



State of West Virginia
 Department of Administration
 Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

Request for Quotation

RFQ NUMBER
PTR11054

PAGE
1

ADDRESS CORRESPONDENCE TO ATTENTION OF
FRANK WHITTAKER
304-558-2316

VENDOR

*709044612 304-872-2870
KYLE CONSTRUCTION COMPANY
PO BOX 280
1800 WEBSTER ROAD
SUMMERSVILLE WV 26651

OFFICE

DIVISION OF PUBLIC TRANSIT
BUILDING 5, ROOM 906
1900 KANAWHA BOULEVARD, EAST
CHARLESTON, WV
25305-0432 304-558-0428

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
02/02/2011				

BID OPENING DATE: **03/17/2011** BID OPENING TIME **01:30PM**

LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	EA		968-20		
<p>OFFICE AND MAINTENANCE FACILTIY</p> <p>THE WEST VIRGINIA PURCHASING DIVISION, FOR THE AGENCY, THE WEST VIRGINIA DIVISION OF PUBLIC TRANSIT IS SOLICITING BIDS FOR THE CONSTRUCTION OF A PRE-ENGINEERED METAL AND BRICK ADMINISTRATIVE AND MAINTENANCE FACILITY FOR THE WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF PUBLIC TRANSIT AND BUILT FOR THE LITTLE KANAWHA BUS LOCATED IN GRANTSVILLE, WV.</p> <p>MANDATORY PRE-BID A MANDATORY PRE-BID WILL BE HELD ON 02/15/11 AT 10:30 AM AT THE LITTLE KANAWHA BUS OFFICE LOCATED AT 794 ARNOLDSBURG ROAD, ARNOLDSBURG, WV 25234. ALL INTERESTED PARTIES ARE REQUIRED TO ATTEND THIS MEETING. FAILURE TO ATTEND THE MANDATORY PRE-BID SHALL RESULT IN DISQUALIFICATION OF THE BID. NO ONE PERSON MAY REPRESENT MORE THAN ONE BIDDER.</p> <p>AN ATTENDANCE SHEET WILL BE MADE AVAILABLE FOR ALL POTENTIAL BIDDERS TO COMPLETE. THIS WILL SERVE AS THE OFFICIAL DOCUMENT VERIFYING ATTENDANCE AT THE MANDATORY PRE-BID. FAILURE TO PROVIDE YOUR COMPANY AND REPRESENTATIVE NAME ON THE ATTENDANCE SHEET WILL RESULT IN DISQUALIFICATION OF THE BID. THE STATE WILL NOT ACCEPT ANY OTHER DOCUMENTATION TO VERIFY ATTENDANCE. THE BIDDER IS RESPONSIBLE FOR ENSURING THEY HAVE COMPLETED THE INFORMATION REQUIRED ON THE ATTENDANCE SHEET. THE PURCHASING DIVISION AND THE STATE AGENCY</p>						

RECEIVED
2011 MAR 31 P 12:20
 PURCHASING DIVISION
 STATE OF WV

SEE REVERSE SIDE FOR TERMS AND CONDITIONS			
SIGNATURE <i>Kevin K. Kyle</i>	TELEPHONE 304-872-2870	DATE 3-31-11	
TITLE President	FEIN 550568589	ADDRESS CHANGES TO BE NOTED ABOVE	

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'



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ADDRESS CORRESPONDENCE TO ATTENTION OF
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RFQ 002

*709044612 304-872-2870
 KYLE CONSTRUCTION COMPANY
 PO BOX 280
 1800 WEBSTER ROAD
 SUMMERSVILLE WV 26651

RFQ 002

DIVISION OF PUBLIC TRANSIT
 BUILDING 5, ROOM 906
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 CHARLESTON, WV
 25305-0432 304-558-0428

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<p>WILL NOT ASSUME ANY RESPONSIBILITY FOR A BIDDER-S FAILURE TO COMPLETE THE PRE-BID ATTENDANCE SHEET. IN ADDITION, WE REQUEST THAT ALL POTENTIAL BIDDERS INCLUDE THEIR E-MAIL ADDRESS AND FAX NUMBER.</p> <p>ALL POTENTIAL BIDDERS ARE REQUESTED TO ARRIVE PRIOR TO THE STARTING TIME FOR THE PRE-BID. BIDDERS WHO ARRIVE LATE, BUT PRIOR TO THE DISMISSAL OF THE TECHNICAL PORTION OF THE PRE-BID WILL BE PERMITTED TO SIGN IN. BIDDERS WHO ARRIVE AFTER CONCLUSION OF THE TECHNICAL PORTION OF THE PRE-BID, BUT DURING ANY SUBSEQUENT PART OF THE PRE-BID WILL NOT BE PERMITTED TO SIGN THE ATTENDANCE SHEET.</p> <p>ALL TECHNICAL QUESTIONS MUST BE SUBMITTED IN WRITING TO FRANK WHITTAKER IN THE WV PURCHASING DIVISION VIA EMAIL AT FRANK.M.WHITTAKER@WV.GOV OR VIA FAX AT 304-558-4115. DEADLINE FOR TECHNICAL QUESTIONS IS 02/18/2011. ALL TECHNICAL QUESTIONS WILL BE ADDRESSED BY ADDENDUM AFTER THE DEADLINE.</p> <p>THE BIDDING DOCUMENTS CONSIST OF THE REQUEST FOR QUOTATION, PLAND AND SPECIFICATIONS.</p> <p>REQUEST FOR QUOTATION MAY BE OBTAINED BY CONTACTING:</p> <p>FRANK WHITTAKER, SENIOR BUYER WV PURCHASING DIVISION 1019 WASHINGTON STREET, EAST CHARLESTON, WV 25305 TELEPHONE: 304-558-2316</p> <p>PLANS AND SPECIFICATIONS MAY BE OBTAINED BY CONTACTING:</p> <p>MICHAEL BAKER JR., INC. ENGINEERS & ARCHITECTS</p>						

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SIGNATURE <i>Frank Bell</i>	TELEPHONE	DATE 3-3-11
TITLE <i>President</i>	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE

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PROPERTY

SHIP TO

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				588 WEST WASHINGTON STREET CHARLESTON, WV 25313 TELEPHONE: 304-769-0821		
				PLANS AND SPECIFICATIONS MAY BE PURCHASED AT \$ 210.00, PLUS \$25.00 SHIPPING AND HANDLING FOR SETS THAT ARE MAILED, WHICH IS NON-REFUNDABLE. ADDITIONAL SETS MAY BE PURCHASED AT ACTUAL COST. ONLY COMPLETE SETS WILL BE ISSUED.		
				EXHIBIT 5		
				WEST VIRGINIA CODE 21-1D-5 PROVIDES THAT: ANY SOLICITA- TION FOR A PUBLIC IMPROVEMENT CONSTRUCTION CONTRACT REQUIRES EACH VENDOR THAT SUBMITS A BID FOR THE WORK TO SUBMIT AT THE SAME TIME AN AFFIDAVIT OF COMPLIANCE WITH THE BID. THE ENCLOSED DRUG-FREE WORKPLACE AFFIDAVIT MUST BE SIGNED AND SUBMITTED WITH THE BID AS EVIDENCE OF THE VENDOR'S COMPLIANCE WITH THE PROVISIONS OF ARTI- CLE 1D, CHAPTER 21 OF THE WEST VIRGINIA CODE. FAILURE TO SUBMIT THE SIGNED DRUG-FREE WORKPLACE AFFIDAVIT WITH THE BID SHALL RESULT IN DISQUALIFICATION OF SUCH BID.		
				NOTICE TO PROCEED: THIS CONTRACT IS TO BE PERFORMED WITHIN 425 CALENDAR DAYS AFTER THE NOTICE TO PROCEED IS RECEIVED. THE AGENCY WILL ISSUE THE NOTICE TO PROCEED IN WRITING.		
				CANCELLATION: THE DIRECTOR OF PURCHASING RESERVES THE RIGHT TO CANCEL THIS CONTRACT IMMEDIATELY UPON WRITTEN NOTICE TO THE VENDOR IF THE MATERIALS OR WORKMANSHIP SUPPLIED ARE OF AN INFERIOR QUALITY OR DO NOT CONFORM WITH THE SPECIFICATIONS OF THE BID AND CONTRACT HERE IN.		

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE <i>Francis Kelly</i>	TELEPHONE	DATE <i>3-21-11</i>
TITLE <i>President</i>	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE

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<p>WAGE RATES: THE CONTRACTOR OR SUBCONTRACTOR SHALL PAY THE HIGHER OF THE U.S. DEPARTMENT OF LABOR MINIMUM WAGE RATES AS ESTABLISHED FOR CALHOUN COUNTY, PURSUANT TO WEST VIRGINIA CODE 21-5A, ET, SEQ. (PREVAILING WAGE RATES APPLY TO THIS PROJECT)</p> <p>ARBITRATION: ANY REFERENCES MADE TO ARBITRATION OR INTEREST FOR PAYMENTS DUE (EXCEPT FOR ANY INTEREST REQUIRED BY STATE LAW) CONTAINED IN THIS CONTRACT OR IN ANY AMERICAN INSTITUTE OF ARCHITECTS DOCUMENTS PERTAINING TO THIS CONTRACT ARE HEREBY DELETED.</p> <p>WORKERS' COMPENSATION: VENDOR IS REQUIRED TO PROVIDE A CERTIFICATE FROM WORKERS' COMPENSATION IF SUCCESSFUL.</p> <p>ALL OF THE ITEMS CHECKED BELOW WILL BE A REQUIREMENT OF THIS CONTRACT:</p> <p>(XX) INSURANCE: SUCCESSFUL VENDOR SHALL FURNISH PROOF OF COMMERCIAL GENERAL LIABILITY INSURANCE PRIOR TO ISSUANCE OF CONTRACT. UNLESS OTHERWISE SPECIFIED IN THE BID DOCUMENTS, THE MINIMUM AMOUNT OF INSURANCE COVERAGE REQUIRED IS \$1,000,000.00</p> <p>(XX) BUILDERS RISK INSURANCE: SUCCESSFUL VENDOR SHALL FURNISH PROOF OF BUILDERS RISK - ALL RISK INSURANCE IN AN AMOUNT EQUAL TO 100% OF THE AMOUNT OF THE CONTRACT.</p> <p>(XX) BONDS: FIVE PERCENT (5%) OF THE TOTAL AMOUNT OF THE BID PAYABLE TO THE STATE OF WEST VIRGINIA, SHALL BE SUBMITTED WITH EACH BID AS A BID BOND. THE SUCCESSFUL BIDDER SHALL ALSO FURNISH A PERFORMANCE BOND AND LABOR/MATERIAL BOND FOR 100% OF THE AMOUNT OF THE CONTRACT. BONDS MAY BE PROVIDED IN THE FORM OF A CERTIFIED CHECK, IRREVOCABLE LETTER OF CREDIT, OR BOND FURNISHED BY A SOLVENT SURETY COMPANY AUTHORIZED TO DO BUSINESS IN TH</p>						

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S-P-T-O

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<p>STATE OF WEST VIRGINIA. A LETTER OF CREDIT SUBMITTED IN LIEU OF A BOND WILL ONLY BE ALLOWED FOR PROJECTS UNDER \$100,000. PERSONAL OR BUSINESS CHECKS ARE NOT ACCEPCTABLE IN LIEU OF THE 5% BID BOND, PERFORMANCE BOND, OR LABOR AND MATERIAL BOND.</p> <p>(XX) MAINTENANCE BOND: A TWO (2) YEAR MAINTENANCE BOND COVERING THE ROOFING SYSTEM WILL BE A REQUIREMENT OF THE SUCCESSFUL VENDOR.</p> <p>IN THE CASE OF STEEL ONLY, WHERE THE COST OF STEEL IS MORE THAN \$50,000 OR WHERE MORE THAN 10,000 POUNDS OF STEEL ARE REQUIRED, THE STATE WILL ACCEPT ONLY ALUMINUM GLASS, OR STEEL PRODUCTS PRODUCED IN THE UNITED STATES. IN ADDITION, ITEMS OF MACHINERY OR EQUIPMENT PURCHASED FOR USE AT THE SITE OF PUBLIC WORKS SHALL BE MADE OF DOMESTIC ALUMINUM, GLASS OR STEEL, UNLESS THE COST OF THE PRODUCT IS LESS THAN \$50,000 OR LESS THAN 10,000 POUNDS OF STEEL ARE USED IN PUBLIC WORKS PROJECTS.</p> <p>FOREIGN MADE ALUMINUM, GLASS OR STEEL PRODUCTS MAY BE ACCEPTED ONLY IF THE COST OF DOMESTIC PRODUCTS IS FOUND TO BE UNREASONABLE. SUCH COST IS UNREASONABLE IF IT IS 20% OR MORE HIGHER THAN THE BID PRICE FOR FOREIGN MADE PRODUCTS. IF THE DOMESTIC ALUMINUM, GLASS OR STEEL PRODUCTS TO BE SUPPLIED OR PRODUCED IN A "SUBSTANTIAL LABOR SURPLUS AREA", AS DEFINED BY THE UNITED STATES DEPARTMENT OF LABOR, FOREIGN PRODUCTS MAY BE SUPPLIED ONLY IF DOMESTIC PRODUCTS ARE 30% OR MORE HIGHER IN PRICE THAN THE FOREIGN MADE PRODUCTS.</p> <p>IF, PRIOR TO THE AWARD OF A CONTRACT UNDER THE ABOVE PROVISIONS, THE SPENDING OFFICER OF THE SPENDING UNIT DETERMINES THAT THERE EXISTS A BID FOR LIKE FOREIGN ALUMINUM, GLASS OR STEEL THAT IS REASONABLE AND LOWER THAN THE LOWEST BID DOMESTIC PRODUCTS, THE SPENDING</p>						

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25305-0432 **304-558-0428**

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<p>OFFICE MAY REQUEST, IN WRITING, A REEVALUATION AND REDUCTION IN THE LOWEST BID FOR SUCH DOMESTIC PRODUCTS. ALL VENDORS MUST INDICATE IN THEIR BID IF THEY ARE SUPPLYING FOREIGN ALUMINUM, GLASS OR STEEL.</p> <p>REV. 3/88</p> <p>EXHIBIT 9</p> <p>NOTICE FOR ISSUANCE & ACKNOWLEDGEMENT OF CONSTRUCTION PROJECT ADDENDA</p> <p>THE ARCHITECT/ENGINEER AND/OR AGENCY SHALL BE REQUIRED TO ABIDE BY THE FOLLOWING SCHEDULE IN ISSUING CONSTRUCTION PROJECT ADDENDA FOR STATE AGENCIES:</p> <p>(1) THE ARCHITECT/ENGINEER SHALL PREPARE THE ADDENDUM AND A LIST OF ALL PARTIES THAT HAVE PROCURED DRAWINGS AND SPECIFICATIONS FOR THE PROJECT. THE ADDENDUM AND LIST SHALL BE FORWARDED TO THE BUYER IN THE STATE PURCHASING DIVISION. THE ARCHITECT/ENGINEER SHALL ALSO SEND A COPY OF THE ADDENDUM TO THE STATE AGENCY FOR WHICH THE CONTRACT IS ISSUED.</p> <p>(2) THE BUYER SHALL SEND THE ADDENDUM TO ALL INTERESTED PARTIES AND, IF NECESSARY, EXTEND THE BID OPENING DATE. ANY ADDENDUM SHOULD BE RECEIVED BY THE BUYER WITHIN FOURTEEN (14) DAYS PRIOR TO THE BID OPENING DATE.</p> <p>(3) ALL ADDENDA SHOULD BE FORMALLY ACKNOWLEDGED BY ALL BIDDERS AND SUBMITTED TO THE STATE PURCHASING DIVISION. THE SAME RULES AND REGULATIONS THAT APPLY TO THE ORIGINAL BIDDING DOCUMENT SHALL ALSO APPLY TO AN ADDENDUM DOCUMENT. THE ONLY</p>						

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<p>EXCEPTION MAY BE FOR AN ADDENDUM THAT IS ISSUED FOR THE SOLE PURPOSE OF CHANGING A BID OPENING TIME AND/OR DATE.</p> <p>REV. 11/96</p> <p>EXHIBIT 10</p> <p>ADDENDUM ACKNOWLEDGEMENT</p> <p>I HEREBY ACKNOWLEDGE RECEIPT OF THE FOLLOWING CHECKED ADDENDUM(S) AND HAVE MADE THE NECESSARY REVISIONS TO MY PROPOSAL, PLANS AND/OR SPECIFICATION, ETC.</p> <p>ADDENDUM NOS.:</p> <p>NO. 1 .. <i>2-20-11</i></p> <p>NO. 2 .. <i>3-10-11</i></p> <p>NO. 3 .. <i>3-11-11</i></p> <p>NO. 4 .. <i>3-16-11</i></p> <p>NO. 5 ..</p> <p>I UNDERSTAND THAT FAILURE TO CONFIRM THE RECEIPT OF THE ADDENDUM(S) MAY BE CAUSE FOR REJECTION OF THE BIDS.</p> <p>VENDOR MUST CLEARLY UNDERSTAND THAT ANY VERBAL REPRESENTATION MADE OR ASSUMED TO BE MADE DURING ANY ORAL DISCUSSION HELD BETWEEN VENDOR'S REPRESENTATIVES AND ANY STATE PERSONNEL IS NOT BINDING. ONLY THE INFORMATION ISSUED IN WRITING AND ADDED TO THE SPECIFICATIONS BY AN OFFICIAL ADDENDUM IS BINDING.</p>						

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SIGNATURE <i>Kevin Kyle</i>	TELEPHONE	DATE <i>3-31-11</i>
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<p>..... <i>Frank Whittaker</i>.....SIGNATURE <i>Kyle Construction Company</i>.....COMPANY <i>3-31-11</i>.....DATE</p>						
REV. 11/96						
CONTRACTORS LICENSE						
<p>WEST VIRGINIA STATE CODE 21-11-2 REQUIRES THAT ALL PERSONS DESIRING TO PERFORM CONTRACTING WORK IN THIS STATE MUST BE LICENSED. THE WEST VIRGINIA CONTRACTORS LICENSING BOARD IS EMPOWERED TO ISSUE THE CONTRACTORS LICENSE. APPLICATIONS FOR A CONTRACTORS LICENSE MAY B MADE BY CONTACTING THE WEST VIRGINIA DIVISION OF LABOR CAPITOL COMPLEX, BUILDING 3, ROOM 319, CHARLESTON, WV 25305. TELEPHONE: (304) 558-7890.</p>						
<p>WEST VIRGINIA STATE CODE 21-11-11 REQUIRES ANY PROSPECTIVE BIDDER TO INCLUDE THE CONTRACTORS LICENSE NUMBER ON THEIR BID.</p>						
<p>BIDDER TO COMPLETE:</p>						
<p>CONTRACTORS NAME: <i>Kyle Construction Company</i></p>						
<p>CONTRACTORS LICENSE NO.: <i>WV 001257</i></p>						
<p>THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FURNISH A COPY OF THEIR CONTRACTORS LICENSE PRIOR TO ISSUANCE OF A PURCHASE ORDER/CONTRACT</p>						

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<p>APPLICABLE LAW</p> <p>THE WEST VIRGINIA STATE CODE, PURCHASING DIVISION RULES AND REGULATIONS, AND THE INFORMATION PROVIDED IN THE "REQUEST FOR QUOTATION" ISSUED BY THE PURCHASING DIVISION IS THE SOLE AUTHORITY GOVERNING THIS PROCUREMENT.</p> <p>ANY INFORMATION PROVIDED IN SPECIFICATION MANUALS, OR ANY OTHER SOURCE, VERBAL OR WRITTEN, WHICH CONTRADICTS OR ALTERS THE INFORMATION PROVIDED FROM THE SOURCES AS DESCRIBED IN THE ABOVE PARAGRAPH IS VOID AND OF NO EFFECT.</p> <p>BANKRUPTCY: IN THE EVENT THE VENDOR/CONTRACTOR FILES FOR BANKRUPTCY PROTECTION, THE STATE MAY DEEM THE CONTRACT NULL AND VOID, AND TERMINATE SUCH CONTRACT WITHOUT FURTHER ORDER.</p> <p>REV. 5/2009</p> <p>NOTICE</p> <p>A SIGNED BID MUST BE SUBMITTED TO:</p> <p>DEPARTMENT OF ADMINISTRATION PURCHASING DIVISION BUILDING 15 2019 WASHINGTON STREET, EAST CHARLESTON, WV 25305-0130</p> <p>THE BID SHOULD CONTAIN THIS INFORMATION ON THE FACE OF THE ENVELOPE OR THE BID MAY NOT BE CONSIDERED:</p>						

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SEALED BID						
BUYER:				44		
REQ. NO.:				PTR11054		
BID OPENING DATE:				03/17/2011		
BID OPENING TIME:				1:30		
PLEASE PROVIDE A FAX NUMBER IN CASE IT IS NECESSARY TO CONTACT YOU REGARDING YOUR BID: <u>104-872-5640</u>						
PLEASE PRINT OR TYPE NAME OF PERSON TO CONTACT CONCERNING THIS QUOTE: <u>Kenneth Kyk</u>						
***** THIS IS THE END OF RFQ PTR11054 ***** TOTAL:						<u>2,493,000</u>

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE <u>Kenneth Kyk</u>	TELEPHONE <u>304 872 2870</u>	DATE <u>3-31-11</u>
TITLE <u>President</u>	FEIN <u>55 056 8587</u>	ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

INVITATION TO BID

The West Virginia Division of Public Transit invites proposals to provide all work, including but not limited to labor, material, equipment supplies, and transportation for the construction of a pre-engineered metal and brick construction administrative office and maintenance facility for the:

Little Kanawha Bus
New Construction Bus Administrative and Maintenance Facility
Grantsville, WV

All Bids must be submitted in accordance with the Bidding Documents issued by the Architect and the Request for Quotations PTR11054 issued by the West Virginia Department of Administration, Purchasing Division. Bidding Documents may be obtained from:

Michael Baker Jr., Inc.
Engineers and Architects
5088 West Washington St
Charleston, WV 25313
Phone: (304) 769-0821

WV Purchasing Division
Frank Whittaker, Buyer
2019 Washington Street, East, Building 15
Charleston, WV 25305
Phone: (304) 558-2316

Documents may be purchased at \$210.00, plus \$25.00 shipping and handling for sets that are mailed, which is NONREFUNDABLE. Bidders and material suppliers may procure additional sets at actual cost. Only complete sets will be issued.

A mandatory pre-bid meeting is scheduled for PTR11054:

Time: 10:30 a.m.
Date: February 15, 2011
Place Little Kanawha Bus Office
794 Arnoldsburg Road
Arnoldsburg, WV 25234

For directions to the mandatory pre-bid meeting, contact Ms. Darlene Harris, Manager, Little Kanawha Bus, Grantsville, WV (304) 655-8999. **Failure to attend the mandatory pre-bid meeting shall disqualify Contract from bidding.**

Sealed Bids will be received by the **Department of Administration, Purchasing Division; 2019 Washington Street, East; Charleston, West Virginia 25305-0130** until **1:30 p.m. on March 17, 2011**, in accordance with the Instructions to Bidders, the Supplementary Instructions to Bidders and Request for Quotations. Bid prices shall remain in effect for 90 days.

Federal funding for this project is being provided from the Federal Transit Administration, Section 5311, CFDA 20509 at 100% of the project cost.

American Recovery and Reinvestment Act NOTICE

This project will be financed with American Recovery and Reinvestment Act (Recovery Act) of 2009 funds. There are substantial reporting requirements associated with Recovery Act funds. Please see attached form for details.

WV DPT ARRA Third Party/Vendor Report on Jobs Form

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INSTRUCTIONS

To Be Completed By Vendor/Third Party: **All forms must be signed**. Faxed (304-558-0174) or scanned copies (email to Christina.A.Risk@wv.gov) will be accepted. Return this completed form to the WV Division of Public Transit, Building 5, Room 906, 1900 Kanawha Boulevard East, Charleston, WV 25303 Phone 304-558-0428 **WHEN REQUESTING PAYMENT FOR SERVICES**. A copy of this form can be emailed upon request. Additional information about ARRA and the reporting requirements can be found at www.recovery.gov.

VENDOR/THIRD PARTY INFORMATION

Legal Name of Vendor/Third Party Contractor: _____

Physical Location/Address: _____

Duns No. _____

Initial Report Period (list to/from dates) _____ Final Report Period (list to/from dates) _____

Pay Period (mo/yr to mo/yr): _____ to _____ Year: 2010 2011 2012 2013

Signature of Individual Authorized to Complete the form by Vendor: _____

Print Name _____ Phone _____ Date _____

PROJECT INFORMATION

1. Description of Project or Activity _____

2. Date of Purchase Order and Amount of Funds _____ Contract No. _____ P.O. Date: _____
Amount: \$ _____

3. Description of current status of project as of the report period _____

4. Evaluation of Completion Status (Please Check) Not Started Completed 50% or more
 Less Than 50% Fully Completed

JOB INFORMATION

A. Number of Jobs Previously Reported	_____	F. Total Jobs Hours Previously Reported	_____
B. Number of Direct On-Project Jobs this PAY PERIOD	_____	G. Total Job Hours This PAY PERIOD	_____
C. Total Jobs since 2/17/09	_____	H. Total Job Hours since 2/17/09	_____
D. Types of Jobs by Job Title: (List Below)	_____	I. Total Payroll of Job Hours Previously Reported	_____
		J. Total Payroll of Job Hours this PAY PERIOD	_____
		K. Total Payroll of Job Hours since 2/17/09	_____

WV DPT Use Only

Information Reviewed By: _____	Date _____	Comments: _____ _____ _____
Information Entered By: _____	Date _____	

WV DPT ARRA Jobs Form Revised 11/15/10

United States Department of Transportation
Federal Transit Administration

MASTER AGREEMENT

**FTA MA(17)
October 1, 2010**

The FTA Master Agreement MA(17) dated October 1, 2010 is a requirement of this RFQ. Vendors must follow the Master Agreement.

Vendors may access the Master Agreement at the following website for their review:

<http://www.fta.dot.gov/documents/17-Master.pdf>

TERMS & CONDITIONS

Federal funding for this project is being provided from the Federal Transit Administration, Section 5311 Stimulus Recovery Funds, CFDA 20509 at 100 % of the project cost

No Federal Government Obligations to Third Parties

(1) The WV Division of Public Transit 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 WV Division of Public Transit, 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 the Federal Transit Administration. 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 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 Federal Transit Administration (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.

Exclusionary or Discriminatory Specifications

The Contractor agrees that it will comply with the requirements of 49 U.S.C. § 5325(h) by refraining from using any Federal assistance awarded by the WV Division of Public Transit to support procurements using exclusionary or discriminatory specifications.

Geographic Restrictions

The Contractor agrees to refrain from using state or local geographic preferences, except those expressly mandated or encouraged by Federal statute, and as permitted by FTA.

Access to Records and Reports

The Contractor agrees to permit the WV Division of Public Transit, the FTA Administrator, or their 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. § 5325(g), 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.

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.

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 WV Division of Public Transit, 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(l)(11). FTA does not require the inclusion of these requirements in subcontracts.

Civil Rights

The following requirements apply to the underlying contract:

(1) **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d, *et seq.*, Section 303 of the Age Discrimination Act of 1974, as amended, 42 U.S.C. § 6101, *et seq.*, Section 202 of the Americans With Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.*, 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 of 1964, 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, disability 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 the Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 et seq. and implementing regulations, 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.

Energy Conservation

The Contractor agrees to comply with, and obtain the compliance of its subcontractors, with mandatory standards and policies relating to energy efficiency contained in applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 et seq.

Environmental Regulations

The Contractor agrees to comply with all applicable standards, orders, or requirements regarding Federal and State laws imposing environmental and resource conservation requirements that may apply to the contract. A listing of possible requirements is available for the Contractor's review in Section 25 of the FTA Master Agreement MA(15), dated 10-1-08.

The Contractor agrees to comply with all applicable standards, orders, or requirements issued under Executive Order 11738, and Environmental Protection Agency Regulations (40 CFR, Part 15), which prohibits the use under nonexempt federal contracts, grants or loans of facilities included on the EPA list of violating facilities. Any violations shall be reported to the Division of Public Transit who will forward the report to the Federal Transit Administration and to the US EPA Administrator for enforcement (9EN-329).

Clean Air & Clean Water Requirements

(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. § 7414 and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. and Section 508 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1368, and other provisions of the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. The Vendor agrees to report each violation to the WV Division of Public Transit and understands and agrees that the WV Division of Public Transit will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

Application of Federal, State and Local Laws and Regulations

To achieve compliance with changing federal, state and local requirements, the Contractor shall note that federal, state and local requirements may change and the changed requirements will apply to this Contract as required.

Contract Work Hours and Safety Standards Act

The Contractor shall comply with Section 102 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701 et seq., esp. § 3702 & 3704) as supplemented by Department of Labor Regulations (29 CFR, § 5 & 29 CFR § 1926) as they involve the employment of mechanics and laborers.

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.

Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph (2) of this section, the Contractor and any subcontractor responsible therefore 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 (2) 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 (2) of this section.

Withholding for Unpaid Wages and Liquidated Damages. The WV Division of Public Transit 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 (3) of this section.

Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in 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 this section.

Payrolls and Basic Records. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR .5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

Contract Work Hours and Safety Standards Act (i) The contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. section 333 and applicable DOL regulations, "Safety and Health Regulations for Construction" 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

(ii) **Subcontracts** The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

Davis-Bacon Act

(1) **Minimum wages** – (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provision of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor,

Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(ii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** – The WV Division of Public Transit 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 the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the WV Division of Public Transit may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** – (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the WV Division of Public Transit for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this

purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** – (i) **Apprentices** – Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees** – Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity** – The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** – The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** – The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include

these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** – A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** – All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** – Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** – (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S. C. 1001.

Privacy Act

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Bankruptcy

Upon entering of a judgment of bankruptcy or insolvency by or against a Contractor, the WV Division of Public Transit may terminate this Contract for cause.

Preference for Recycled Products

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

Hold Harmless

The Contractor agrees to protect, defend, indemnify and hold the WV Division of Public Transit, its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of this Contract and/or the performance hereof. Without limiting the generality of the foregoing, any and all such claims, etc. relating to personal injury, infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or actual or alleged violation of any other tangible or intangible personal or property rights, or actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decrees of any court, shall be included in the indemnity hereunder. The Contractor further agrees to investigate, handle, respond to, provide defense for and defend any such claims, etc., at his/her sole expense and agrees to bear all other costs and expenses related thereto, even if such claim is groundless, false or fraudulent.

Licensing and Permits

The Contractor shall be appropriately licensed for the work required as a result of the Contract. The cost for any required licenses or permits shall be the responsibility of the Contractor. The Contractor is liable for any and all taxes due as a result of the Contract.

Compliance with Laws and Permits

The Contractor shall give all notices and comply with all existing and future federal, state and municipal laws, ordinances, rules, Regulations, and orders of any public authority bearing on the performance of the Contract, including, but not limited to, the laws referred to in these provisions of the Contract and the other Contract documents. If the Contract documents are at variance therewith in any respect, any necessary changes shall be incorporated by appropriate modification. Upon request, the Contractor shall furnish to the WV Division of Public Transit certificates of compliance with all such laws, orders, and Regulations.

Cargo Preference

The Contractor agrees:

To utilize privately owned United States--Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States--Flag commercial vessels;

To furnish within twenty (20) working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on board" commercial ocean bill of lading in English for each shipment of cargo described in the paragraph above to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the Division of Public Transit (through the Contractor in the case of a subcontractor's bill of lading.)

To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

Federal Regulation 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 Master Agreement (Form FTA MA(15) dated October 1, 2008) between the WV Department of Transportation, Division of Public Transit 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.

Severability

In the event any provision of the Contract is declared or determined to be unlawful, invalid or unconstitutional, such declaration shall not affect, in any manner, the legality of the remaining provisions of the Contract and each provision of the Contract will be and is deemed to be separate and severable from each other provision.

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 provision. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, 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 Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any WV Division of Public Transit requests which would cause the WV Division of Public Transit to be in violation of the FTA terms and conditions.

Fly America

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with 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.

Prohibited Interest

No employee, officer, board member, agent or their family members of the Division of Public Transit may participate in the selection, award, or administration of a Contract supported by Federal funds if a real or apparent conflict of interest is involved. Such a conflict could arise when any of the parties mentioned above have a financial or other interest in the Contractor selected for the Contract.

Buy America Certification

Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

A bidder or offerer must submit to the Division of Public Transit the appropriate Buy America certification on **Bid Form #7** with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier subcontractors.

Debarment and Suspension

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 certifies as follows:

The certification in this clause is a material representation of fact relied upon by the WV Division of Public Transit. If it is later determined that the bidder knowingly rendered an erroneous certification, in addition to remedies available to the WV Division of Public Transit, the Federal Government may

pursue available remedies, including but not limited to suspension and/or debarment. The bidder 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 further agrees to include a provision requiring such compliance in its lower tier covered transactions. All Contractors shall be required to certify that they are not on the Comptroller General's list of ineligible contractors on Bid Form #8 and 8A.

Restrictions on Lobbying

Every Contractor who applies or bids for an award of \$100,000 or more shall file the certification on Bid Form #10, required by C.F.R. 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 the 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 Division of Public Transit.

Amendments to Solicitation/Addendum Acknowledgment

A. The State of West Virginia reserves the right to amend any element or part of these bid documents and specifications and/or change the bid opening date and time, up to the time and date that bids are due. In this event, all potential Contractors that have received a copy of these contract documents and specifications shall be notified of the postponement and the new time and date that bids will be due. Such notification shall be mailed or otherwise provided. Any bids received in accordance with the original bid due date shall be held unopened till the new bid opening date.

B. In the event that amendments are issued by the State fourteen (14) or more days prior to the original bid due date, the original date and time established for the receipt of bids, at the State's option, may or may not be changed. The addendum notification sent by the State shall contain either a statement that the bid due date remains as previously established or shall provide a new time and date if the bid due date is changed.

C. In the event that addenda are issued by the State, Contractors must complete the Addendum Acknowledgment form contained within these contract documents and specifications and submit that form with their bid. Bid Form #11 shall be used for this purpose.

Metric System

To the extent required by the U.S. Department of Transportation or the Federal Transit Administration, the Contractor agrees to use the metric system of measurement in its Contract activities, as may be required by 15 U.S.C. §§ 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and other regulations, guidelines, and policies issued by the U.S. Department of Transportation or the Federal Transit Administration. To the extent practicable and feasible, the Contractor agrees to accept products and services with dimensions expressed in the metric system of measurement.

Patent Infringement

The Contractor shall advise the Division of Public Transit of any impending patent suit and shall provide all information available. The Contractor shall defend any suit or proceeding brought against the Division of Public Transit based on a claim that any equipment, or any part thereof, furnished under this contract constitutes an infringement of any patent, and the Contractor shall pay all damages and costs awarded therein, excluding incidental and consequential damages, against the Division of Public Transit. In case said equipment, or any part thereof, is in such suit held to constitute infringement and use of said equipment or parts is enjoined, the Contractor shall, at its own expense and its option, either procure for the Division of Public Transit the right to continue using said equipment or part, or replace same with non-infringing equipment, or modify it so it becomes non-infringing.

Seismic Safety

Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §§ 7701 *et seq.*, in accordance with executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. § 7704 note, and comply with U.S DOT regulations, "Seismic Safety," 49 C.F.R. Part 41.

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.

Accessibility

Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §§ 7701 *et seq.*, in accordance with executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. § 7704 note, and comply with U.S DOT regulations, "Seismic Safety," 49 C.F.R. Part 41.

Sensitive Security Information

Each Contractor must protect, and take measures to ensure that its subcontractors at each tier protect, "sensitive security information" made available during the administration of this contract or any subcontract to ensure compliance with 49 U.S.C. Section 40119(b) and implementing DOT regulations, "Protection of Sensitive Security Information," 49 CFR Part 15, and with 49 U.S.C. Section 114(s) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information," 49 CFR Part 1520.

Seat Belt Use

In compliance with Federal Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in any third party subcontracts, involving this project.

Bid Protest Procedures

1. Filing of Protest(s)

Protests based on a violation of State law or rule must be filed no later than five (5) working days after issuance by the Purchasing Division of the notice of intent to award the contract or purchase order. Protests based on restrictive bid specifications or alleged improprieties in any type of solicitation, which are apparent prior to the bid opening or closing date for receipt of bids or proposals, must be filed no later than five (5) working days prior to the bid opening or closing date. Any other protest must be filed no later than five (5) working days following award of the contract or purchase order.

The Contractor is responsible for knowing the bid opening and award dates. Protests filed after the time frames specified above will not be considered. In addition, after these time frames, protests may not be amended, altered or changed.

All protests must be in writing and filed with the WV Purchasing Division containing the following:

- a) Include the name and address of the protester.
- b) Identify the requisition number of the bid or the purchase order number.
- c) Contain a statement of the grounds for protest and any supporting documentation.
- d) Indicate the ruling or relief desired from the WV Purchasing Division.

Failure to submit this information shall be grounds for rejection of the protest by the Director of the Purchasing Division.

No formal briefs or other technical forms of pleading or motion are required, but a protest and other submission should be concise, logically arranged, and clear.

The protest must be filed in writing with the:

Director
WV Purchasing Division
2019 Washington Street, East
P. O. Box 50130
Charleston, WV 25305-0130

with a copy of the protest sent to the:

Division of Public Transit
Building 5, Room 906
1900 Kanawha Boulevard, East
Charleston, WV 25305-0432

To expedite handling, the address should include **"ATTENTION: Bid Protest – Bid # PTR11054."**

Protests received timely will be reviewed and a written decision issued. **The Director of the WV Purchasing Division has the authority to make the final determination on any protest.**

2. Protest Review

The Purchasing Director or his/her designee shall review the matter of protest and issue a written decision. A hearing may be conducted at the option of the Purchasing Director or assigned designee.

3. Division of Public Transit Report/Response

The Division of Public Transit shall submit a complete report/response on the protest to the Director of the WV Purchasing Division responding in detail to each substantive issue raised in the protest, with a copy to the protester, as expeditiously as possible but not later than twenty-five (25) working days after being notified of the protest.

4. Withholding of Award

When a protest has been filed before award, the WV Purchasing Division will not make an award prior to the resolution of the protest, and when a protest has been filed before the opening of bids, the WV Purchasing Division will not open bids prior to the resolution of the protest, unless the WV Purchasing Division determines that:

- a) The items to be procured are urgently required; or

- b) Delivery or performance will be unduly delayed by failure to make the award promptly; or
- c) Failure to make prompt award will otherwise cause undue harm to a recipient, the Division of Public Transit or the State of West Virginia.

In the event that the WV Purchasing Division determines that the award is to be made during the pendency of a protest, the Division of Public Transit will notify the Federal Transit Administration (FTA) prior to making such award.

5. Request for Reconsideration

Reconsideration of a decision by the WV Purchasing Division may be requested by the protester or any party involved in the protest. The request for reconsideration must be in writing, made to the Director of the Purchasing Division and shall contain the following:

- a) Include the name and address of the aggrieved party.
- b) Identify the requisition number of the bid or the purchase order number.
- c) Contain a detailed statement of the grounds for reconsideration with supporting documentation; and a statement of whether a hearing is requested.
- d) Indicate the ruling or relief desired from the WV Purchasing Division.

Request for reconsideration of a decision of the WV Purchasing Division shall be filed not later than five (5) working days after the initial written decision. The protest shall not be considered pending during the five (5) working day period specified in this paragraph.

In the event a hearing is requested by the aggrieved party, the Purchasing Director, or his or her designee, will set a time and place for the hearing for full review of the matter.

If no hearing is requested, the Purchasing Director, or his or her designee, will review the request for reconsideration and issue a written decision. If a hearing is requested, the Purchasing Director, or his or her designee, will hold the hearing and then issue a written decision.

6. Refusal of Protests

The State of West Virginia may refuse to decide any protest or reconsideration where the matter involved is one of the following:

- a) the protest is the subject of litigation before a court of competent jurisdiction;
- b) the protest has previously been decided on the merits by a court of competent jurisdiction;
- c) the protest has been decided in a previous protest.

The provisions do not apply where the court requests, expects, or otherwise expresses interest in the decision of the State.

7. Appeals to the Federal Transit Administration (FTA)

Under the Federal Transit Administration's Circular 4220.1F, the Federal Transit Administration's (FTA's) appeals process for reviewing protests of a recipient's procurement decisions are:

1. Requirements for the Protester. The protester must:

- a) Qualify as an "Interested Party." Only an "interested party" qualifies for FTA review of its appeal. An "interested party" is a party that is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or failure to award the contract at issue.
 - 1. Subcontractors. A subcontractor does not qualify as an "interested party" because it does not have a direct economic interest in the results of the procurement.
 - 2. Consortia/Joint Ventures/Partnerships/Teams. An established consortium, joint venture, partnership, or team that is an actual bidder or offeror and is acting in its entirety, would qualify as an "interested party" because it has a direct economic interest in the results of the procurement. An individual member of a consortium, joint venture, partnership, or team, acting solely in its individual capacity, does not qualify as an "interested party" because it does not have a direct economic interest in the results of the procurement.
 - 3. Associations or Organizations. An association or organization that does not perform contracts does not qualify as an "interested party," because it does not have a direct economic interest in the results of the procurement.
- b) Exhaust Administrative Remedies. The protester must exhaust its administrative remedies by pursuing the WV Division of Public Transit's protest procedures to completion before appealing the WV Division of Public Transit's decision to FTA.
- c) Appeal Within Five Days. The protester must deliver its appeal to the FTA Regional Administrator, Region III, 1760 Market Street, Suite 500, Philadelphia, PA 19103-4124 within five (5) working days of the date when the protester has received actual or constructive notice of the WV Division of Public Transit's final decision. Likewise, the protester must provide its appeal to the same address within five (5) working days of the date when the protester has identified other grounds for appeal.

to FTA. For example, other grounds for appeal include the WV Division of Public Transit's failure to have or failure to comply with its protest procedures or failure to review the protest.

2. **Extent of FTA Review.** FTA limits its review of protests to:

- a) Failure of the Division of Public Transit to have or adhere to its written bid protest procedures, or failure of the Division of Public Transit to review a complaint or protest.
- b) Alleged violations on other grounds are under the jurisdiction of the appropriate State or local administrative authorities.
- c) Alleged violations of a specific Federal Law or regulation that provides an applicable complaint procedure shall be submitted and processed in accordance with that Federal Law or regulation. See, e.g., Buy America Requirements, 49 C.F.R. Part 661 (Section 661.15); Participation by Minority Business Enterprise in Department of Transportation Programs, 49 C.F.R. Section 26.89.

FTA will exercise discretionary jurisdiction over those appeals involving issues important to FTA's overall public transportation program. FTA will refer violations of Federal law for which it does not have primary jurisdiction to the Federal authority having proper jurisdiction.

3. **FTA Determinations to Decline Protest Reviews.** FTA's determination to decline jurisdiction over a protest does not mean that FTA approves of or agrees with the Division of Public Transit's decision or that FTA has determined the contract is eligible for Federal participation. FTA's determination means only that FTA does not consider the issues presented to be sufficiently important to FTA's overall program that FTA considers a review to be required.

Prompt Payment

The prime Contractor agrees to pay each sub-contractor under this prime contract for satisfactory performance of its contract no later than 15 days from the receipt of each payment the prime Vendor receives from the Division of Public Transit. The Vendor agrees further to return retainage payments to each subcontractor within 15 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Division of Public Transit. This clause applies to both DBE and non-DBE subcontractors.

ALL WORK MUST BE COMPLETED IN ACCORDANCE WITH THE PLANS AND SPECIFICATIONS PREPARED BY THE ARCHITECT AND PURCHASE ORDER ISSUED BY THE DEPARTMENT OF ADMINISTRATION, PURCHASING DIVISION.

PROJECT ARCHITECT

Michael Baker Jr., Inc
5088 West Washington Street
Charleston, WV 25313
(304) 769-0821

THERE IS A \$210.00 NON-REFUNDABLE FEE, PLUS \$25.00 FOR SHIPPING AND HANDLING FOR A TOTAL OF \$235.00, FOR PLANS AND SPECIFICATIONS. BIDDERS AND MATERIAL SUPPLIERS MAY PROCURE ADDITIONAL SETS AT ACTUAL COST ONLY. COMPLETE SETS WILL BE ISSUED.

LIQUIDATED DAMAGES

LIQUIDATED DAMAGES SHALL BE ACCESSED AT A RATE OF \$200.00 PER DAY IF SUBSTANTIAL COMPLETION IS NOT OBTAINED WITHIN 365 CALENDAR DAYS OF THE CONTRACTOR'S PROCEED DATE AND LIQUIDATED DAMAGES SHALL BE ACCESSED AT A RATE OF \$100.00 PER DAY IF FINAL COMPLETION IS NOT ACHIEVED WITHIN 60 CALENDAR DAYS OF SUBSTANTIAL COMPLETION.

REQUIRMENT OF RFQ

The Davis-Bacon Act Wage Rates apply to this project.

The vendor is required to meet all requirements pertaining to the Higher Prevailing Wage Rate set for Calhoun County, West Virginia by the State of West Virginia or the Federal Government.

Vendors may access the wage rates at the following websites:

FEDERAL: <http://www.access.gpo.gov/davisbacon/>

STATE:

<http://www.wvsos.com/adlaw/wagerates/heavyhighways09.htm>

**WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF PUBLIC TRANSIT**

**SPECIAL PROVISION
FOR
DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION**

1. - GENERAL:

The West Virginia Division of Public Transit is committed to assuring the participation of Disadvantaged Business Enterprises (DBE) in our transit construction program. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of United States Department of Transportation assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

The contractor shall designate and make known to the Division a liaison officer who is assigned the responsibility of effectively administering and promoting an active program for utilization of Disadvantaged Business Enterprises (DBE).

All contractors are to consider DBE's for subcontract work as well as for the supply of materials and services needed for the performance of this work.

The contractor is encouraged to use the services of banks owned and controlled by minorities or women. Agreements between a bidder/proposer and a DBE in which the DBE promises not to provide subcontracting quotations to other bidders/proposers are prohibited.

2. - DEFINITIONS:

"Disadvantaged business" A small business concern:

- 1) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
- 2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

"Small business concern" A small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto, except that a limitation of \$16.6 million in average annual gross receipts (over 3 years) is placed on firms to be eligible as a DBE.

“Socially and economically disadvantaged individuals” Those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Subcontinent Asian Americans, Women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act. The Division shall make a rebuttable presumption that individuals in the following groups are socially and economically disadvantaged. The Division also may determine, on a case-by-case basis, that individuals who are not a member of one of the following groups are socially and economically disadvantaged:

- 1) “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;
- 2) “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American or other Spanish, or Portuguese culture or origin, regardless of race;
- 3) “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- 4) “Asian Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific islands (Republic of Palau), the Commonwealth of the Northern Marianas, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- 5) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, and Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka; and
- 6) “Women”.

3. – DBE CLASSIFICATION REQUEST:

In order to be classified as a DBE under this specification a firm must submit Form EO-475, Schedule A, for certification as a DBE. In addition Form EO-476, Schedule B, must be submitted for any proposed joint venture. These forms must be **submitted and approved** prior to bid date of any project in which a firm wants to participate as DBE. Copies of these forms are available from Bob Cooke, DBE Program Specialist, WV DOT, Equal Employment Opportunity Office, Building 5, Room 925, 1900 Kanawha Blvd., E., Charleston, WV 25305-0430 (PHONE: 304-558-3931) and shall be submitted to that Office.

A directory of DBE firms (consultants) which are certified by the WV DOT, EEO office, may be found at: <http://www.transportation.wv.gov>, under Business, click on See More, then click on Disadvantaged Business Enterprise Program, from the menu on left-side of page, under the heading Disadvantaged Business, select DBE Consultant/Contractors Listing.

4. – DBE GOAL:

The DBE goal determined by the West Virginia Division of Public Transit for this contract is **6.00%** of the contract bid amount.

The contractor shall indicate his goal in the appropriate space of the **Contractor's Plan For DBE Participation (Bid Form #12)** (example of form can be found at end of Special Provision). The goal so indicated will be used in determining the award of the contract in accordance with this Special Provision and the Standard Specifications.

5. – CONTRACTOR'S DBE PLAN:

All bidders shall submit their DBE Participation Plan with their bid. This shall include the following:

- 1) Name of DBE Subcontractor(s) or Supplier(s).
- 2) Description of work each is to perform to include: Line Number, Item Number, unit, Quantity, Unit price and Amount.
- 3) The dollar value of each proposed DBE subcontract and the percentage of the total contract value this represents.
- 4) The dollar value of materials to be furnished by DBE suppliers and manufacturers, provided that the DBE's assume the actual and contractual responsibility for the materials and supplies:
 - (a) The Division of Public Transit may count the entire expenditure to a DBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them for resale).
 - (b) The Division shall only count 60 percent of expenditures to DBE suppliers that are not manufacturers provided the supplier is a regular dealer in the product involved. A regular dealer must be engaged in, as its principal business and in its own name, the sale of products to the public or maintain an inventory or own or operate distribution equipment.
 - (c) The Division may count fees or commissions charged by the DBE firms for a bona fide service, such as professional, technical, consultant, or managerial services and assistance in the procurement of essential personnel, facilities, equipment,

materials, or supplies, delivery of materials and supplies or for furnishing bonds, or insurance, providing such fees or commissions are determined to be reasonable and customary.

- 5) The dollar value of services provided by DBE's such as quality control testing, equipment repair and maintenance, engineering stakeout, etc.
- 6) The dollar value of proposed joint ventures. DBE credit for joint ventures will be limited to the percent of DBE participation in the joint venture. Joint ventures must have an approved EO Form 476 – Schedule B at the time of the bid opening.
- 7) Written and signed documentation of the bidders commitment to use a DBE subcontractor whose participation is being utilized to meet the DBE contract goal.
- 8) Written and signed confirmation from the DBE (**Bid Form #13**) that it is participating in the contract as provided in the prime contractor's commitment (**Bid Form #12**).

Any bidder who does not submit a fully completed and signed DBE Participation Plan with their bid shall not be considered for award.

The Division must approve any changes to this plan after bid award.

In order to be accepted under this program, all DBE subcontractors and suppliers of materials or services must be certified in accordance with Section 3 of this provision at the time of bid.

6. – CONTRACT AWARD REQUIREMENTS:

If the bidder's proposed goal, as indicated on the **Contractor's Plan For DBE Participation (Bid Form #12)**, is less than the Division of Public Transit's determined goal, as indicated in Section 4 of this Special Provision, he or she must demonstrate that good faith efforts were made prior to submitting the bid. This documentation (which was made prior to bid) must be submitted to the Division of Public Transit and received no later than ten (10) calendar days after the date of receipt of written notification. Efforts to increase the goal after bid submission will not be considered in justifying the good faith effort. These documented attempts shall include but not be limited to:

- 1) Whether the contractor attended any pre-solicitation or pre-bid meetings that were scheduled by the Division to inform DBE's of contracting and subcontracting opportunities;

- 2) Whether the contractor advertised in general circulation, trade association, and minority-focus media concerning the subcontracting opportunities;
- 3) Whether the contractor provided written notice to a reasonable number of specific DBE's that their interest in the contract was being solicited, in sufficient time to allow the DBE's to participate effectively;
- 4) Whether the contractor followed up initial solicitations of interest by contacting DBE's to determine with certainty whether the DBE's were interested;
- 5) Whether the contractor selected portions of the work to be performed by DBE's in order to increase the likelihood of meeting the DBE's goals (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE's participation);
- 6) Whether the contractor provided interested DBE's with adequate information about the plans, specifications and requirements of the contract;
- 7) Whether the contractor negotiated in good faith with interested DBE's, not rejecting DBE's as unqualified without sound reasons based on a thorough investigation of their capabilities;
- 8) Whether the contractor made efforts to assist interested DBE's in obtaining bonding, lines of credit, or insurance required by the recipient or contractor, and
- 9) Whether the contractor effectively used the services of available minority community organizations; minority contractor's groups; local, state and Federal minority business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBE's.

Contractors that do not meet the contract DBE goal and who fail to demonstrate that good faith efforts were made prior to the bid shall not be eligible to be awarded the contract.

The bidder's signature under the **Contractor's Plan For DBE Participation (Bid Form #12)** shall be written assurance he/she will comply with this special provision. The bidder's proposed DBE goal percent must be completed or the bid will be deemed irregular.

7. – CONTRACT COMPLIANCE REQUIREMENTS:

Each contractor or subcontractor that fails to carry out the requirements set forth below will be subject to a breach of contract and, after notification of the Federal Transit Administration, the Division of Public Transit may terminate the contract or subcontract or initiate other such remedy as deemed appropriate.

- A. **Policy.** It is the policy of the Federal Transit Administration that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of work financed in whole or in part with Federal funds under this contract. Consequently, the DBE requirements of 49 CFR Part 26 apply to this contract.
- B. **DBE Obligation.** The contractor agrees to ensure that DBE's as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of subcontracts financed in whole or in part with Federal funds provided under this contract. In this regard all contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBE's have the maximum opportunity to compete for and perform contract work. Contractor's and subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of Federally-assisted contracts.
- C. **Sanctions.** Failure by the prime contractor to fulfill the DBE requirements and to demonstrate good faith efforts constitutes a breach of contract. When this occurs, the Division will hold the prime contractor accountable as would be the case with all other contract provisions. Therefore, the contractor's failure to carry out the DBE requirements shall constitute a breach of contract and may result in the following:
- 1) Withholding of progress payments.
 - 2) Withholding payment to the prime in an amount equal to the unmet portion of the contract goal.
 - 3) Termination of the contract.
- D. All contractors must keep detailed records and provide regular reports to the Division, along with his/her application for progress payment (invoice) or as requested, on their progress in meeting contractual DBE obligations. These records may include but shall not be limited to payroll, lease agreements, canceled payroll checks, canceled supply and material checks, executed subcontracting agreements, etc. At the end of each quarter, prime contractors will be requested to submit certified reports on monies paid to each DBE subcontractor/supplier on all active Federal Aid Projects.

8. – DBE PROGRAM REQUIREMENTS:

Commercially Useful Function: The Prime Contractor is responsible for ensuring that DBE's performing work on the contract perform a commercially useful function. A DBE is considered to perform a commercially useful function when it is responsible for the execution of at least 30% of the total cost of its contract. Regardless of whether an arrangement between the Contractor and the DBE represent standard industry practice, if the arrangement erodes the ownership, control or independence of the DBE or in any other way does not meet the commercially useful function requirement, the contractor shall receive no credit toward the goal.

Work Force: The DBE firm must employ a work force, (including administrative and clerical) separate and apart from that employed by the Prime Contract, other subcontractors on the project or their affiliates. This does not preclude the employment by the DBE of an individual that has been previously employed by another firm involved in the contract, provided that the individual was independently recruited by the DBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the DBE shall not be allowed.

Supervision: All work performed by the DBE must be controlled and supervised by the DBE without duplication of supervisory personnel of the DBE and other supervisors necessary to coordinate the work of the contract.

Equipment: DBE subcontracts may supplement their equipment by renting or leasing additional equipment in accordance with customary industry practice. However, no more than 50% of the equipment required to perform the work of the subcontractor may be obtained from the Prime Contractor, other subcontractors on the project or their affiliates. If the DBE obtains equipment from any of those sources, the Department shall obtain from the DBE documentation demonstrating that similar equipment and terms could not be obtained at a lower cost from other customary sources of equipment. The required documentation shall include, but not be limited to, copies of the rental or leasing agreements and the names, addresses and terms quoted by other sources of equipment.

Trucking Operations: To be certified as a DBE trucking firm, the firm must own at least one fully operational truck that is used on a day-to-day basis. In order for DBE project goals to be credited, DBE trucking firms must be covered by a subcontract or a written agreement approved by the State prior to performing their portion of the work. In order to perform a commercially useful function, the DBE trucking firm is restricted to the same subcontracting limitation in effect for other contractors.

Default or Decertification of DBE: If a DBE subcontractor is decertified or defaults in the performance of its work, the overall goal cannot be credited for the uncompleted work unless it is completed by an approved DBE substitute or unless the Prime Contractor elects to fulfill the DBE goal with another DBE on a different item of work. If the Prime Contractor after exerting good faith effort is unable to replace the DBE, the unmet portion may be waived.

WEST VIRGINIA
DIVISION OF PUBLIC TRANSIT
CONTRACTOR'S PLAN FOR DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

It is the intention of this organization to affirmatively seek out and consider disadvantaged business enterprises to participate in this contract as subcontractor and/or Suppliers of materials and services.

	COMPLETE APPROPRIATE COLUMN(S) BELOW		
NAME OF DBE Sub-Contractor	(SUBCONTRACTOR) DESCRIPTION OF WORK TO BE PERFORMED	(SUPPLIER) DESCRIPTION OF MATERIAL OR SERVICE TO BE SUPPLIED	TOTAL DOLLAR AMOUNT ②
EXAMPLE FORM ONLY			
TOTAL			

CONTRACTOR'S DBE GOAL ③: PERCENT _____ % OF BID AMOUNT \$ _____

1. ① DBE for the purpose of the certificate means a disadvantage business as defined by Special Provisions in the Proposal.
2. ② If material is to be supplied the figure in this column shall not exceed 60% of the actual cost unless the material is manufactured by a DBE in which case 100% of the cost can be recorded.
3. ③ The total DBE participation as a percentage of the total contract bid amount.
4. If the material is not supplied by a regular dealer as defined in 49 CFR 26.55(e)(2)(ii), the figure in this column ② shall include only a reasonable and customary fee or commission for providing a bonafide service.
5. By fully completing and signing this bid form (Bid Form #12), the Contractor shall commit to use a DBE subcontractor(s) to meet the contract goal.
6. By submitting Bid Form #13, the Contractor shall submit written and signed confirmation from the DBE(s) that it is participating in the contract as provided in the prime contractor's commitment (Bid Form #12).

Authorized Signature _____ Title _____

BID

BF#1

Proposal of Kyle Construction Company hereinafter called
 Bidder, organized and existing under the laws of the State of West Virginia doing business
 as Corporation *. To the West Virginia
 Division of Public Transit, hereinafter called OWNER.

In compliance with you Advertisement for Bids, Bidder hereby proposed to perform all work for the new construction of a Administrative Office and Bus Maintenance Facility in Grantsville, Calhoun County, West Virginia in strict accordance with the Contract Documents, within the time and at the prices stated herein.

By submission of this Bid, each Bidder certifies, and in the case of a joint Bid, each party hereto certifies as to his own organization, that this Bid has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this Bid with any other Bidder or with any competitor.

Bidder hereby agrees to commence work under this Contract on or before a date to be specified in the Notice to Proceed and to obtain substantial completion and final completion for the Project as called for in these Contract Documents.

NOTE: Bids include all applicable taxes, permits, and fees.

* Insert "a corporation," "a partnership," or "an individual" as applicable.

BASE BID: Two million four hundred ninety-three

(Amount to be shown in both words and numbers) \$ 2,493,000

BF#2

GENERAL CONTRACTOR

GENERAL WORK This price to include all work shown and noted in the Contract Documents. The General Contractor shall be responsible for the coordination, scheduling, and normal administrative activities of the project.

In the event of a difference between the written amount and the number amount, the written amount shall prevail.

The Bidder understands that to the extent allowed by applicable Codes, the Owner reserves the right to waive any informality or irregularity in any Bid or Bids and to reject any or all Bids in whole or in part; to reject a Bid not accompanied by the required bid security or by other data required by the Bidding Documents; to reject any condition of the Bid by the Bidder that is in any way inconsistent with the requirements, terms, and conditions of the Bidding Documents; or to reject a Bid that is in any way incomplete or irregular.

The Bidder, if successful and awarded a Contract, agrees that the work is to be substantially complete 365 days after Notice To Proceed is issued or 15 days after the encumbrance date of the Purchase Order if Notice to Proceed has not been received. The Bidder agrees to achieve Final Completion within 60 consecutive calendar days after the substantial completion. Liquidated damages shall be assessed at a rate of \$200 per day if substantial completion is not obtained within 365 calendar days of the Contractor's proceed date and liquidated damages shall be assessed at \$100 per day if final completion is not achieved within 60 calendar days of substantial completion.



AIA® Document A305™ - 1986

Contractor's Qualification Statement

The Undersigned certifies under oath that the information provided herein is true and sufficiently complete so as not to be misleading.

SUBMITTED TO:

WV Purchasing Division - Div of Public Transit
2019 Washington St E

ADDRESS:

Charleston, WV 25305

SUBMITTED BY:

Kyle Construction Co, Inc

NAME:

Berneth V. Kyle, Pres

ADDRESS:

PO B 280
Summersville, WV 26651

PRINCIPAL OFFICE:

1800 Webster Rd, Summersville, WV

- Corporation
 Partnership
 Individual
 Joint Venture
 Other

NAME OF PROJECT: (If applicable)

Little Kanawha Bus Maint. Facility
PTR 11054 Frank Whitaker

TYPE OF WORK: (File a separate form for each Classification of Work.)

- General Construction
 HVAC
 Electrical
 Plumbing
 Other: (Specify)

§ 1.0 ORGANIZATION

§ 1.1 How many years has your organization been in business as a Contractor?

This form is approved and recommended by the American Institute of Architects (AIA) and The Associated General Contractors of America (AGC) for use in evaluating the qualifications of contractors. No endorsement of the submitting party or verification of the information is made by AIA or AGC.

§ 1.6 If the form of your organization is other than those listed above, describe it and name the principals:

§ 2.0 LICENSING

§ 2.1 List jurisdictions and trade categories in which your organization is legally qualified to do business, and indicate registration or license numbers, if applicable.

NY, NJ
P/MB
General Contractor

§ 2.2 List jurisdictions in which your organization's partnership or trade name is filed.

§ 3.0 EXPERIENCE

§ 3.1 List the categories of work that your organization normally performs with its own forces.

Engineering
Site
Concrete
Masonry
Carpentry

§ 3.2 Claims and Suits

(If the answer to any of the questions below is yes, attach details.)

§ 3.2.1 Has your organization ever failed to complete any work awarded to it?

No

§ 3.2.2 Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization or its officers?

No

§ 3.2.3 Has your organization filed any law suits or requested arbitration with regard to construction contracts within the last five years?

No

§ 3.3 Within the last five years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract?

(If the answer is yes, attach details.)

No

§ 3.4 On a separate sheet, list major construction projects your organization has in progress, giving the name of project, owner, architect, contract amount, percent complete and scheduled completion date.

§ 3.4.1 State total worth of work in progress and under contract:

0

§ 5.1.2 Name and address of firm preparing attached financial statement, and date thereof:

Financial are tendered to Bonding Co

§ 5.1.3 Is the attached financial statement for the identical organization named on page one?

§ 5.1.4 If not explain the relationship and financial responsibility of the organization whose financial statement is provided (e.g., parent-subsidiary).

§ 5.2 Will the organization whose financial statement is attached act as guarantor of the contract for construction?

§ 6.0 SIGNATURE

§ 6.1 Dated this

31 day of March 20 11

Name of organization:

Kyle Construction Co, Inc

By

Kenneth G. [Signature]

Title:

President

§ 6.2

M

duly sworn deposes and says that the information provided herein is true and sufficiently complete so as not to be misleading.

Subscribed and sworn before me this

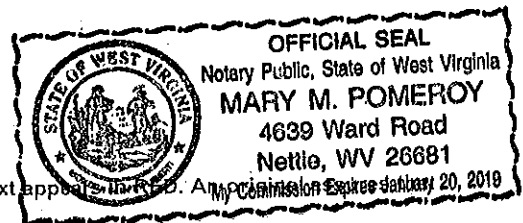
31 day of March 20 11

Notary Public:

Mary M. Pomeroy

My commission expires:

Jan 20, 2019



CAUTION: You should sign an original AIA Contract Document; on which this text appears. Any changes will not be obscured.

BID FORM #
BF5

CONTRACTORS LICENSE

WEST VIRGINIA STATE CODE 21-11-2 REQUIRES THAT ALL PERSONS DESIRING TO PERFORM CONTRACTING WORK IN THIS STATE MUST BE LICENSED. THE WEST VIRGINIA CONTRACTORS LICENSING BOARD IS EMPOWERED TO ISSUE THE CONTRACTORS LICENSE. APPLICATIONS FOR A CONTRACTORS LICENSE MAY BE MADE BY CONTACTING THE WEST VIRGINIA DIVISION OF LABOR, CAPITOL COMPLEX, BUILDING 3, ROOM 319, CHARLESTON, WV 25305. TELEPHONE: (304) 558-7890.

WEST VIRGINIA STATE CODE 21-11-11 REQUIRES ANY PROSPECTIVE BIDDER TO INCLUDE THE CONTRACTOR'S LICENSE NUMBER ON THEIR BID.

BIDDER TO COMPLETE AND SUBMIT WITH BID:

CONTRACTOR'S NAME: Kyle Construction Company

CONTRACTOR'S LICENSE NO: WV 00 1257

THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FURNISH A COPY OF THEIR CONTRACTORS LICENSE PRIOR TO ISSUANCE OF A PURCHASE ORDER/CONTRACT.

REQUIRED BID FORMS

The following certifications must be properly **completed and furnished by the OFFERER as part of the bid**. Failure to submit any of these certifications **shall deem the bid non-responsive**.

BID FORM #7

BUY AMERICA CERTIFICATION

Bidder or offerer to complete correct certification.

Certificate of Compliance with Section 165(a)

The bidder or offerer hereby certifies that it will comply with the requirements of section 165(a) of the Surface Transportation Act of 1982, as amended, and the applicable regulations in 49 CFR part 661.

3-31-11
Date

Kenneth Kyle
Authorized Signature

Kyle CONSTRUCTION COMPANY
Company Name

Kenneth Kyle
Name

PRESIDENT
Title

Certificate for Non-Compliance with Section 165(a)

The bidder or offerer hereby certifies that it cannot comply with the requirements of section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, but it may qualify for an exception to the requirement pursuant to section 165(b)(2) or (b)(4) of the Surface Transportation Act of 1982, as amended, and the regulations in 49 CFR 661.7.

Date

Authorized Signature

Company Name

Name

Title

BID FORM #8

**CERTIFICATION OF PRIMARY PARTICIPANT REGARDING
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

The Primary Participant (applicant for an FTA grant or cooperative agreement, or potential contractor for a major third party contract),

Kyle Construction Company (COMPANY NAME) certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(If the primary participant (applicant for an FTA grant, or cooperative agreement, or potential third party contractor) is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.)

THE PRIMARY PARTICIPANT (APPLICANT FOR AN FTA GRANT OR COOPERATIVE AGREEMENT, OR POTENTIAL CONTRACTOR FOR A MAJOR THIRD PARTY CONTRACT),

Kenneth Kyle, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Kenneth Kyle - President
Signature and Title of Authorized Official

BID FORM#8A

Kyle Construction Company hereby certifies that it **IS** or **IS NOT** (specify one) included on the U.S Comptroller General's Consolidated List of Persons or Firms Currently Debarred for Violations of Various Public Contracts Incorporating Labor Standards Provisions.

3-31-11
Date

Kevin Kyle
Authorized Signature

President
Title

Kyle Construction Company
Company Name

BID FORM # 9

VENDOR'S CERTIFICATION OF UNDERSTANDING AND ACCEPTANCE

The Contractor hereby certifies that all Technical Specifications and Contract Terms and Conditions have been carefully reviewed, are fully understood and shall be adhered to in performance and completion of any contract resulting from this bid.

3-31-11
Date

Kenneth Kyle
Authorized Signature

PRESIDENT
Title

Kyle Construction Company
Company Name

SPECIFICATION COMPLIANCE

NOTE: Please check if what is offered is in exact compliance with specifications. Any discrepancies must be listed as an attachment to the bid proposal. Exact dimensions and/or descriptions must be provided as a part of the Contractor's bid proposal when submitted.

- Bid proposal submitted meets and/or exceeds all specification requirements.
- Bid proposal submitted contains deviations from specification requirements. Detailed descriptions of these deviations have been provided with this bid proposal.

BID FORM #10

CERTIFICATION OF RESTRICTIONS ON LOBBYING

The undersigned (Vendor, 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 Vendor, Kyle Construction Company certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Vendor understands and agrees that the provisions of 31 U.S.C. § 3801, et seq., apply to this certification and disclosure, if any.

3-31-11
Date

Kenneth Kyle
Authorized Signature

President
Title

BID FORM #11

ADDENDUM ACKNOWLEDGMENT

I hereby acknowledge receipt of the following checked addendum(s) and have made the necessary revisions to my proposal, plans and/or specifications, etc.

Addendum No.'s:

- No. 1 2-20-11
- No. 2 3-10-11
- No. 3 3-14-11
- No. 4 3-16-11
- No. 5 _____

I understand that failure to confirm the receipt of the addendum(s) is cause for rejection of bids.

Kenneth K. B. President
Signature
Kyle Construction Company
Company
3-31-11
Date

BID FORM # 12

WEST VIRGINIA
DIVISION OF PUBLIC TRANSIT
CONTRACTOR'S PLAN FOR DISADVANTAGED BUSINESS ENTERPRISED PARTICIPATION

It is the intention of this organization to affirmatively seek out and consider disadvantaged business enterprises to participate in this contract as subcontractor and/or Suppliers of materials and services.

COMPLETE APPROPRIATE COLUMN(S) BELOW		TOTAL DOLLAR AMOUNT ②
NAME OF DBE Sub-Contractor	(SUB-CONTRACTOR) DESCRIPTION OF WORK TO BE PERFORMED	
VAK-LEE STEELWELDING	LABOR REPAIR	17,000
NOBLE CONCRETE PAVING	ASPHALT PAVING	150,000
TOTAL		167,000

CONTRACTOR'S DBE GOAL ③: PERCENT 6 % OF BID AMOUNT \$ _____

- 1 ① DBE for the purpose of the certificate means a disadvantage business as defined by Special Provisions in the Proposal.
- 2 ② If material is to be supplied the figure in this column shall not exceed 60% of the actual cost unless the material is manufactured by a DBE in which case 100% of the cost can be recorded.
- 3 ③ The total DBE participation as a percentage of the total contract bid amount.
4. If the material is not supplied by a regular dealer as defined in 49 CFR 26.55(e)(2)(ii), the figure in this column ② shall include only a reasonable and customary fee or commission for providing a bonafide service.
5. By fully completing and signing this bid form (Bid Form #12), the Contractor shall commit to use a DBE subcontractor(s) to meet the contract goal.
6. By submitting Bid Form #13, the Contractor shall submit written and signed confirmation from the DBE(s) that it is participating in the contract as provided in the prime contractor's commitment (Bid Form #12).

Authorized Signature _____ Title President

BID FORM #13

**DISADVANTAGED BUSINESS ENTERPRISE
PARTICIPATION CONFIRMATION CERTIFICATION**

**NOTE: BID FORM #13 MUST BE INCLUDED FROM EACH DBE
SUBCONTRACTOR/SUPPLIER THAT IS PARTICIPATING IN
THE CONTRACT.***

This DBE subcontractor/supplier confirms that he/she is participating in the contract as provided in the prime Contractor's Plan For DBE Participation (Bid Form #12). Signature on this form does not constitute a contract between the prime contractor and subcontractor/supplier.

March 31, 2011

Date

Val-Mace

Authorized Signature

President

Title

Val-Lee Stud & Welding Inc.

Company Name



***Please make as many copies of this bid form as needed.**

BID FORM #13

**DISADVANTAGED BUSINESS ENTERPRISE
PARTICIPATION CONFIRMATION CERTIFICATION**

**NOTE: BID FORM #13 MUST BE INCLUDED FROM EACH DBE
SUBCONTRACTOR/SUPPLIER THAT IS PARTICIPATING IN
THE CONTRACT.***

This DBE subcontractor/supplier confirms that he/she is participating in the contract as provided in the prime Contractor's Plan For DBE Participation (Bid Form #12). Signature on this form does not constitute a contract between the prime contractor and subcontractor/supplier.

March 31, 2011

Date

Patrice Johnson

Authorized Signature

Pres.

Title

North Central Paving

Company Name

**Please make as many copies of this bid form as needed.*

State of West Virginia

Supplementary Conditions to AIA Document A201-2007
General Conditions of the Contract for Construction

The following Supplementary Conditions modify the General Conditions of the Contract for Construction, AIA Document A201, 2007 Edition. Where a portion of the General Conditions is modified or deleted by these Supplementary Conditions, the unaltered portions of the General Conditions shall remain in effect.

ARTICLE 1
GENERAL PROVISIONS

ANY PROVISION OF THE AIA DOCUMENT A201-2007 STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR THAT CONFLICTS WITH THESE SUPPLEMENTARY CONDITIONS IS NULL AND VOID.

Add the following Section to Article 1:

§1.05 PARTY RELATIONS

§1.05 The Owner and their consultants, the Architect and their Consultants, and the Contractor and their Subcontractors agree to proceed with the Work on the basis of mutual trust, good faith and fair dealing.

§1.1 BASIC DEFINITIONS

§1.1.1 THE CONTRACT DOCUMENTS

§1.1.1 Delete the last sentence of this Section and substitute the following:

The Contract Documents also include the Bidding Documents (Advertisement or Invitation to Bid, Request for Quotations/Bids, Instructions to Bidders, Form of Proposal, Bid Bond and Sample Forms), Performance Bond, Payment Bond, Maintenance Bond (if applicable), Certificates of Insurance, Special Provisions For Disadvantaged and Women Business Enterprise Utilization (if bound herein), and West Virginia Department of Labor Wage Rates.

§1.1.2 THE CONTRACT

§1.1.2 Make the following changes to Section 1.1.2:

In the last sentence, insert "and the Contractor" after "The Architect" and delete "the Architect's" and insert "their respective",

ARTICLE 2
OWNER

§2.1 GENERAL

§2.1.2 Delete Section 2.1.2 in its entirety.

§2.1 Add the following Section to 2.1:

§2.1.3 The Owner reserves the right to maintain a full time project representative at the site who shall have such duties and responsibilities as the Owner may assign. The Owner's representative shall not interfere with or be responsible for the Contractor's means, methods, techniques, sequences and procedures for accomplishing the Work.

§2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§2.2.3 Delete the last sentence of Section 2.2.3 and substitute the following:

The Contractor shall confirm the locations of each utility. If the Owner has provided geotechnical and other tests to determine subsurface conditions, the Owner will provide such documents to the Contractor; the Contractor acknowledges that it will make no claims for any subsurface or any other conditions revealed by these tests.

§2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

§2.4 Delete the third sentence of Section 2.4.

ARTICLE 3
CONTRACTOR

§3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§3.2.2 Add the following sentence to the end of Section 3.2.2:

Claims by Contractor resulting from its failure to familiarize itself with the site or pertinent documents shall be deemed waived.

§3.2.3 Delete Section 3.2.3 in its entirety and substitute the following:

§3.2.3 The Contractor acknowledges its continuing duty to review and evaluate the Construction Documents during performance of its services and shall immediately notify the Owner and the Architect about any problems, conflicts, defects, deficiencies, inconsistencies or omissions it discovers in or between the Construction Documents, and variances it discovers between the Construction

Documents and applicable laws, statutes, building codes, rules and regulations.

§ 3.2.4 Add the following clauses to Section 3.2.4:

§3.2.4.1 If the Contractor performs any Work which it knows or should have known involves a recognized problem, conflict, defect, deficiency, inconsistency or omission in the Construction Documents, or a variance between the Construction Documents and requirements of applicable laws, statutes, building codes, rules and regulations, without notifying the Owner and the Architect prior to receiving written authorization from the Architect to proceed, the Contractor shall be responsible for the consequences of such performance.

§3.2.4.2 Before ordering any materials or doing any Work, the Contractor and Subcontractors shall verify all measurements at the site and shall be responsible for the correctness of same. Discrepancies shall be reported in writing to the Architect prior to proceeding with the Work. No extra charge or compensation will be entertained due to differences between actual measurements and dimensions indicated on the drawings. If such differences do not result in a change in the scope of Work or if the Architect failed to receive written notice before the Work was performed.

§3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§3.3.1 Make the following changes to Section 3.3.1:

In the last sentence, delete the word "solely" the first time it appears and insert at the end of this sentence "unless the Contractor is grossly negligent."

§3.4 LABOR AND MATERIALS

§3.4.1 Add the following clauses to Section 3.4.1:

§3.4.1.1 In accordance with West Virginia Code §5-19-1 of seq., every contract and subcontract for the construction, reconstruction, alteration, repair, improvement or maintenance of public works, where the cost is more than \$50,000 and, in the case of steel only, where the cost of steel is more than \$50,000 or where more than 10,000 pounds of steel are required, the State will accept only aluminum, glass or steel products produced in the United States. In addition, items of machinery or equipment purchased for use at the site of public works, shall be made of domestic aluminum, glass or steel, unless the cost of the product is less than \$50,000 or less than 10,000 pounds of steel are used in the public works project.

§3.4.1.2 Foreign made aluminum, glass or steel products may be accepted only if the cost of domestic products is found to be unreasonable. Such cost is unreasonable if it is twenty percent (20%) or more higher than the bid price for foreign made products. If the domestic aluminum, glass or steel products to be supplied or produced are in a "substantial labor surplus area," as defined by the

United States Department of Labor, foreign made products may be supplied only if domestic products are thirty percent (30%) or more higher in price than the foreign made products.

§3.4.1.3 If, prior to the award of a contract under the above provisions, the spending officer of the spending unit determines that there exists a bid for like foreign aluminum, glass or steel that is reasonable and lower than the lowest bid for domestic products, the spending officer may request in writing a reevaluation and reduction in the lowest bid for such domestic products. All vendors must indicate in their bid if they are supplying foreign aluminum, glass or steel.

§3.4.1.4 PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS

1. Except when authorized by the director of the Purchasing Division pursuant to Subclause 2 below, no contractor may use or supply steel products for a state contract project other than those steel products made in the United States. As used in this contract:

a. "State contract project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of any materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.

b. "Steel products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more of such operations, from steel made by the open hearth, basic oxygen, electric furnace, bassner or other steel making process.

c. "United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.

2. The director of the Purchasing Division may, in writing, authorize the use of foreign steel products if:

a. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this contract, the cost is the value of the steel product as delivered to the project; or

b. The director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

AIA A201-2007 Supplementary Conditions to Standard Form of Agreement Between
Owner and Contractor

State of West Virginia

3 A contractor who uses steel products in violation of this Clause may be subject to civil penalties pursuant to West Virginia Code §5A-3-56.

§3.4.1.5 The Contractor and all Subcontractors shall pay the higher of the U. S. Department of Labor minimum wage rates or the West Virginia Department of Labor minimum wage rates for the County in which this contract is performed, pursuant to West Virginia Code §21-5A-1 *et seq.*

§3.4.1.6 WEST VIRGINIA JOBS ACT: Pursuant to West Virginia Code §21-1C-1 *et seq.*, every public improvement contract or subcontract let by a public authority shall contain the following language:

1. DEFINITIONS:

a. The term "construction project" means any construction, reconstruction, improvement, enlargement, painting, decorating or repair of any public improvement let to contract in an amount equal to or greater than one million dollars (\$1,000,000). The term "construction project" does not include temporary or emergency repairs;

b. (1) The term "employee" means any person hired or permitted to perform hourly work for wages by a person, firm or corporation in the construction industry;

(2) The term "employee" does not include:

(A) Bona fide employees of a public authority or individuals engaged in making temporary or emergency repairs;

(B) Bona fide independent contractors; or

(C) Salaried supervisory personnel necessary to assure efficient execution of the employee's work;

c. The term "employer" means any person, firm or corporation employing one or more employees on any public improvement and includes all contractors and subcontractors;

d. The term "local labor market" means every county in West Virginia and all counties bordering West Virginia that fall within seventy-five (75) miles of the border of West Virginia;

e. The term "public authority" means any officer, board, commission or agency of the State of West Virginia and its political subdivisions, including counties and municipalities. Further, the Economic Grant Committee, Economic Development Authority, Infrastructure and Jobs Development Council and School Building Authority shall

be required to comply with the provisions of this Clause for loans, grants or bonds provided for public improvement construction projects; and

f. The term "public improvement" includes the construction of all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports and all other structures that may be let to contract by a public authority, excluding improvements funded, in whole or in part, by federal funds.

2. LOCAL LABOR MARKET UTILIZATION ON PUBLIC IMPROVEMENT CONSTRUCTION PROJECTS, WAIVER CERTIFICATES:

a. Employers shall hire at least seventy-five percent (75%) of employees for public improvement construction projects from the local labor market, to be rounded off, with at least two employees from outside the local labor market permissible for each employer per project.

b. Any employer unable to employ the minimum number of employees from the local labor market shall inform the nearest office of the Bureau of Employment Programs' Division of Employment Services of the number of qualified employees needed and provide a job description of the positions to be filled.

c. If, within three (3) business days following the placing of a job order, the Division is unable to refer any qualified job applicants to the employer or refers less qualified job applicants than the number requested, then the Division shall issue a waiver to the employer stating the unavailability of applicants and shall permit the employer to fill any positions covered by the waiver from outside the local labor market. The waiver shall be either oral or in writing and shall be issued within the prescribed three (3) days. A waiver certificate shall be sent to both the employer for its permanent project records and to the public authority.

3. SCOPE: REPORTING REQUIREMENTS:

a. Pursuant to West Virginia Code §21-1C-5, the West Virginia Jobs Act applies to expenditures for construction projects by any public authority for public improvements as defined by this Act.

b. For public improvement projects let pursuant to the West Virginia Jobs Act, the public authority shall file or require an employer as defined in Chapter 21, Article 1C, Section 2 to file with the Division of Labor copies of the waiver certificates and certified payrolls, pursuant to West Virginia Code, Chapter 21, Article 5A, or other comparable documents that include the number of employees, the

county and state wherein the employees reside and their occupation.

c. The Division of Labor shall compile the information required by this section and submit it annually to the Joint Committee on Government and Finance by the fifteenth day of October. The Joint Committee may forward these reports to the Legislative Auditor to review and make comments regarding the usefulness of the information collected and to suggest changes to the division's method of reporting to ensure the information collected will prove useful in evaluating the effectiveness of the provisions of this Clause.

d. Each public authority has the duty to implement the reporting requirements of this Clause. Every public improvement contract or subcontract let by a public authority shall contain provisions conforming to the requirements of this Clause.

e. The Division of Labor is authorized to establish procedures for the efficient collection of data, collection of civil penalties prescribed in West Virginia Code §21-1C-6 and transmittal of data to the Joint Committee on Government and Finance.

4. PENALTIES: Pursuant to West Virginia Code §21-1C-6, any employer who violates any provision of this Clause is subject to a civil penalty of one hundred dollars (\$100) per day of violation.

§3.4.1.7. PUBLIC IMPROVEMENT CONTRACTS & DRUG-FREE WORKPLACE ACT: The Contractor must, at all times during the term of this Agreement, be in compliance with West Virginia Code §21-1D-1 et seq., which provides, in part:

1. DEFINITIONS:

- a. The term "construction", as used in this article, means any construction, reconstruction, improvement, enlargement, painting, decorating or repair of any public improvement let to contract the value of which contract is over \$100,000. The term "construction" does not include temporary or emergency repairs.
- b. The term "contractor" means any employer working on a public improvement without regard to whether they are serving as the prime or subcontractor to another.
- c. The term "employee" means a laborer, mechanic or other worker. For the purposes of this article, employee does not include those persons as are employed or hired directly by a public authority on a regular or temporary basis engaged exclusively in

making temporary or emergency repairs. Furthermore, employee does not include those persons employed by a contractor who does not work in public improvement construction.

- d. The term "public authority", as used in this article, means any officer, board or commission or other agency of the State of West Virginia, its counties or municipalities or any political subdivision thereof, authorized by law to enter into a contract for the construction of a public improvement, including any institution supported, in whole or in part, by public funds of the State of West Virginia and this article applies to expenditures of these institutions made, in whole or in part, from public funds; and
- e. The term "public improvement", as used in this article, includes all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports and all other structures upon which construction may be let to contract by the State of West Virginia, its counties or municipalities or any political subdivision thereof.

2. No public authority may award a public improvement contract which is to be let to bid to a contractor unless the terms of the contract require the contractor and its subcontractors to implement and maintain a written drug-free workplace policy in compliance with this article and the contractor and its subcontractors provide a sworn statement in writing, under the penalties of perjury, that they maintain a valid drug-free workplace policy in compliance with this article.

The public improvement contract shall provide for the following:

- (1) That the contractor implements its drug-free workplace policy;
- (2) Cancellation of the contract by the awarding public authority if the contractor:
 - (A) Fails to implement its drug-free workplace policy;
 - (B) Fails to provide information regarding implementation of the contractor's drug-free workplace policy at the request of the public authority; or
 - (C) Provides to the public authority false information regarding the contractor's drug-free workplace policy.

3. Each contractor that submits a bid for the work must submit at the same time an affidavit that the contractor has a written plan for a drug-free workplace policy in compliance with West Virginia Code §21-1D-5. A public improvement contract may not be awarded to a contractor who does not have a written

plan for a drug-free workplace policy and who has not submitted that plan to the appropriate contracting authority in timely fashion.

4. In instances where a worker is required by law to follow United States Department of Transportation drug testing guidelines, no additional drug tests are required under this article.

5. A clearly legible copy of the contractor's written drug-free workplace policy shall be kept posted in a prominent and easily accessible place at the public improvement construction site thereof by each contractor subject to the provisions of this article.

6. Every contractor shall keep an accurate record showing the names, occupation, and safety-sensitive status of all employees, in connection with the construction on the public improvement, and showing any drug tests or alcohol tests performed and employee education and supervisor training received, which record shall be open at all reasonable hours for inspection by the public authority which let the contract and its officers and agents. It is not necessary to preserve the record for a period longer than three (3) years after the termination of the contract.

7. All drug testing information specifically related to individual employees is confidential and should be treated as such by anyone authorized to review or compile program records. Drug test results may not be used in a criminal proceeding without the employee's consent.

8. No less than once per year, or upon completion of the project, every contractor shall provide a certified report to the public authority which let the contract. The report shall include:

- (1) Information to show that the education and training service to the requirements of section five (§ 21-10-5) of this article was provided;
- (2) The name of the laboratory certified by the United States Department of Health and Human Services or its successor that performs the drug tests pursuant to this article;
- (3) The average number of employees in connection with the construction on the public improvement;
- (4) Drug test results for the following categories including the number of positive tests and the number of negative tests:

- (A) Preemployment and new hires;
- (B) Reasonable suspicion;

- (C) Post-accident;
- (D) Random.

9. PENALTIES:

a. Any contractor who violates any provision of this article is, for the first offense, guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000; for the second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000; for the third or any subsequent offense within the preceding five years, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$25,000 and the contractor shall be excluded from bidding any additional new public improvement projects for a period of one year.

b. Any person who directly or indirectly aids, requests or authorizes any other person to violate any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$250.

§3.4 Add the following Sections to 3.4:

§3.4.4 Where materials and equipment are to be provided by the Owner under the Contract Documents, the Contractor shall notify the Owner in writing as to when materials and equipment are required on the project site in sufficient time to avoid delay in the Work.

§3.4.5 The Contractor shall employ labor on the Project or in connection with the Work, capable of working harmoniously with all trade crafts and any other individuals associated with the Project. The Contractor shall also use its best efforts and implement policies and practices to minimize the likelihood of any strike, work stoppage or other labor disturbance. Except as specifically provided in this Agreement, Contractor shall not be entitled to any adjustment in the Contract sum or Contract time and shall be liable to the Owner for all damages suffered by the Owner occurring as a result of work stoppages, slowdowns, disputes, or strikes by the work force of or provided by Contractor or its Subcontractors.

§3.6 WARRANTY

§3.6 Add the following sentence at the end of Section 3.5:

The Contractor agrees to assign to the Owner at time of Final Completion of the Work, any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such a manner so as to preserve any and all such warranties.

§3.8 ALLOWANCES

§3.8.3 Make the following change to Section 3.8.3:

§3.8.3 Delete "with reasonable promptness" and insert "in sufficient time to avoid delay in the Work."

Add the following Section to 3.8:

§3.8.4 The Contractor shall promptly submit to the Owner an itemized account of any expenditure by the Contractor of the Contract allowance in sufficient detail to allow the Owner to properly account for such expenditure.

§3.9 SUPERINTENDENT/PROJECT MANAGER

§3.9.1 Add the following sentence to the end of Section 3.9.1:

The Contractor may also employ a competent project manager.

§3.9.2 Make the following changes to Section 3.9.2:

In the first sentence, add "and project manager, if applicable" after "superintendent." In the second sentence, add "or project manager, if applicable," after "superintendent."

§3.9.3 Make the following changes to Section 3.9.3:

In the first sentence, add "or project manager, if applicable," after "superintendent." In the second sentence, add "or project manager, if applicable," after "superintendent."

§3.9 Add the following Section to 3.9:

§3.9.4 The Owner shall have the right, at any time, to direct a change in the Contractor's representatives if their performance is deemed unsatisfactory.

§3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§3.10.1 Make the following changes to Section 3.10.1:

In the first sentence, delete the word "promptly" and substitute "by the earliest reasonable date."

Add the following sentence to the end of Section 3.10.1: "The Contractor shall submit an updated construction schedule with each payment application, unless waived by the Owner."

Add the following Sections to 3.10:

§3.10.4 At any time after the first thirty (30) days of the Contract Time, if it is found that the project is two (2) weeks or more behind schedule, beyond approved time extensions, or if at any time during the last thirty (30) days of the scheduled Contract Time the

Contractor is one (1) week or more behind schedule, the Contractor shall immediately submit a plan to the Owner describing how the Work will be placed back on schedule within the remaining Contract Time.

§3.10.5 If the Owner and the Architect determine that the performance of the Work during any stage of the construction schedule last approved by the Owner has not progressed or reached the level of completion required by the Contract Documents, the Owner will have the right to order the Contractor to take corrective measures (hereinafter referred to collectively as Extraordinary Measures) necessary to expedite the progress of the Work, including, without limitation: (1) working additional shifts or overtime; (2) supplying additional manpower, equipment, and facilities; and (3) other similar measures. Such Extraordinary Measures shall continue until the progress of the Work complies with the last approved construction schedule. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule after allowing for approved extensions of Contract Time as provided elsewhere in this Agreement. The Contractor is not entitled to an adjustment in the Contract Sum in connection with any Extraordinary Measures required by the Owner. The Owner may exercise its rights under this Section as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with the construction schedule.

§3.11 DOCUMENTS AND SAMPLES AT THE SITE

§3.11 Insert the following sentence at the end of Section 3.11:

The Contractor's compliance with this Section 3.11 shall be a condition precedent to any obligation of the Owner to make Final Payment pursuant to this Agreement.

§3.15 CLEANING UP

§3.15.2 Delete Section 3.15.2 in its entirety and substitute the following:

§3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and may withhold such reasonable costs as necessary for the fulfillment of the Contractor's obligation under this Section 3.15. If the reasonable costs of such cleaning exceed the Contract Sum then due the Contractor, the Contractor shall reimburse the Owner the difference within thirty (30) consecutive calendar days of the Owner's written request.

§3.15 Add the following Section to 3.15:

§3.15.3 In order to achieve Substantial Completion, as defined by Section 9.8, for any portion of the Work, the Contractor must have the area where the Work is located fully cleaned and all materials and/or debris removed from site. The Certificate of Substantial

Completion will not be issued until the Contractor has met this obligation.

ARTICLE 4
ARCHITECT

§4.1 GENERAL

§4.1.1 Make the following changes to Section 4.1.1:

In first sentence, delete the period and add ", when required pursuant to West Virginia Code §30-12-1 et seq." Add the following sentence at the end of Section 4.1.1: "If the Owner does not retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located, the Owner will appoint an individual to assume the role and obligations of the Architect pursuant to this Agreement."

§4.2 ADMINISTRATION OF THE CONTRACT

§4.2 Make the following changes to Section 4.2:

§4.2.1 In the first sentence of Section 4.2.1 after the word "Architect" add ", unless otherwise indicated by the Owner."

§4.2.2 In the first sentence of Section 4.2.2 strike the word "generally."

§4.2.3 In the first sentence of Section 4.2.3 strike the word "reasonably."

§4.2.5 Add the following sentence at the end of Section 4.2.5:

The Architect upon receipt of an Application for Payment from the Contractor shall either review and certify such amounts due for payment or return such Application for Payment to the Contractor for correction(s) within five (5) consecutive business days of receipt.

§4.2.7 Delete the first sentence and substitute the following:

The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents.

§4.2.8 Make the following change to Section 4.2.8:

In the first sentence, after the word "Architect" add ", in consultation with the Owner."

ARTICLE 7
CHANGES IN THE WORK

§7.2 CHANGE ORDERS

§7.2 Add the following Section to 7.2:

§7.2.2 A written Change Order as defined under 7.2.1 above constitutes a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to general conditions, all direct or indirect costs associated with such change and any and all adjustment to the Contract Sum and Contract Time.

§7.3 CONSTRUCTION CHANGE DIRECTIVES

§7.3.7 Make the following change in Section 7.3.7:

In the fourth line of the first sentence, delete the words "an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount" and substitute "an allowance for overhead and profit in accordance with clauses 7.3.11.1 through 7.3.11.9 below."

§7.3.9 Delete Section 7.3.9 in its entirety and substitute the following:

§7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment provided these amounts have been added to the Contract by Change Order and a purchase order has been issued for the Change Order.

§7.3.10 Add the following sentence at the end of Section 7.3.10:

The Change Order shall be issued by the Owner within 60 days following such agreement.

Add the following Section to 7.3:

§7.3.11 In Section 7.3.7, the allowance for overhead and profit included in the total cost to the Owner shall be based on the following schedule:

- 1 For the Contractor, for any Work performed by the Contractor's own forces, fifteen percent (15%) of the cost.
- 2 For the Contractor, for Work performed by the Contractor's Subcontractor, ten percent (10%) of the amount due the Subcontractor.
- 3 For each Subcontractor or Sub-Subcontractor involved, for any Work performed by that Subcontractor's own forces, fifteen percent (15%) of the cost.

4. For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors (ten percent (10%) of the amount due the Sub-subcontractor.

5. Cost to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.7. Estimated labor hours shall include hours only for those workmen and working foremen directly involved in performing the Change Order work. Supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) is considered to be included in the allowance for Overhead and Profit. Hand tools are defined as equipment with a value of \$1,000 or less. For Contractor owned equipment, the "bare" equipment rental rates allowed to be used for pricing Change Order proposals shall be not more than the monthly rate listed in the most current publication of The AED Green Book divided by 176 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the Change Order work.

6. In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, material, equipment and Subcontractors. Details to be submitted will include detailed line item estimates showing detailed materials quantity take-offs, material prices by item and related labor hour pricing information and extensions (by line item or by drawing as applicable). Where major cost items are Subcontracts they shall also be itemized as prescribed above. In no case will a change involving over \$10,000 be approved without such an itemization.

7. Local Business and Occupation Taxes, if applicable, shall be calculated on the cost of the Work, overhead and profit.

8. Overhead and profit shall not be calculated on changes in the Work involving unit prices. Unit prices are to have overhead and profit included in the price quoted.

ARTICLE 8 TIME

§8.3 DELAYS AND EXTENSIONS OF TIME

§8.3.1 In the first sentence, delete "unusual delay in deliveries."

ARTICLE 9 PAYMENTS AND COMPLETION

§9.2 SCHEDULE OF VALUES

§9.2 Make the following changes to Section 9.2:

In the first sentence add "and the Owner" after the first reference to the Architect. In the second sentence add "or the Owner" after Architect.

§9.3 APPLICATIONS FOR PAYMENT

§9.3 Make the following changes to Section 9.3:

§9.3.1 In the first sentence add "and the Owner" after the first reference to the Architect and add "and other required documents" after the words "schedule of values."

§9.3.1.1 Delete clause 9.3.1.1 in its entirety and substitute the following:

§9.3.1.1 Such applications may include requests for payment on account of changes in the Work authorized by Construction Change Directives and Change Orders only after a purchase order has been issued for the Work affected.

§9.3.1 Add the following clauses to Section 9.3.1:

§9.3.1.3 Until the Work is fifty percent (50%) complete, the Owner will withhold as retainage 10% of the amount due the Contractor on account of progress payments. At the time the Work is fifty percent (50%) complete and thereafter, if the manner of completion of the Work and its progress are and remain satisfactory to the Owner and Architect, and in the absence of other good and sufficient reasons, the Architect will, on presentation by the Contractor of Consent of Surety, authorize any remaining partial payments to be paid in full.

§9.3.1.4 The full Contract retainage may be reinstated if the manner of completion of the Work and its progress do not remain satisfactory to the Owner and Architect, if the Surety withholds its consent, or for other good and sufficient reasons.

§9.6 PROGRESS PAYMENTS

§9.6.7 Delete Section 9.6.7 in its entirety.

§9.7 FAILURE OF PAYMENT

§9.7 Make the following changes in Section 9.7:

In line two, change "seven days" to "sixty days." In line four, delete "binding dispute resolution" and substitute "a court of competent jurisdiction in the State of West Virginia."

§9.8 SUBSTANTIAL COMPLETION

§9.8.5 Add the following clause to Section 9.8.5:

§9.8.5.1 The payment of retainage shall be sufficient to increase the total payments to ninety-five percent (95%) for the Work or designated portion thereof being accepted as Substantially

Complete, less any amounts as the Architect shall determine for any Work that is not complete, not in accordance with the Contract Documents, or for unperfected claims.

§9.10 FINAL COMPLETION AND FINAL PAYMENT

§9.10.2 Make the following changes in Section 9.10.2:

In the first sentence, delete "for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner)."

Add the following clause to Section 9.10.2:

§9.10.2.1 Before final payment is due the Contractor, all applicable State and local taxes must be paid. If requested by the Owner, the Contractor shall present evidence that payment or satisfaction of all such tax obligations has been made.

§9.10.3 Add the following clause to Section 9.10.3:

9.10.3.1 Unless and to the extent final completion is delayed through no fault of the Contractor as provided in Section 9.10.3, the Owner shall be under no obligation to increase payments above ninety-five percent (95%) until final completion of the Work is Certified by the Architect.

Add the following Sections to Article 9:

§9.11 LIQUIDATED DAMAGES

§9.11.1 The Owner will suffer financial loss if the Work is not Substantially Complete within the Contract Time as defined in Article 8, and if final completion is not achieved within the specified time frame following Substantial Completion. As liquidated damages, and not as a penalty, the Contractor and the Contractor's surety shall be liable for and shall pay the Owner the sum(s) stated in this Agreement and/or purchase order.

§9.11.2 Allowances may be made for delays due to shortages of materials and/or energy resources, subject to proof by documentation, and also for delays due to strikes or other delays beyond the control of the Contractor. All delays and any claim for extension of Contract Time must be properly documented in accordance with Section 18.1.6 by the Contractor and must be made within the time limits stated in Section 15.1.2.

**ARTICLE 10
PROTECTION OF PERSONS AND PROPERTY**

§10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

§10.2.8 Make the following changes to Section 10.2.8:

In the first sentence, delete "within a reasonable time not exceeding 21 days" and substitute "immediately".

§10.3 HAZARDOUS MATERIALS

§10.3.3 Delete Section 10.3.3 in its entirety.

§10.3.6 Make the following change to Section 10.3.6:

Delete "indemnify" and substitute "reimburse."

**ARTICLE 11
INSURANCE AND BONDS**

§11.1 CONTRACTOR'S LIABILITY INSURANCE

§11.1.1 Make the following changes in Section 11.1.1:

§11.1.1.1 Delete the semicolon at the end of clause 11.1.1.1 and add:

"including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project."

§11.1.1.2 Delete the semicolon at the end of clause 11.1.1.2 and add:

"as described in West Virginia Code §23-4-2 (Mandolids), or persons or entities excluded by statute from the requirements of clause 11.1.1.1 but required by the Contract Documents to provide the insurance required by that clause."

§11.1.2 Add the following clause to Section 11.1.2:

§11.1.2.1 The insurance coverages required by Section 11.1.1 shall be written for not less than the minimum limits (or greater if required by law) set forth in the sample Certificate of Insurance following these Supplementary Conditions.

§11.1.4 Delete Section 11.1.4 in its entirety and substitute the following:

§11.1.4 The Owner shall require the Contractor to purchase and maintain liability insurance coverage, primary to the Owner's coverage under Paragraph 11.2. Owner, Architect, and Architect's Consultants shall be named as additional insureds on Contractor's Commercial General Liability Insurance specified for operations and completed operations, but only with respect to bodily injury, property damage or personal and advertising injury to the extent caused by the negligent acts or omissions of the Contractor or those acting on the Contractor's behalf, in the performance of the Contractor's Work for the Owner at the Worksite.

§11.3 PROPERTY INSURANCE

§11.3.1 Make the following changes to Section 11.3.1:

At the beginning of the first sentence, delete "Unless otherwise provided, the Owner" and substitute "The Contractor".

Add the following sentences at the end of this Section:

The form of policy for this coverage shall be Completed Value. If the Owner is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall bear all reasonable costs properly attributable thereto.

§11.3.1.2 Delete clause 11.3.1.2 in its entirety.

§11.3.1.3 Delete clause 11.3.1.3 in its entirety.

§11.3.2 BOILER AND MACHINERY INSURANCE

§11.3.2 Make the following changes to Section 11.3.2:

In the first line, delete "Owner" and substitute "Contractor".

§11.3.4 Delete Section 11.3.4 in its entirety.

§11.3.6 Make the following changes in Section 11.3.6:

At the beginning of the first sentence, delete "Before an exposure to loss may occur, the Owner shall file with the Contractor" and substitute "Before an exposure to loss may occur, the Contractor shall file with the Owner".

At the end of the third sentence, delete "Contractor" and substitute "Owner".

§11.3.7 WAIVERS OF SUBROGATION

§11.3.7 Make the following change in Section 11.3.7:

At the end of the first sentence, delete "Owner" and substitute "Contractor".

§11.3.8 Make the following changes in Section 11.3.8:

In the first sentence, substitute "Contractor" for "Owner" each time the latter word appears.

§11.3.9 Make the following changes in Section 11.3.9:

Substitute "Contractor" for "Owner" each time the latter word appears, except in the last sentence. In the second sentence, delete "method of binding dispute resolution selected in the Agreement between the Owner and Contractor" and substitute "court award or judgment".

§11.3.10 Delete Section 11.3.10 in its entirety and substitute the following:

§11.3.10 The Contractor as fiduciary shall have the power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Contractor's exercise of this power. If such objection is made, the dispute shall be resolved as provided in Section 4.5. The Contractor as fiduciary shall, in that case, make settlement with insurers in accordance with directions of the Court. If distribution of the insurance proceeds as directed by the Court is required, the Court will direct such distribution.

§11.4 PERFORMANCE BOND AND PAYMENT BOND

§11.4.1 Add the following clauses to Section 11.4.1:

§11.4.1.1 The Contractor shall provide, at the Contractor's expense, a Performance Bond and a Labor and Material Payment Bond for 100% of the Contract Sum and, if applicable, a two-year roofing Maintenance Bond for the full value of the roofing system. The surety company must be one with which the Owner has no reasonable objection and it must be authorized to transact surety insurance business in the State of West Virginia.

§11.4.1.2 An attorney-in-fact who executes the bonds on behalf of the surety shall affix thereto a certified and current copy of power of attorney.

§11.4.1.3 The bonds shall be issued on State of West Virginia forms. The Contractor shall deliver the required bonds and all other contract documents to the Owner not later than 15 days following receipt of the Owner's notice of intent to award a Contract.

Add the following Section to Article 11:

§11.5 WAGE BOND

The Contractor, if engaged in construction work in West Virginia less than five consecutive years preceding the date of the Bid, shall post a wage bond with the West Virginia Department of Labor.

**ARTICLE 13
MISCELLANEOUS PROVISIONS****§13.6 INTEREST**

§13.6 Delete Section 13.6 in its entirety and substitute the following:

Notwithstanding any other provision in the Contract Documents, any interest due and payable for payments due and unpaid under the Contract Documents shall be made pursuant to West Virginia Code.

§13.7 TIME LIMITS ON CLAIMS

§13.7 Delete Section 13.7 in its entirety and substitute the following:

Any applicable statute of limitations shall be in accordance with West Virginia Code.

Add the following Sections to Article 13:

§13.8 WORKERS COMPENSATION

The Contractor shall provide proof of compliance with West Virginia Worker's Compensation laws and regulations.

§13.9 CONTRACTOR'S LICENSE

§13.9.1 West Virginia Code §21-11-2 requires that all persons desiring to perform contractual work in West Virginia shall be duly licensed. The West Virginia Contractor's Licensing Board is empowered to issue a contractor's license.

§13.9.2 West Virginia Code §21-11-11 requires any prospective Bidder to include the Bidder's contractor's license number on its Bid. The successful Bidder will be required to furnish a copy of its contractor's license in a classification appropriate to the Work prior to issuance of a purchase order/contract.

ARTICLE 14
TERMINATION OR SUSPENSION OF THE
CONTRACT

§14.1 TERMINATION BY THE CONTRACTOR

§14.1.1 Make the following changes in Section 14.1.1:

At the end of clause 14.1.1.3 delete ", or" and insert a period.

Delete clause 14.1.1.4 in its entirety.

§14.1.3 Delete Section 14.1.3 in its entirety and substitute the following:

§14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exist, the Contractor may, upon seven days written notice to the Owner and Architect, terminate the Contract. In such event, the Contractor shall be paid for all Work performed in accordance with the Contract Documents, for reasonable and proven termination expenses and a reasonable allowance for overhead and profit. However, such payment, exclusive of termination expenses, shall not exceed the Contract Sum as reduced by other payments made to the Contractor and further reduced by the value of Work as yet not completed. The Contractor shall be entitled to reasonable overhead, but not profit, on Work not performed.

§14.2 TERMINATION BY THE OWNER FOR CAUSE

§14.2.4 Delete Section 14.2.4 in its entirety and substitute the following:

§14.2.4 If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall not be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Owner shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§14.4.1 Delete Section 14.4.1 in its entirety and substitute the following:

§14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause, upon thirty days written notice.

§14.4.3 Delete Section 14.4.3 in its entirety and substitute the following:

§14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment from the Owner on the same basis provided in Section 14.1.3 above.

Add the following Section to Article 14:

§14.5 FISCAL YEAR FUNDING

§14.5 Work performed under this Contract is to continue in the succeeding fiscal year contingent upon funds being appropriated by the Legislature for this Work. In the event funds are not appropriated for this Work, this Contract becomes of no effect and is null and void after June 30.

ARTICLE 15
CLAIMS AND DISPUTES

§15.2 INITIAL DECISION

§15.2.1 In the third sentence of Section 15.2.1, insert "or litigation" following the word "mediation".

§15.2.5 Delete the last sentence in Section 15.2.5 and substitute the following:

Approval or rejection of a claim by the Initial Decision Maker shall be final and binding on the parties unless it is pursued further by either party in accordance with Section 15.2.6.

AIA A201-2007 Supplementary Conditions to Standard form of Agreement Between
Owner and Contractor | State of West Virginia

§15.2.6 Make the following change to clause 15.2.6.1:

In the last sentence, delete "or pursue binding dispute resolution proceedings."

§15.2.8 Delete Section 15.2.8 in its entirety.

§15.3 MEDIATION

§15.3.1 Delete "binding dispute resolution" and substitute "litigation in a court of competent jurisdiction."

§15.3.2 Delete Section 15.3.2 in its entirety and substitute the following:

§15.3.2 The parties shall endeavor to resolve their Claims by non-binding mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement.

§15.4 ARBITRATION

§15.4 Delete Section 15.4 in its entirety and substitute the following:

§15.4 SETTLEMENT OF CLAIMS

§15.4.1 The Constitution of West Virginia grants the State sovereign immunity from any and all Claims against the public treasury. This immunity applies and is extended to all agencies of the State, including the Owner. It shall be in full force and effect as it relates to this Contract. The West Virginia Legislature, recognizing that certain Claims against the State may constitute a moral obligation of the State and should be heard, has established the West Virginia Court of Claims for this purpose. Notwithstanding any provision to the contrary in the Contract Documents, all references to arbitration are hereby deleted and all Claims of the Contractor for monetary relief, and only of the Contractor, arising out of or related to this Contract shall be decided by the West Virginia Court of Claims. The following Sections have been rewritten to bring them into conformance with the foregoing.

§15.4.2 Claims by the Owner may be brought against the Contractor in the Circuit Court of Kanawha County, West Virginia, or in any other court that has jurisdiction, as the Owner may elect.

§15.4.3 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 15.1.6, 9.10.4 and 9.10.5, shall, within 30 days after submission of the decision by the Initial Decision Maker, be settled for the Contractor by the West Virginia Court of Claims or, for the Owner, by the Circuit Court of Kanawha County or any other court of jurisdiction as the Owner may elect.

§15.4.4 Notice of such action shall be filed in writing with the other party to the Contract, and a copy of such notice shall be filed with the Initial Decision Maker and the Architect, if applicable.

§15.4.5 During court proceedings, the Owner and the Contractor shall comply with Section 15.1.3.

§15.4.6 Claims shall be made within the time limits specified in Section 15.2.6.1.

§15.4.7 The party filing a Claim must assert in the demand all Claims then known to that party on which action is permitted.

Add the following Article:

**ARTICLE 16
EQUAL OPPORTUNITY**

§16.1 COMPLIANCE WITH REGULATIONS UNDER TITLE VI OF THE FEDERAL CIVIL RIGHTS ACT OF 1964 AND EXECUTIVE ORDER 06-2 BY THE GOVERNOR OF WEST VIRGINIA DATED DECEMBER 15, 1985

§16.1.1 The Contractor agrees that it will comply with Title VI of the Federal Civil Rights Act of 1964 (P.L. 88362) and the regulations of the State of West Virginia, to the end that no person in the State, or in the United States, shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination under any program or activity for which the Contractor receives any recompense or other consideration of value, either directly or indirectly, from the State, and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this Agreement.

§16.1.2 If any real property or structure hereon is provided or improved, this assurance shall obligate the Contractor, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which any State payment is extended or for another purpose involving the provision of similar services or benefits. If any other goods or services are so provided, this assurance shall obligate the Contractor for the period during which it supplies such goods or services.

§16.1.3 The Contractor recognizes and agrees that such right to provide property, goods or services to the State will be extended in reliance on the representations and agreements made in assurance, and that the State shall have the right to seek judicial enforcement of this assurance. This is binding on the Contractor, its successors, transferee, and assignee, or any authorized person on behalf of the Contractor.

END OF SUPPLEMENTARY CONDITIONS TO AIA DOCUMENT A201-2007

AIA A201-2007 Supplementary Conditions to Standard Form of Agreement Between Owner and Contractor

State of West Virginia

Any provisions of the Contract Documents that conflict with these Supplementary Conditions shall be null and void unless they have been approved in writing by the applicable State purchasing officer and the Attorney General, and are clearly identified as such in the bid documents.

The Owner and Contractor hereby agree to the full performance of the covenants contained herein.

IN WITNESS WHEREOF, the Owner and Contractor have entered into this Agreement as of the effective date as stated in the A101-2007 Agreement.

Owner:

By: _____

Title: _____

Date: _____

Contractor: Kyle Construction Company

By: [Signature]

Title: President

Date: 3-31-11

APPROVED AS TO FORM THIS 25th DAY OF March, 2010
DARRELL V. MCGRAW, JR., ATTORNEY GENERAL

BY: [Signature]
DEPUTY ATTORNEY GENERAL



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

<p>PRODUCER</p> <p>INSURANCE AGENCY'S NAME AND ADDRESS</p>	<p>THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.</p>												
<p>INSURED</p> <p>CONTRACTOR'S NAME AND ADDRESS</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">INSURERS AFFORDING COVERAGE</td> <td style="width: 20%;">NAIC #</td> </tr> <tr> <td>INSURER A: INSURER'S NAME</td> <td></td> </tr> <tr> <td>INSURER B: INSURER'S NAME</td> <td></td> </tr> <tr> <td>INSURER C: INSURER'S NAME</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> </table>	INSURERS AFFORDING COVERAGE	NAIC #	INSURER A: INSURER'S NAME		INSURER B: INSURER'S NAME		INSURER C: INSURER'S NAME		INSURER D:		INSURER E:	
INSURERS AFFORDING COVERAGE	NAIC #												
INSURER A: INSURER'S NAME													
INSURER B: INSURER'S NAME													
INSURER C: INSURER'S NAME													
INSURER D:													
INSURER E:													

COVERAGES		THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.		LIMITS	
TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)		
<p>A</p> <p>GENERAL LIABILITY</p> <p><input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY</p> <p>CLAIMS MADE: <input checked="" type="checkbox"/> OCCUR</p> <p>GEN'L AGGREGATE LIMIT APPLIES PER POLICY: <input checked="" type="checkbox"/> PER <input type="checkbox"/> PER LOC</p>				EACH OCCURRENCE	\$1,000,000
				DAMAGE TO RENTED PREMISES (EA OCCUR)	\$50,000
				MED EXP (Any one person)	\$5,000
				PERSONAL & ADV INJURY	\$1,000,000
				GENERAL AGGREGATE	\$2,000,000
				PRODUCTS & COMP AGG	\$2,000,000
<p>A</p> <p>AUTOMOBILE LIABILITY</p> <p><input checked="" type="checkbox"/> ANY AUTO</p> <p><input type="checkbox"/> ALL OWNED AUTOS</p> <p><input type="checkbox"/> SCHEDULED AUTOS</p> <p><input checked="" type="checkbox"/> HIRED AUTOS</p> <p><input checked="" type="checkbox"/> NON-OWNED AUTOS</p>				COMBINED SINGLE LIMIT (EA ACCIDENT)	\$1,000,000
				BODILY INJURY (PAI PERSON)	\$
				BODILY INJURY (PAI ACCIDENT)	\$
				PROPERTY DAMAGE (PAI ACCIDENT)	\$
				AUTO ONLY (EA ACCIDENT)	\$
				OTHER THAN AUTO ONLY	EA ACC: \$
					AGG: \$
<p>B</p> <p>EXCESS/UMBRELLA LIABILITY</p> <p><input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE</p> <p>DEDUCTIBLE (RETENTION): \$</p>				EACH OCCURRENCE	\$5,000,000
				AGGREGATE	\$5,000,000
<p>C</p> <p>WORKERS COMPENSATION AND EMPLOYERS LIABILITY</p> <p>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED? (Mandatory in NH)</p> <p>(If NH, describe under SPECIAL PROVISIONS below)</p> <p>OTHER: <input type="checkbox"/> Y/N</p>				EL: EACH ACCIDENT	\$ 500,000
				EL: DISEASE: EA EMPLOYEE	\$ 500,000
				EL: DISEASE: POLICY LIMIT	\$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Employers liability includes coverage for W. Va. Code §23-4-2 (Mandolids) Owner, Architect and Architect's Consultants are to be named as additional insureds. (Insert project's name and address)

<p>CERTIFICATE HOLDER</p> <p>STATE AGENCY'S NAME AND ADDRESS</p>	<p>CANCELLATION</p> <p>IF CANCELLED BY ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL SEND BY MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.</p> <p>AUTHORIZED REPRESENTATIVE</p>
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ACORD CERTIFICATE OF PROPERTY INSURANCE

DATE

<p>PRODUCER</p> <p>INSURANCE AGENCY'S NAME AND ADDRESS</p>	<p>THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.</p> <p style="text-align: center;">COMPANIES AFFORDING COVERAGE</p> <p>COMPANY A INSURER'S NAME</p> <p>COMPANY B</p> <p>COMPANY C</p> <p>COMPANY D</p>
<p>INSURED</p> <p>CONTRACTOR'S NAME AND ADDRESS</p>	

COVERAGES
 THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO. LYR.	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	COVERED PROPERTY	LIMITS
	<input type="checkbox"/> PROPERTY CAUSES OF LOSS <input type="checkbox"/> BASIC <input type="checkbox"/> BROAD <input type="checkbox"/> SPECIAL <input type="checkbox"/> EARTHQUAKE <input type="checkbox"/> FLOOD				<input type="checkbox"/> BUILDING <input type="checkbox"/> PERSONAL PROPERTY <input type="checkbox"/> BUSINESS INCOME <input type="checkbox"/> EXTRA EXPENSE <input type="checkbox"/> BLANKET BUILDING <input type="checkbox"/> BLANKET PERS PROP <input type="checkbox"/> BLANKET BLDG & PP	
	<input checked="" type="checkbox"/> INLAND MARINE TYPE OF POLICY <input checked="" type="checkbox"/> Dist/Builder's Risk CAUSES OF LOSS <input type="checkbox"/> NAMED PERILS <input type="checkbox"/> OTHER <input type="checkbox"/> CRIME TYPE OF POLICY	(if applicable)			<input checked="" type="checkbox"/> BUILDING <input checked="" type="checkbox"/> TRANSIT <input checked="" type="checkbox"/> OFF-SITE <input type="checkbox"/> STORAGE	CONTRACT AMT \$ 20% \$ 20%
	<input type="checkbox"/> BOILER & MACHINERY <input type="checkbox"/> OTHER					

LOCATION OF PREMISES/DESCRIPTION OF PROPERTY

PROJECT NAME AND ADDRESS

SPECIAL CONDITIONS/OTHER COVERAGES

Owner is to be named as additional insured.

<p>CERTIFICATE HOLDER</p> <p>STATE AGENCY'S NAME AND ADDRESS</p>	<p>CANCELLATION</p> <p>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.</p> <p>AUTHORIZED REPRESENTATIVE</p>
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BID BOND

KNOW ALL MEN BY THESE PRESENTS, That we, the undersigned, Kyle Construction Company, Inc.
of Summersville, WV, as Principal, and Fidelity and Deposit Company of Maryland
of Schaumburg, IL, a corporation organized and existing under the laws of the State of
MD with its principal office in the City of Schaumburg, as Surety, are held and firmly bound unto the State
of West Virginia, as Obligee, in the penal sum of Five Percent of Amount Bid (\$ 5%) for the payment of which,
well and truly to be made, we jointly and severally bind ourselves, our heirs, administrators, executors, successors and assigns.

The Condition of the above obligation is such that whereas the Principal has submitted to the Purchasing Section of the
Department of Administration a certain bid or proposal, attached hereto and made a part hereof, to enter into a contract in writing for
Administrative & Maintenance Facility for the WVDOT Division of Public Transit and built for the Little Kanawha
Bus, Grantsville, WV

NOW THEREFORE,

(a) If said bid shall be rejected, or
(b) If said bid shall be accepted and the Principal shall enter into a contract in accordance with the bid or proposal attached
hereto and shall furnish any other bonds and insurance required by the bid or proposal, and shall in all other respects perform the
agreement created by the acceptance of said bid, then this obligation shall be null and void, otherwise this obligation shall remain in full
force and effect. It is expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event,
exceed the penal amount of this obligation as herein stated.

The Surety, for the value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no
way impaired or affected by any extension of the time within which the Obligee may accept such bid, and said Surety does hereby
waive notice of any such extension.

IN WITNESS WHEREOF, Principal and Surety have hereunto set their hands and seals, and such of them as are corporations
have caused their corporate seals to be affixed hereunto and these presents to be signed by their proper officers, this
17th day of March, 2011

Principal Corporate Seal

Kyle Construction Company, Inc.
(Name of Principal)
By [Signature]
(Must be President or
Vice President)
PRESIDENT
(Title)

Surety Corporate Seal

Fidelity and Deposit Company of Maryland
(Name of Surety)
By: [Signature]
Kimberly L. Miles, Licensed WV Resident Agent Attorney-in-Fact

IMPORTANT – Surety executing bonds must be licensed in West Virginia to transact surety insurance. Corporate seals must be affixed,
and a power of attorney must be attached.

Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by FRANK E. MARTIN JR., Vice President, and GREGORY E. MURRAY, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint **Andrew K. TEETER, Janis K. PEACOCK, Kimberly L. MILES, Douglas P. TAYLOR, Donna J. PRICE and Pamela V. LANHAM, all of Charleston, West Virginia, EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf its surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney revokes that issued on behalf of Andrew K. TEETER, Janis K. PEACOCK, Kimberly L. MILES, Douglas P. TAYLOR, Donna J. PRICE, dated July 13, 2004.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 11th day of November, A.D. 2004.

ATTEST:

FIDELITY AND DEPOSIT COMPANY OF MARYLAND



Gregory E. Murray

Frank E. Martin Jr.

By:

Gregory E. Murray Assistant Secretary

Frank E. Martin Jr.

Vice President

State of Maryland }
City of Baltimore } ss:

On this 11th day of November, A.D. 2004, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came FRANK E. MARTIN JR., Vice President, and GREGORY E. MURRAY, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself depose and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Maria D. Adamski

Maria D. Adamski

Notary Public

My Commission Expires: July 8, 2011



State of West Virginia
DRUG FREE WORKPLACE CONFORMANCE AFFIDAVIT
West Virginia Code §21-1D-5

STATE OF WEST VIRGINIA,

COUNTY OF NICHOLAS, TO-WIT:

I, Ryan Kyle, after being first duly sworn, depose and state as follows:

- 1. I am an employee of Kyle Construction Company; and,
2. I do hereby attest that Kyle Construction Company

maintains a valid written drug free workplace policy and that such policy is in compliance with West Virginia Code §21-1D-5.

The above statements are sworn to under the penalty of perjury.

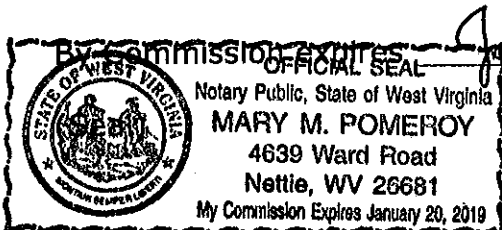
Kyle Construction Company
(Company Name)

By: [Signature]

Title: VP

Date: 3-31-11

Taken, subscribed and sworn to before me this 31st day of March, 2011



Mary M. Pomeroy
(Notary Public)

THIS AFFIDAVIT MUST BE SUBMITTED WITH THE BID IN ORDER TO COMPLY WITH WV CODE PROVISIONS. FAILURE TO INCLUDE THE AFFIDAVIT WITH THE BID SHALL RESULT IN DISQUALIFICATION OF THE BID.

BF#14

RFQ No. PT 11054

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

West Virginia Code §6A-3-10a states: No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owed is an amount greater than one thousand dollars in the aggregate.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Debtor" means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions. "Political subdivision" means any county commission, municipality, county board of education, any instrumentally established by a county or municipality, any separate corporation or instrumentally established by one or more counties or municipalities, as permitted by law, or any public body charged by law with the performance of a government function or whose jurisdiction is coextensive with one or more counties or municipalities. "Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

EXCEPTION: The prohibition of this section does not apply where a vendor has contested any tax administered pursuant to chapter eleven of this code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

Under penalty of law for false swearing (West Virginia Code §61-5-3), it is hereby certified that the vendor affirms and acknowledges the information in this affidavit and is in compliance with the requirements as stated.

WITNESS THE FOLLOWING SIGNATURE

Vendor's Name: High Construction Company

Authorized Signature: [Signature] Date: 3-31-11

State of West Virginia

County of Nicholas to-wit:

Taken, subscribed, and sworn to before me this 31st day of March, 2011.

My Commission expires Jan. 20, 2019, 20 .

NOTARY PUBLIC [Signature]

