Vendor of furnishing quality service in a timely manner. Any variances must be clearly identified.

No contract entered into as the result of the Vendor response to this document may be subject to any type of non-disclosure agreement.

#### **SUBMITTAL PROCEDURES**

Proposals must be submitted to the Procurement Manager, City of Kingsport, 415 Broad St, Kingsport, TN 37660, no later than 4:00 PM, Eastern Time, on October 6, 2022, Proposals will be opened in conference Room #436, 4<sup>th</sup> Floor, City Hall.

A pre-proposal conference will be held at 2:00 PM, Eastern Time, on September 26, 2022 in the BMA Conference Room #307, 3<sup>rd</sup> Floor, City Hall, 415 Broad St, Kingsport, TN 37660

One original proposal signed by an authorized representative and three (3) copies (for a total of 4) along with an electronic copy shall be enclosed in a sealed envelope addressed as follows:

Procurement Manager  
City of Kingsport  
415 Broad Street  
Kingsport, TN 37660  
Request for Proposal: "Temporary Employment Services"

Proposal submittals, modifications, or corrections received after the scheduled closing time will not be considered and will be returned unopened. The City of Kingsport (the City) is not responsible for delays in delivery by mail, courier, etc.

No submitted proposals may be withdrawn for a minimum of one hundred twenty (120) days after proposal opening.

No oral interpretation will be made by any Vendor as to the meaning of the proposal specifications or any part thereof. Each written request for clarification or interpretation shall be made in writing to the City.

**NOTE:** It is the intent of the City to issue one (1) addendum, if necessary, to answer any and all Requests for Information or Clarification (RFI). All RFI's shall be submitted to the Procurement Manager by email (BrentMorelock@KingsportTN.gov) and must be received by 4:00 PM, Eastern Time, on September 27, 2022. The addendum will be issued by 4:00 PM, Eastern Time, on October 3, 2022, and will be available online at <https://www.kingsporttn.gov/city-services/purchasing/>

It shall be the Vendor responsibility to make inquiry as to the addenda issued. Any and all addenda shall become part of the specifications and all vendors shall be bound by such addenda, whether or not received by vendor.

**MINIMUM PROPOSER REQUIREMENT**

All proposers must;

- Have at least two (2) years previous experience (minimum) of providing Temporary Employment Services of similar requirements.
- Have sufficient and skilled staff to perform the Services required
- Include a reference page, which shall contain contact names, telephone numbers, and email addresses, which the City can use in the verification process;
- Be an equal employment opportunity employer, abide by the Title VI guidelines and all applicable state and federal laws
- Provide signed and notarized Compliance Affidavits Form.
- Provide proof of the minimum insurance requirements.

**ACCEPTANCE/REJECTION OF PROPOSALS**

The City reserves the right to accept any or all proposals and make the award to the vendor, who in the opinion of the City, is in their best interest. Considerations in the award shall be: company and employee qualifications, service guarantee, and necessary resources for the job, agreement with the City's terms and conditions, and cost; in compliance with the City's Code of Ordinances.

Vendor Proposal - The City reserves the right to reject the proposal of any vendor who has previously failed in the proper performance of an award, has failed to deliver on time contracts of similar nature, who has been suspended or disbarred from doing business with the City, or who is not in a position to perform properly under this contract.

The City, in accordance with its governing directives, reserves the right to reject any or all proposals and to waive informalities, irregularities, and technicalities in the request for proposal process and to issue a new request for proposals, and unless otherwise specified by the vendor, to accept any item.

The intent of the City is to award Temporary Employment Services to two primary vendors. However, the City maintains the right to utilize the services of other Temporary Services Providers in the event we determine it is in our best interests to do so. Should we change vendors in the future per this RFP, we may refer your employees who are working for the city or your referrals to the new vendor.

**Insurance Required**

During any work performed by the successful Vendor(s) on the premises of the City or otherwise, the successful Vendor(s) agrees to take such measures as will effectively prevent any accident to person(s) 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 Vendor and the City and their representative agents and employees, occasioned in any way by the acts or omissions of the Vendor, or the Vendor 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 Vendor shall maintain such insurance as will protect 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.

Insurance required (minimum):

- 1.1.1. One Million Dollars (\$1,000,000.00) limit Comprehensive General Public and Professional Liability, Comprehensive Automobile Liability and Owner's Liability.
- 1.1.2. One Million Dollars (\$1,000,000.00) Malpractice Insurance per occurrence, Five Million Dollars (\$5,000,000.00) aggregate.
- 1.1.3. 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."

The insurance requirements will be effective for the life of any contract/agreement entered into by the Vendor and the City.

**GENERAL TERMS AND CONDITIONS**

Taxes – The City is exempt from Federal Excise Tax, State of Tennessee and local sales tax. The Vendor must quote prices which do not include these taxes, unless by law the taxes must be a part of the price. Exemption certificates will be furnished upon request.

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.

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 Vendor, provided that such liability is not attributable to negligence on the part of the using agency or failure of the using agency to use the materials in the manner outlined by the Vendor in descriptive literature or specifications submitted with the Proposal. The City will not indemnify the successful Vendor.

Patent Liability – The successful Vendor, 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.

Limitation of Remedies – Any remedies in the Vendor'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.

All agreements related to the purchase and sale of any product pursuant to this proposal 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."

By submission of a signed Proposal, the Vendor certifies total compliance with Title VI and Title VII of the Civil Rights Act of 1964, as amended, and all regulations promulgated thereunder.

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.

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.

**PAYMENT**

Payment to the Contractor shall be made net thirty (30) days after monthly invoice is submitted.

**ASSIGNMENT**

Neither party to the contract shall assign the contract or subcontract it as a whole without the written consent of the other, nor shall the Contractor assign any monies due or to become due to him/her hereunder, without the previous written consent of the City.



## **TEMPORARY EMPLOYMENT SERVICES**

The intent of this Request for Proposal (RFP) is to obtain fixed price proposals from vendors to provide Temporary Employment Services for various City of Kingsport departments and divisions on an as-needed basis. The City of Kingsport reserves the right to make awards to one or more vendors as best meets the City needs. Staffing assignments may be anywhere from one day or one week, while other assignments may last a few months. The City of Kingsport does not guarantee any minimum amount of services.

All bidders must comply with the specifications as outlined below:

### **1. VENDOR QUALIFICATIONS**

- Have at least two (2) years previous experience (minimum) of providing Temporary Employment Services of similar requirements.
- Have sufficient and skilled staff to perform the Services required
- Reference page, which shall contain contact names, telephone numbers, and email addresses, which the City can use in the verification process;
- Be an equal employment opportunity employer, abide by the Title VI guidelines and all applicable state and federal laws
- Signed and notarized Compliance Affidavits Form.
- Proof of the minimum insurance requirements

### **2. Vendor Background Screening Services**

Provide best qualified candidates for temporary positions. Vendor should include their employment process/practices which should include, but not limited to;

- I-9 verification
- E-Verify
- Criminal background
- Skills assessment
- Drug Screen
- Essential Function test

### **3. CONTACT PERSONNEL**

A good working relationship must develop between the City of Kingsport and the successful vendor. The vendor will provide a contact(s) to handle billing inquiries and service related issues. In the event the usual contact is unavailable, the vendor will notify Human Resources of the change.

### **4. AUTHORIZED CITY OF KINGSPORT CONTACTS**

The City of Kingsport authorizes the following persons to request services from the selected vendor(s):

Human Resources Director	Tyra Copas
HR Administrator	Tonya Fletcher
HR Specialist	Tracie Warren

**PRICE STRUCTURE**

Vendors are to quote for each service listed herein and any volume discounts with thresholds for discounts;

- Referral Bill Rate (markup %) – applicants referred by City
- Regular Bill Rate (markup %) – applicants recruited by the Vendor

**TEMPORARY POSITIONS Estimated number of positions and their current pay rate before any markup**  
(No hours guaranteed)

**Kingsport Aquatic Center**

- 15 Concessions workers\* \$9.50-\$10.50/hr.
- 10 Gatekeepers \$9.00-\$9.50/hr.
- 65 Life Guards \$10.50-\$11.00/hr.
- 4 Water Safety Instructors \$10.50-\$11.00/hr.

**Parks and Recreation Department**

- 65 Umpires/referees (paid by game) \$12.00-\$25.00/game est. 3000 games/yr.
- 40 Concessions workers\* \$9.50-\$10.50/hr.
- 5 Allandale hosts/hostesses \$10.00/hr.
- 10 Open Gym/Facility rental supervisors \$10.00-\$12.00/hr.
- 15 Field/Gym Supervisors \$10.00-\$12.00/hr.
- 70 Scorekeepers \$9.00/hr.
- 6 Clerical/office support \$10.00-\$12.00/hr.
  
- 24 Summer/Seasonal playground staff \$8.00-\$11.00/hr.
- 2 Splash Pad/Maintenance Seasonal staff \$8.00-\$10.00/hr.

**Miscellaneous**

- 10-20 Maintenance Workers/Utility Workers \$13.00/hr.
- 2-5 Administrative/Fiscal Assistant \$10.00-\$12.00/hr.
- 1-2 Transit Bus Drivers \$10.00/hr.
- 3 Carousel Operators/Cashiers \$9.00-\$10.00/hr.

\*total of 80 concession workers; could work interchangeably in either assignment

**VENDOR RESPONSIBILITIES**

- a. Provide competent workers with the qualifications specified for each job assignment.
  
- b. Provide replacement workers within a timely fashion after receipt of call when the City determines that a temporary worker is not acceptable. The City of Kingsport reserves the right to reject or to have replaced any temporary workers judged deficient by the ordering

- department/division.
- c. Ensure that temporary workers assigned have met the screening process of the vendor.
  - d. Ensure that all temporary workers in a manual labor position can fulfill the physical requirements of the job. This includes but is not limited to lifting requirements and the use of certain hand or power tools. If temporary workers are unable to use certain tools or vehicles/equipment due to workers compensation liability to the temporary service, the City will be informed before the temporary workers are placed.
  - e. Ensure all temporary workers report to work at the specified facility at the scheduled time and in the proper attire. Understand that if temporary workers do not show up on time or in appropriate attire, the city reserves the right to request a different worker or to cancel placement.
  - f. Understand that refusal or inability to wear provided personal protective equipment (PPE) or participating in an unsafe act will result in temporary worker being dismissed or refused.
  - g. Understand that the “Hourly Rate Billed to the City of Kingsport” will be straight time up to forty-hours. The straight-time rate shall be increased by a factor of 1.5 for each hour worked, during a single workweek, in excess of forty hours (overtime), provided the using/ordering department authorized such excess hours.
  - h. Understand that the City of Kingsport will not pay for holiday hours or for hours that the company closes due to inclement weather or company-wide meetings.
  - i. Understand the vendor is solely responsible for the provision of and payment for all workers compensation claims. The City of Kingsport does not and will not assume any liability for any worker's compensation claims, injuries or other claims that a temporary worker may file. Such claims shall be the sole responsibility of the contractor.

#### **DRIVERS LICENSES**

Certain positions may require valid Driver’s Licenses.

If driving is a requirement of a position, the City of Kingsport will require a Department of Motor Vehicle check before the temporary worker begins work. The cost of this service shall be incurred by the vendor. A copy of the DMV report may be required.

#### **EMPLOYED BY THE VENDOR**

The vendor shall employ all temporary workers. The vendor shall be responsible for all payroll, taxes, worker’s compensation, insurance and other federal and state requirements for temporary workers. The City of Kingsport is not the employer

#### **FLSA**

The City of Kingsport will not be considered a joint employer of the vendor’s temporary workers under this contract. Furthermore, the City will not be liable for violations of the Fair Labor Standards Act (FLSA). Specifically, the vendor shall:

- a. Determine the FLSA status (exempt or non-exempt) status of their employees.
- b. Keep track of the total hours its employees actually work, for all employers, in each workweek.
- c. Compute and pay its employee's worker's wages, including overtime and benefits.
- d. Maintain FLSA required records for its workers.

#### **WORKERS COMPENSATION**

Contractor shall maintain in force Workers' Compensation coverage in accordance with the Statutory Requirements and Limits of the State of Tennessee and shall require all Subcontractors to do likewise.

#### **HIRING OF TEMPORARY EMPLOYEES**

Vendors are to provide temp to hire provisions (hours worked and/or duration of assignment) in their proposal

#### **REPORTING**

Vendor will provide quarterly report summarizing hours per employee per assignment for the year to date in addition to billings. The agency will maintain all books, documents, papers, accounting records, and other evidence pertaining to the fee paid under this contract and make such materials available to the City of Kingsport at our request during the period of this contract.

#### **INTERVIEWS**

Depending on the length or type of assignment, resumes and interviews may be requested. The city reserves the right to reject any temporary worker for any reason.

#### **TIMECARDS**

The vendor shall supply all temporary workers with time cards or other appropriate timekeeping methods. Hours worked will be signed on a daily or weekly basis by a City of Kingsport supervisor. The city will pay only for actual hours worked at the designated city location.

#### **EMPLOYMENT OF CITY WORKERS**

The Agency will not engage, on a full or part-time, or other basis during the period of the Contract, any City employee.

#### **CONTRACT RENEWAL OPTIONS**

The contract will be awarded for a period of three (3) years, starting upon award of proposal, with a renewal option on an annual basis in one (1) year increments, providing all terms, conditions, and costs are acceptable to both parties. The City reserves the right to request new proposals near the end of any contract period.

#### **CONTRACT CANCELLATION**

The City may cancel this Agreement at any time and for any reason, without cause and for its convenience, upon 30 days written notice to the Vendor.

**NONAPPROPRIATION OF FUNDS**

It is understood and agreed between the parties that if any agreement results from this RFP invitation, the entities shall be bound hereunder only to the extent of funds available or which may hereafter become available for the purpose of this agreement.

All contractors and/or subcontractors with the Kingsport Area Transit Service are required to meet the following federal requirements (operations management >\$100,000)

1. No Government Obligation to Third Parties
2. Program Fraud and False Statements and Related Acts
3. Access to Records and Reports
4. Federal Changes
5. Termination Certification
6. Civil Rights
7. Disadvantaged Business Enterprise (DBE)
8. Bidders/Proposers List Information (*Return Signed Form with Bid Proposal*)
9. Incorporation of Federal Transit Administration Terms
10. Government Wide Debarment and Suspension (Nonprocurement)
11. Breaches and Dispute Resolution
12. Lobbying Certification (*Return Signed Form with Bid Proposal*)
13. Clean Air
14. Clean Water Requirements
15. Fly America Requirements
16. Contract work Hours & Safety Standards Act
17. Public Transportation Employee Protective Arrangements
18. Charter Services
19. School Bus Operations
20. Substance Abuse Requirements
21. Drug Free Workplace (*Return Signed Form with Bid Proposal*)
22. Prompt Payment to Subcontractors
23. Energy Conservation Requirements
24. Recycled Products
25. ADA
26. City of Kingsport Protest Procedures
27. Disputes, Breaches, Defaults, or Other Litigation
28. Notification of Federal Participation

Additional information and description of the above requirements are available as requested. Signing this document certifies the vendor understands their responsibility to be in compliance with the above third party contract clauses. All the above contract clauses are attached with this document.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Name of Vendor

\_\_\_\_\_  
Date

## **NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

### **No Obligation by the Federal Government.**

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

**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**

**Program Fraud and False or Fraudulent Statements or Related Acts.**

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

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

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



**ACCESS TO RECORDS AND REPORTS**

**49 U.S.C. 5325**

**18 CFR 18.36 (i)**

**49 CFR 633.17**

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

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where 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.
3. 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.
4. 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).
5. FTA does not require the inclusion of these requirements in subcontracts.

**FEDERAL CHANGES**  
**49 CFR Part 18**

**Federal Changes** - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA(10) dated October, 2003) 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.

**TERMINATION**  
**49 U.S.C. Part 18**  
**FTA Circular 4220.1E**

**(Supplies and Service)**

**a. Termination for Convenience (General Provision)** The City of Kingsport / Kingsport Area Transit Service 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 the City of Kingsport / Kingsport Area Transit Service to be paid the Contractor. If the Contractor has any property in its possession belonging to the City of Kingsport / Kingsport Area Transit Service, the Contractor will account for the same, and dispose of it in the manner the Kingsport / Kingsport Area Transit Service directs.

**b. Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the City of Kingsport / Kingsport Area Transit Service may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the City of Kingsport / Kingsport Area Transit Service 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 Kingsport / Kingsport Area Transit Service, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

**c. Opportunity to Cure (General Provision)** The City of Kingsport / Kingsport Area Transit Service in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] 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 City of Kingsport / Kingsport Area Transit Service 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 the Kingsport / Kingsport Area Transit Service setting forth the nature of said breach or default, the City of Kingsport / Kingsport Area Transit Service 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 the City of Kingsport / Kingsport Area Transit Service 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 City of Kingsport / Kingsport Area Transit Service elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the City of Kingsport / Kingsport Area Transit Service shall not limit the City of Kingsport / Kingsport Area Transit Service's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

## 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.**

**Civil Rights** - The following requirements apply to the underlying contract:

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

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

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

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

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

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

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)**  
**49 CFR Part 26**

**Disadvantaged Business Enterprises**

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. If it is a transit vehicle manufacturer the bidder certifies that it has complied with the requirements of 49 CFR 26 by submitting an annual DBE goal to the FTA. The goal has either been approved or not disapproved by FTA. The bidder, if a nonmanufacturer supplier hereby certifies that the manufacturer of the transit vehicle to be supplied has complied with the requirements of 49 CFR section 26.
- 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 Kingsport Area Transit Service deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).
- c. The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the City of Kingsport on behalf of Kingsport Area Transit Service (a department of the City of Kingsport). In addition, the contractor may not hold retainage from its subcontractors.
- e. The contractor must promptly notify Kingsport Area Transit Service, 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 Kingsport Area Transit Service.

**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:**

**INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**  
**FTA Circular 4220.1E**

**Incorporation of Federal Transit Administration (FTA) Terms** - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, 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 City of Kingsport / Kingsport Area Transit Service s requests which would cause the City of Kingsport / Kingsport Area Transit Service to be in violation of the FTA terms and conditions.

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

### **Suspension and Debarment**

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

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

### **By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:**

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



## **BREACHES AND DISPUTE RESOLUTION**

### **49 CFR Part 18**

### **FTA Circular 4220.1E**

**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 City of Kingsport / Kingsport Area Transit Service's Director. 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 Director of Transit. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director of Transit shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Performance During Dispute** - Unless otherwise directed by the City of Kingsport / Kingsport Area Transit Service, 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 or damage.

**Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City of Kingsport / Kingsport Area Transit Service 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 City of Kingsport / Kingsport Area Transit Service 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 City of Kingsport / Kingsport Area Transit Service, (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.

**LOBBYING**  
**31 U.S.C. 1352**  
**49 CFR Part 19**  
**49 CFR Part 20**

**(Return signed form with bid proposal.)**

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

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

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

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

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

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

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name and Title of Contractor's Authorized Official

\_\_\_\_\_ Date

**DISCLOSURE OF LOBBYING ACTIVITIES**  
 Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
 (See reverse for public burden disclosure.)

Approved  
 by OMB  
 0348-0046

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter ____ date of last report _____
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<b>4. Name and Address of Reporting Entity:</b>  <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, <i>if known</i> .  Congressional District, <i>if known</i> :	<b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b>   Congressional District, <i>if known</i> :
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<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, <i>if applicable</i> :
--------------------------------------	--

<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b> \$
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<b>10. a. Name and Address of Lobbying Registrant</b> <i>(if individual, last name, first name, MI):</i>	<b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a)</i> <i>(last name, first name,</i> <i>MI):</i>
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16 Information requested through this form is authorized by 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of the information upon which reliance was placed by the clerks above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	<b>Signature:</b> _____ <b>Print Name:</b> _____ <b>Title:</b> _____ <b>Telephone No.:</b> _____ <b>Date:</b> _____
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**CLEAN AIR**  
**42 U.S.C. 7401 et seq**  
**40 CFR 15.61**  
**49 CFR Part 18**

**Clean Air** - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

**CLEAN WATER REQUIREMENTS**

**33 U.S.C. 1251**

**Clean Water** - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

**FLY AMERICA REQUIREMENTS**

**49 U.S.C. § 40118**

**41 CFR Part 301-10**

**48 C.F.R. part 47.4**

**Fly America Requirements**

a) Definitions. As used in this clause “International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. “United States” means the 50 States, the District of Columbia, and outlying areas.

“U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

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

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

e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

## **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

### **Contract Work Hours and Safety Standards**

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

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

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

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

## **PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS**

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

1. U.S. DOL Certification. Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.

2. Special Warranty. When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.

**1.** Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.



## **CHARTER SERVICE**

The contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that Recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(d);
2. FTA regulations, "Charter Service," 49 C.F.R. part 604;
3. Any other federal Charter Service regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

The contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

1. Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
2. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
3. Any other appropriate remedy that may apply.

The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

## **SCHOOL BUS OPERATIONS**

The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(f);
2. FTA regulations, "School Bus Operations," 49 C.F.R. part 605;
3. Any other Federal School Bus regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

If Contractor violates this School Bus Agreement, FTA may:

1. Bar the Contractor from receiving Federal assistance for public transportation; or
2. Require the contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

## **SUBSTANCE ABUSE REQUIREMENTS**

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency, or Agency, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with part 655 and to submit the Management Information System (MIS) reports to the Agency.

**CERTIFICATION REGARDING DRUG-FREE  
WORKPLACE REQUIREMENTS**

That \_\_\_\_\_  
Name of Bidder

hereby certifies that it will comply with Federal Transit Administration regulations regarding Drug-Free Workplace Requirements.

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Authorized Person Name and Title (Type or Print)

\_\_\_\_\_  
Signature of Authorized Person Date

### **Prompt Payment to Subcontractors**

- A. The Contractor is required to pay all Subcontractors for all work that the Subcontractor has satisfactorily completed, no later than thirty (30) business days after the Contractor has received payment from the City.
- B. In addition, all Retainage amounts must be paid by the Contractor to the Subcontractor no later than thirty (30) business days after the Subcontractor has satisfactorily completed its portion of the Work.
- C. A delay in or postponement of payment to the Subcontractor requires good cause and prior written approval of the General Manager, Purchasing.
- D. The Contractor is required to include, in each subcontract, a clause requiring the use of appropriate arbitration mechanisms to resolve all payment disputes.
- E. The City will not pay the Contractor for work performed unless and until the Contractor ensures that the Subcontractors have been promptly paid for the work they have performed under all previous payment requests, as evidenced by the filing with the City of lien waivers, canceled checks (if requested), and the Contractor's sworn statement that it has complied with the prompt payment requirements. Prime Contractors must submit a prompt payment form which identifies each subcontractor (both DBE and non-DBE) and the date and amount of the last payment to such subcontractor, with every payment request filed with the City.
- F. Failure to comply with these prompt payment requirements is a breach of the Contract, which may lead to any remedies permitted under law, including, but not limited to, Contractor debarment.

**ENERGY CONSERVATION REQUIREMENTS**

**42 U.S.C. 6321 et seq.  
49 CFR Part 622, subpart C**

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

The Contractor also agrees to include any applicable requirements in each subcontract, issued pursuant to this contract, financed in whole or in part with Federal assistance provided by FTA.

**RECYCLED PRODUCTS**

**42 U.S.C. § 6962**

**40 C.F.R. part 247**

**2 C.F.R. part § 200.322**

**Recovered Materials** - The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

**ADA ACCESS – MATERIALS AND SUPPLIES**  
**42 U.S.C. Chapter 126, Sections 12101 *et seq.***

Contractor shall meet all applicable requirements of the Americans with Disabilities Act of 1990, as amended, in fulfilling this contract.

The contractor also agrees to include any applicable requirements in each subcontract issued pursuant to this contract, financed in whole or in part with Federal assistance provided by FTA.



Analysis. When using Federal funds, the City will ensure that all Federal requirements, required clauses and certifications (including Buy America) are properly followed and included, whether in the State's master intergovernmental contract or in the City's purchase order. The City will obtain Buy America certification, if required, before entering into the purchase order. The overall cost of the SWC, not just the City's purchase price, will be considered in determining which FTA clauses, such as Buy America, will apply to the purchase.

## **21. Protest Procedures**

Any protest to the award of a contract by the City shall be submitted in writing to the Procurement Manager, with a copy to the City Manager, delivered to City of Kingsport, 225 W Center St, Kingsport, Tennessee 37660, not later than five (5) calendar days from the date of City's award decision. The appeal shall, at a minimum, identify the decision in question, specify all reasons why the appealing party disagrees in question, specify all reasons why the appealing party disagrees with the decision, and shall include all facts and justification, including technical information from the appealing party and information or a response from other bidders. So far as practicable, appeals will be decided upon the basis of the written appeal, information and written response submitted by the appealing party and other bidders; all parties are urged to make written submission as complete as possible. Failure of any party to timely respond (within 7 days of request receipt) to a request for information may be deemed by the City that such party does not desire to participate in the proceeding, does not contest the matter, or does not desire to submit a response, and in such event the appeal will proceed and will not be delayed due to the lack of a response.

Upon receipt and review of written submission and any independent investigation deemed appropriate by the City, the City Manager shall either (a) render a decision which shall be final and advise all interested parties of same in writing or (b) at the sole election of the City Manager, conduct an informal hearing at which the interested participating parties will be afforded an opportunity to present their respected position and facts, documents, justification and technical information in support thereof. Parties may, but are not required to be, represented by counsel at the informal hearing, which will not be the subject to formal rules of evidence or procedures. Following the informal hearing, the City Manager shall render a decision which shall be final and advise all interested parties thereof in writing. The City will disclose all information regarding the protest to FTA, and keep FTA informed about the status of the protest.

After exhausting all administrative remedies with the City, any party dissatisfied with the final decision of the City Manager, whether following review of the written submission or informal hearing, may utilize the appeal procedure set forth in Federal Transit Administration Circular 4220 (as amended). Federal Transit Administration (FTA) reviews of protests will be limited to: 1) a grantee's failure to follow its protest procedures, or its failure to review a complaint or protest; or 2) violations of Federal law or regulation, or violations of State/Local law or regulation. FTA will refer violations of Federal law for which it does not have primary jurisdiction to the Federal authority having proper jurisdiction. FTA will refer violations of State or local law to the State or local authority having proper jurisdiction.

**SECTION 9-101**

**BID PROTESTS**

- (1) Right to Protest. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the City Manager. Protestors are urged to seek resolution of their complaints initially with the Procurement Manager. A protest with respect to an invitation for bids or request for proposals shall be submitted in writing prior to the opening of bids or the closing date of proposals, unless the aggrieved person did not know and should not have known of the facts giving rise to such protest prior to bid opening of the closing date for proposals. The protest shall be submitted within five (5) calendar days after such aggrieved person knows or should have known of the facts giving rise thereto.
- (2) Stay of Procurements During Protests. In the event of a timely protest under Subsection (1) of this Section, the Procurement Manager shall not proceed further with the solicitation or award of the contract until all the administrative and judicial remedies have been exhausted or until the City Manager makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of the City.
- (3) Entitlement to Costs. In addition to any other relief, when a protest is sustained and the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, then the protesting bidder or offeror shall be entitled to the reasonable costs incurred in connection with solicitation, including bid preparation costs other than attorney's fees.

**SECTION 9-102**

**CONTRACT CLAIMS**

- (1) Decision of the Procurement Manager. All claims by a contractor against the City relating to a contract, except bid protests, shall be submitted in writing to the Procurement Manager for a decision. The contractor may request a conference with the Procurement Manager on the claim. Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation or other cause for contract modification or rescission.
- (2) Notice to the Contractor of the Procurement Manager's Decision. The decision of the Procurement Manager shall be promptly issued in writing, and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of appeal rights under Subsection (3) of this Section.
- (3) Finality of Procurement Manager's Decision - Contractor's Right to Appeal. The Procurement Manager's decision shall be final and conclusive unless, within ten (10) calendar days from the date of receipt of the decision, the contractor mails or otherwise delivers a written appeal to the Board of Mayor and Aldermen or commences an action in a court of competent jurisdiction.

### **Disputes, Breaches, Defaults, or Other Litigation**

- (a) *FTA Interest.* FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.
- (b) *Notification to FTA; Flow Down Requirement.* If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.
- (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
  - (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
  - (3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.
- (c) *Federal Interest in Recovery.* The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Recipient may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Recipient receives FTA’s prior written concurrence.
- (d) *Enforcement.* The Recipient must pursue its legal rights and remedies available under any third party agreement or any federal, state, or local law or regulation.

## **SPECIAL NOTIFICATION REQUIREMENTS FOR STATES**

Applies to States –

- a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:
  - (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
  - (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
  - (3) The amount of federal assistance FTA has provided for a State Program or Project.
  
- b. Documents - The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.