



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  
**PTR10011**

PAGE  
**1**

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

RFQ COPY  
 TYPE NAME/ADDRESS HERE

PROVIDER

SHIP TO

**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
09/17/2009				

BID OPENING DATE: **10/07/2009** BID OPENING TIME **01:30PM**

LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	JB		906-00-00-001		
<p>ARCHITECT/ENGINEERING SERVICES, PROFESSIONAL</p> <p>THE WEST VIRGINIA PURCHASING DIVISION, FOR THE AGENCY, THE WEST VIRGINIA DIVISION OF PUBLIC TRANSIT IS SOLICITING EXPRESSIONS OF INTEREST FOR ARCHITECTURAL AND ENGINEERING SERVICES FOR THE CONSTRUCTION FO A LEED CERTIFIED PRE-ENGINEERED METAL AND BRICK CONSTRUCTION ADMINISTRATIVE OFFICE AND MANITENANCE FACILITY NEAR GRANTSVILLE, WV.</p> <p>EXHIBIT 10</p> <p>REQUISITION NO.: .....</p> <p>ADDENDUM ACKNOWLEDGEMENT</p> <p>I HEREBY ACKNOWLEDGE RECEIPT OF THE FOLLOWING CHECKED ADDENDUM(S) AND HAVE MADE THE NECESSARY REVISIONS TO M PROPOSAL, PLANS AND/OR SPECIFICATION, ETC.</p> <p>ADDENDUM NO.'S:</p> <p>NO. 1 .....</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>NO. 2 .....</p>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS.

SIGNATURE	TELEPHONE	DATE
TITLE	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE

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

**GENERAL TERMS & CONDITIONS**  
**REQUEST FOR QUOTATION (RFQ) AND REQUEST FOR PROPOSAL (RFP)**

1. Awards will be made in the best interest of the State of West Virginia.
2. The State may accept or reject in part, or in whole, any bid.
3. All quotations are governed by the *West Virginia Code* and the *Legislative Rules* of the Purchasing Division.
4. Prior to any award, the apparent successful vendor must be properly registered with the Purchasing Division and have paid the required \$125 fee.
5. All services performed or goods delivered under State Purchase Order/Contracts are to be continued for the term of the Purchase Order/Contracts, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Purchase Order/Contract becomes void and of no effect after June 30.
6. Payment may only be made after the delivery and acceptance of goods or services.
7. Interest may be paid for late payment in accordance with the *West Virginia Code*.
8. Vendor preference will be granted upon written request in accordance with the *West Virginia Code*.
9. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
10. The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
11. The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern all rights and duties under the Contract, including without limitation the validity of this Purchase Order/Contract.
12. Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
13. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, the State may deem this contract null and void, and terminate such contract without further order.
14. **HIPAA BUSINESS ASSOCIATE ADDENDUM:** The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, and available online at the Purchasing Division's web site (<http://www.state.wv.us/admin/purchase/vrc/hipaa.htm>) is hereby made part of the agreement. Provided that, the Agency meets the definition of a Cover Entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the vendor.
15. **WEST VIRGINIA ALCOHOL & DRUG-FREE WORKPLACE ACT:** If this Contract constitutes a public improvement construction contract as set forth in Article 1D, Chapter 21 of the West Virginia Code ("The West Virginia Alcohol and Drug-Free Workplace Act"), then the following language shall hereby become part of this Contract: "The contractor and its subcontractors shall implement and maintain a written drug-free workplace policy in compliance with the West Virginia Alcohol and Drug-Free Workplace Act, as set forth in Article 1D, Chapter 21 of the West Virginia Code. The contractor and its subcontractors shall provide a sworn statement in writing, under the penalties of perjury, that they maintain a valid drug-free work place policy in compliance with the West Virginia and Drug-Free Workplace Act. It is understood and agreed that this Contract shall be cancelled by the awarding authority if the Contractor: 1) Fails to implement its drug-free workplace policy; 2) Fails to provide information regarding implementation of the contractor's drug-free workplace policy at the request of the public authority; or 3) Provides to the public authority false information regarding the contractor's drug-free workplace policy."

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**INSTRUCTIONS TO BIDDERS**

1. Use the quotation forms provided by the Purchasing Division.
2. **SPECIFICATIONS:** Items offered must be in compliance with the specifications. Any deviation from the specifications must be clearly indicated by the bidder. Alternates offered by the bidder as **EQUAL** to the specifications must be clearly defined. A bidder offering an alternate should attach complete specifications and literature to the bid. The Purchasing Division may waive minor deviations to specifications.
3. Complete all sections of the quotation form.
4. Unit prices shall prevail in case of discrepancy.
5. All quotations are considered F.O.B. destination unless alternate shipping terms are clearly identified in the quotation.
6. **BID SUBMISSION:** All quotations must be delivered by the bidder to the office listed below prior to the date and time of the bid opening. Failure of the bidder to deliver the quotations on time will result in bid disqualifications: Department of Administration, Purchasing Division, 2019 Washington Street East, P.O. Box 50130, Charleston, WV 25305-0130



State of West Virginia  
 Department of Administration  
 Purchasing Division  
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DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
09/17/2009				

BID OPENING DATE: **10/07/2009** BID OPENING TIME: **01:30PM**

LINE	QUANTITY	UOP	CAT NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
				CHARLESTON, WV 25305-0130		
<p>THE BID SHOULD CONTAIN THIS INFORMATION ON THE FACE OF THE ENVELOPE OR THE BID MAY NOT BE CONSIDERED:</p> <p>SEALED BID</p> <p>BUYER: 44</p> <p>RFQ. NO.: PTR10011</p> <p>BID OPENING DATE: 10/07/09</p> <p>BID OPENING TIME: 1:30 PM</p> <p>PLEASE PROVIDE A FAX NUMBER IN CASE IT IS NECESSARY TO CONTACT YOU REGARDING YOUR BID:</p> <p>-----</p> <p>CONTACT PERSON (PLEASE PRINT CLEARLY):</p> <p>-----</p>						

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BID OPENING DATE: 10/07/2009 BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	CAT NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
	NO. 3 .....					
	NO. 4 .....					
	NO. 5 .....					
<p>I UNDERSTAND THAT FAILURE TO CONFIRM THE RECEIPT OF THE ADDENDUM(S) MAY BE CAUSE FOR REJECTION OF 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> <p>..... SIGNATURE</p> <p>..... COMPANY</p> <p>..... DATE</p> <p>REV. 11/96</p> <p style="text-align: center;">NOTICE</p> <p>A SIGNED BID MUST BE SUBMITTED TO:</p> <p style="text-align: center;">DEPARTMENT OF ADMINISTRATION          PURCHASING DIVISION          BUILDING 15          2019 WASHINGTON STREET, EAST</p>						

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Spending Unit: Division of Public Transit  
Department of Transportation

## **EXPRESSION OF INTEREST**

Project: Little Kanawha Bus  
PTR10011

### **Part 1 GENERAL INFORMATION**

#### **1.1 Purpose:**

The Acquisition and Contract Administration Section of the Purchasing Division "State" on behalf of West Virginia Department of Transportation, Division of Public Transit, is soliciting Expression(s) of Interest (EOI) from qualified firms to provide architectural/engineering services as defined in Part two (2) and three (3).

#### **1.2 Project:**

The purpose of the projects described in Parts 2 & 3 is to provide architectural and engineering services for the construction of a LEED Certified pre-engineered metal and brick construction administrative office and maintenance facility, approximately 9,700 sq. ft. The Division already has a footprint of plans that will be followed. The space will allow for offices, restrooms, money counting room, parts supply room, enclosed passenger waiting area if funds permit, and vehicle parking. This project will be located in near Grantsville, WV.

**This project will be funded by the 2009 American Recovery and Reinvestment Act (ARRA). Due to funding timeline, this project will have an accelerated timeline and will be strictly enforced by the Division of Public Transit. In addition to the timeline, strict reporting requirements for the ARRA Funds will also be involved.**

#### **1.3 Format: N/A**

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**1.4 Inquiries:**

Additional information inquiries regarding this EOI must be submitted in writing to the State Buyer with the exception of questions regarding proposal submission, which may be oral. The deadline for written inquiries is identified in the Schedule of Events, Section 1.16. All inquiries of specification clarification must be addressed to:

Mr. Frank Whittaker, Senior Buyer  
Purchasing Division  
P.O. Box 50130  
Charleston, WV 25305-0130  
Telephone: (304) 558-2316  
Fax: (304) 558-4115

**The firm, or anyone on the firm's behalf, is not permitted to make any contact whatsoever with any member of the evaluation committee.** Violation may result in rejection of the EOI. The State Buyer named above is the sole contact for any and all inquiries after this EOI has been released.

**1.5 Vendor Registration:**

Firms participating in this process should complete and file a ***Vendor Registration and Disclosure Statement*** (Form WV-1) and remit the registration fee. Firm is not required to be a registered vendor in order to submit an EOI, but the **successful firm must** register and pay the fee prior to the issuance of an actual contract.

**1.6 Oral Statements and Commitments:**

Firm must clearly understand that any verbal representations made or assumed to be made during any oral discussions held between firm's representatives and any State personnel are **not** binding. Only the information issued in writing and added to the Expression of Interest specifications file by an official written addendum is binding.

**1.7 Economy of Preparation:**

EOI's should be prepared simply and economically, providing a straightforward, concise description of firm's abilities to satisfy the requirements of the EOI. Emphasis should be placed on completeness and clarity of content.

**1.8 Labeling of the Sections:** The response sections should be labeled for ease of evaluation.

**1.9 Submission:**

1.9.1 State law requires that the original expression shall be submitted to the Purchasing Division. All copies to the Purchasing Division must be submitted **prior** to the date and time stipulated as the opening date. All expressions will be date

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and time stamped on the Purchasing Division official time clock to verify time and date of receipt.

1.9.2 Firms mailing expressions should allow sufficient time for mail delivery to ensure timely arrival. The Purchasing Division **CANNOT** waive or excuse late receipt of an expression which is delayed and late for any reason according West Virginia State Code §5A-3-11. Any EOI received after the bid opening time and date will be immediately disqualified in accordance with State law and the Legislative Rule 148-CSR-1.

**Submit:**

One original plus (5) convenience copies to:  
 Purchasing Division  
 2019 Washington Street, East  
 P.O. Box 50130  
 Charleston, WV 25305-0130

The outside of the envelope or package(s) should be clearly marked:

Buyer:	Frank Whittaker FW-44
Req#:	PTR10011
Opening Date:	October 7, 2009
Opening Time:	1:30pm

**1.10 Rejection of Expressions:**

The State shall select the best value solution according to §5G-1-3 of the West Virginia State Code. However, the State reserves the right to accept or reject any or all expressions and to reserve the right to withdraw this Expression of Interest at any time and for any reason. Submission of, or receipt by the State of Expressions confers no rights upon the firm nor obligates the State in any manner.

**1.11 Incurring Costs:**

The State and any of its employees or officers shall not be held liable for any expenses incurred by any firm responding to this EOI for expenses to prepare, deliver, or to attend the short-list interviews.

**1.12 Addenda:**

If it becomes necessary to revise any part of this EOI, an official written addendum will be issued by the State to all potential firms of record.

**1.13 Independent Price Determination:**

A contract will not be considered for award if the negotiated price was not arrived at independently without collusion, consultation, communication, or agreement as to

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any matter relating to prices with any competitor.

1.14 **Price Quotations:** No "price" or "fee" quotation is requested or permitted in the response.

1.15 **Public Record:**

1.15.1 *Submissions are Public Record.*

All documents submitted to the State Purchasing Division related to purchase orders/contracts are considered public records. All EOI's submitted by firms shall become public information and are available for inspection during normal official business hours in the Purchasing Division Records and Distribution center after the expressions have been opened.

1.15.2 *Written Release of Information.*

All public information may be released with or without a Freedom of Information request, however, only a written request will be acted upon with duplication fees paid in advance. Duplication fees shall apply to all requests for copies of any document. Currently the fees are \$0.50/page, or a minimum of \$10.00 per request, which ever is greater.

1.15.3 *Risk of Disclosure.*

The only exemptions to disclosure of information are listed in West Virginia Code §29B-1-4. Primarily, only trade secrets as submitted by a firm are the only exemption to public disclosure. The submission of any information to the State by a firm puts the risk of disclosure on the firm. The submission of any information to the State by a vendor puts the risk of disclosure on the vendor. The State does not guarantee non-disclosure of any information to the public.

1.16 **Schedule of Events:**

Release of the EOI.....09/18/09  
Addendum Issued .....TBD  
Expressions of Interest Opening Date.....10/07/09  
Estimated Date for Interviews...(wk of ?).....TBD

1.17 **Mandatory Prebid Conference:** N/A

1.18 **Bond Requirements:** N/A



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 Spending Unit: Division of Public Transit  
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1.19 **Purchasing Affidavit:**

West Virginia State Code §5A-3-10a (3) (d) requires that all firms submit an Affidavit regarding any debt owed to the State and licensing and confidentiality certifications. The Affidavit **must** be signed and submitted prior to award. It is preferred that the Affidavit be submitted with the EOI. **Bid Form #6**

**PART 2 OPERATING ENVIRONMENT**

2.1 **Location:** The West Virginia Division of Public Transit is located at 1900 Kanawha Blvd., East, Building 5, Room 906 at the State Capitol Complex. This project for this EOI is located in near Grantsville, WV. To visit the site, the vendor may call Little Kanawha Bus for directions only at (304) 655-8999.

2.2 **Background:** The West Virginia Department of Transportation, Division of Public Transit is responsible for administering the Federal Transit Administration (FTA) Section 5311 Program for rural transit systems and is the designated state agency for the receipt of FTA funding. Little Kanawha Bus is the Section 5311 rural transit provider for Calhoun, Jackson and Roane Counties.

The firm will design and supervise construction of a LEED Certified pre-engineered metal and brick construction administrative office and maintenance facility, approximately 9,700 sq. ft. The space will allow for offices, restrooms, parts supply room, enclosed passenger waiting area if funds permit, money counting room, and vehicle parking. This project will be located in near Grantsville, WV.

**PART 3 PROCUREMENT SPECIFICATIONS**

3.1 **General Requirements:** Design work will include the preparation of plans, project specifications, estimates and evaluations of vendors during the procurement process.

It is the policy of the West Virginia Department of Transportation, Division of Public Transit, that Disadvantaged and Women-owned Business Enterprise shall have the maximum opportunity to participate in the performance of contract financed in whole or in part with the Federal Transit Administration funds. The DBE goal for this project is 5.3%.

The successful firm will be required to comply with all federal terms and conditions that apply to funding from the Federal Transit Administration. A copy of these conditions is attached.

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At a minimum, the Division is requesting that the prospectus contain the following items listed in their proposal (1) Overall capabilities to handle this work, including work force available to assign to the project, personnel qualifications and present workload, (2) Location of office in which the work will be performed, (3) Amount of work proposed to be subcontracted or preformed by subconsulant, (4) Indication of whether a cost accounting system has been maintained and is in effect, such that it is capable of segregating and identifying accumulating costs for each job that is performed under cost type projects.

Each firm and any subcontractors shall submit a current audited overhead rate computation performed by a State or Federal government agency or an independent CPA firm. The submitted overhead audit shall contain a detailed exhibit of the computations with all applicable eliminations and references. The audit shall be done in accordance with Government Auditing Standards issued by the Comptroller General of the United States and all eliminations required by the Federal Acquisition Regulations will be made.

- 3.2 **Project Description:** Architectural/Engineering services for the building, landscaping and site design, preparation of construction specifications, contract plans, and related documents, assistance in the preparation of bidding documents, costs estimates, construction oversight, coordination with local officials, utilities, site assessments and construction administration and supervision of construction of a LEED pre-engineered metal and brick construction administrative office and maintenance facility, approximately 9,700 sq. ft. The space will allow for offices, restrooms, parts supply room, enclosed passenger waiting area if funds permit, money counting room, and vehicle parking. This project will be located in near Grantsville, WV. All state, federal and local regulations and codes shall be met.
- 3.3 **Special Terms and Conditions:**
- 3.3.1 *Bid and Performance Bonds:*
- 3.3.2 *Insurance Requirements:* \$1,000,000 Professional Liability  
 Workers Compensation Certificate upon award
- 3.4 **General Terms and Conditions:**  
 By signing and submitting the EOI, the successful firm agrees to be bound by all the terms contained in Section Three (3) of this EOI.

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Spending Unit: Division of Public Transit  
Department of Transportation

#### 3.4.1 *Conflict of Interest:*

Firm affirms that it, its officers or members or employees presently have no interest and shall not acquire any interest, direct or indirect which would conflict or compromise in any manner or degree with the performance or its services hereunder. The firm further covenants that in the performance of the contract, the firm shall periodically inquire of its officers, members and employees concerning such interests. Any such interests discovered shall be promptly presented in detail to the Agency.

#### 3.4.2 *Prohibition Against Gratuities:*

Firm warrants that it has not employed any company or person other than a bona fide employee working solely for the firm or a company regularly employed as its marketing agent to solicit or secure the contract and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award of the contract. For breach or violation of this warranty, the State shall have the right to annul this contract without liability at its discretion, and/or to pursue any other remedies available under this contract or by law.

#### 3.4.3 *Certifications Related to Lobbying:*

Firm certifies that no federal appropriated funds have been paid or will be paid, by or on behalf of the company or an employee thereof, to any person for purposes of influencing or attempting to influence an officer or employee of any Federal entity, 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.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or 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 firm shall complete and submit a disclosure form to report the lobbying.

Firm agrees that this language of certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly. This certification is a material

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representation of fact upon which reliance was placed when this contract was made and entered into.

#### 3.4.4 *Vendor Relationship:*

The relationship of the firm to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by the parties to this contract. The firm as an independent contractor is solely liable for the acts and omissions of its employees and agents.

Firm shall be responsible for selecting, supervising and compensating all individuals employed pursuant to the terms of this EOI and resulting contract. Neither the firm nor any employees or contractors of the firm shall be deemed to be employees of the State for any purposes whatsoever.

The Firm shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension or other deferred compensation plans, including but not limited to Workers' Compensation and Social Security obligations, and licensing fees, etc. and the filing of all necessary documents, forms and returns pertinent to all of the foregoing.

The Firm shall hold harmless the State, and shall provide the State and Agency with a defense against all claims including but not limited to the foregoing payments, withholdings, contributions, taxes, social security taxes and employer income tax returns.

The firm shall not assign, convey, transfer or delegate any of its responsibilities and obligations under this contract to any person, corporation, partnership, association or entity without expressed written consent of the Agency.

#### 3.4.5 *Indemnification:*

The firm agrees to indemnify, defend and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person or firm performing or supplying services, materials or supplies in connection with the performance of the contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the firm, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use or disposition of any data used under the contract in a manner not authorized by the contract, or by Federal or State statutes or regulations; (3) Any failure of the firm, its officers, employees or subcontractors

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to observe State and Federal laws, including but not limited to labor and wage laws.

**3.4.6 Contract Provisions:**

After the most qualified firm is identified, and fee negotiations are concluded, a formal contract document will be executed between the State and the firm. The order of precedence is the contract, the EOI and the firm's response to the EOI.

**3.4.7 Governing Law:**

This contract shall be governed by the laws of the State of West Virginia. The firm further agrees to comply with the Civil Rights Act of 1964 and all other applicable laws (Federal, State or Local Government) regulations.

**3.4.8 Compliance with Laws and Regulations:**

The firm shall procure all necessary permits and licenses to comply with all applicable laws, Federal, State or municipal, along with all regulations, and ordinances of any regulating body.

The firm shall pay any applicable sales, use, or personal property taxes arising out of this contract and the transactions contemplated thereby. Any other taxes levied upon this contract, the transaction, or the equipment, or services delivered pursuant here to shall be borne by the contractor. It is clearly understood that the State of West Virginia is exempt from any taxes regarding performance of the scope of work of this contract.

**3.4.9 Subcontracts/Joint Ventures:**

The State will consider the firm to be the sole point of contact with regard to all contractual matters. The firm may, with the prior written consent of the State, enter into written subcontracts for performance of work under this contract; however, the firm is totally responsible for payment of all subcontractors.

**3.4.10 Term of Contract:**

This contract will be effective (date set upon award) and shall extend until the scope of work is complete or for one (1) consecutive twelve (12) month period. The contract may be renewed upon mutual consent for two (2) consecutive years one (1) year periods or until such reasonable time as may be necessary to obtain a new contract or to complete work.

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*3.4.11 Non-Appropriation of Funds:*

If the Agency is not allotted funds in any succeeding fiscal year for the continued use of the service covered by this contract by the West Virginia Legislature, the Agency may terminate the contract at the end of the affected current fiscal period without further charge or penalty. The Agency shall give the firm written notice of such non-allocation of funds as soon as possible after the Agency receives notice. No penalty shall accrue to the Agency in the event this provision is exercised.

*3.4.12 Contract Termination:*

The State may terminate any contract resulting from this EOI immediately at any time the firm fails to carry out its responsibilities or to make substantial progress under the terms of this EOI and resulting contract. The State shall provide the firm with advance notice of performance conditions, which are endangering the contract's continuation. If after such notice the firm fails to remedy the conditions contained in the notice, within the time contained in the notice, the State shall issue the firm an order to cease and desist all work immediately.

The State shall be obligated only for services rendered and accepted prior to the date of the notice of termination. The contract may also be terminated upon mutual agreement of the parties with thirty (30) days prior notice.

*3.4.13 Changes:*

If changes to the original contract become necessary, a formal contract change order will be required. Prior to any work being performed, the change must be negotiated and approved by the State, the Agency and the firm. An approved contract change order is defined as one approved by the Purchasing Division and approved as to form by the West Virginia Attorney General's Office prior to the effective date of such amendment. **NO CHANGE SHALL BE IMPLEMENTED BY THE FIRM UNTIL THE FIRM RECEIVES AN APPROVED WRITTEN CHANGE ORDER.**

*3.4.14 Invoices, Progress Payments, & Retainage:*

The Firm shall submit invoices, in arrears, to the Agency at the address on the face of the purchase order labeled "Invoice To" pursuant to the terms of the contract. Progress payments may be made at the option of the Agency based on percentage of work completed if so defined in the final contract. Any provision for progress payments must also include language for a minimum 10% retainage until the final deliverable is accepted.

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If progress payments are permitted, firm is required to identify points in the work plan at which compensation would be appropriate. Progress reports must be submitted to Agency with the invoice detailing progress completed or any deliverables identified. Payment will be made only upon approval of acceptable progress or deliverables as documented in the firm's report. Invoices may not be submitted more than once monthly and State law forbids payment of invoices prior to receipt of services.

*3.4.15 Liquidated Damages:*

According to West Virginia State Code §5A-3-4(8), firm agrees that liquidated damages shall be imposed at the rate of **\$200** per workday, for failure to provide deliverables at the agreed upon date identified in the final contract. This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue to any other additional remedy to which the State or Agency may have legal cause for action including further damages against the firm.

*3.4.16 Record Retention (Access & Confidentiality):*

Firm shall comply with all applicable Federal and State of West Virginia rules and regulations, and requirements governing the maintenance of documentation to verify any cost of services or commodities rendered under this contract by the firm. The firm shall maintain such records a minimum of five (5) years and make available all records to Agency personnel at firm's location during normal business hours upon written request by Agency within 10 days after receipt of the request.

Firm shall have access to private and confidential data maintained by Agency to the extent required for firm to carry out the duties and responsibilities defined in this contract. Firm agrees to maintain confidentiality and security of the data made available and shall indemnify and hold harmless the State and Agency against any and all claims brought by any party attributed to actions of breach of confidentiality by the firm, subcontractors, or individuals permitted access by the firm.

*3.4.17: FEDERAL TRANSIT ADMINISTRATION MASTER AGREEMENT:*

The attached document is incorporated by reference and made part of this Agreement: "Federal Transit Administration Master Agreement," FTA MA (15), October 1, 2008 and any revisions, amendments or reissuance under any title which may occur now or in the future for the life of the Agreement by the Federal Transit Administration or its assigns. In the event that any of the covenants, agreements, terms or provisions contained in this Agreement shall be in conflict with the "Federal Transit Administration Master Agreement", the current "Federal Transit Administration Master Agreement" shall prevail and be the instrument governing the

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receipt of Federal assistance from the Federal Transit Administration.

**3.4.18: Disadvantage Business Enterprise (DBE):**

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the West Virginia Department of Transportation, Division of Public Transit, to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all Bidders/Offerors, including those who qualify as a DBE. A DBE contract goal of 5.3% has been established for this contract. The Bidder/Offeror shall make good faith efforts, as defined in 3.4.19, to meet the contract goal for DBE participation in the performance of this contract.

In **Bid Form #1**: Letter of Intent, the Bidder/Offeror shall be required to complete and submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) written documentation of the Bidder/Offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (4) written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (5). The bidder shall indicate his goal in the appropriate space on **Bid Form #2**: DBE Utilization Plan.

Any Bidder who does not submit the Letter of Intent (**Bid Form #1**) and the DBE Utilization Plan, **Bid Form #2**, shall not be considered for award.

In order to be accepted under this program, all DBE's must be certified by the West Virginia Department of Transportation, Equal Employment Opportunity Office, **at the time of bid**. Applications for DBE classification may be requested from:

Bob Cook, DBE Program Specialist  
WV DOT, EEO Office  
Building 5, Room 925  
1900 Kanawha Blvd., E.  
Charleston, WV 25305-0430  
PHONE: (304) 558-3931

A directory of DBE firms (consultants) which are certified by the WV DOT, EEO office, may be found at:

[http://www.wvdot.com/3\\_roadways/3d9a\\_consult\\_inc.pdf](http://www.wvdot.com/3_roadways/3d9a_consult_inc.pdf).



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*3.4.19: DBE Good Faith Efforts:*

If the Bidder's proposed goal is less than the Division of Public Transit's determined goal, he or she must demonstrate that good faith efforts were made prior to submitting the bid. This documentation 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 Firm advertised in general circulation, trade association, and minority-focus media concerning the subcontracting opportunities;
- 2) Whether the Firm 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;
- 3) Whether the Firm followed up initial solicitations of interest by contracting DBE's to determine with certainty whether the DBE's were interested;
- 4) Whether the Firm 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);
- 5) Whether the Firm provided interested DBE's with adequate information about the specifications and requirements of the contract;
- 6) Whether the Firm 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;
- 7) Whether the Firm effectively used the services of available minority community organizations; local, State and Federal minority business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBE's.

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Firms 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.

*3.4.20: Federal Terms and Conditions:*

By signing and submitting their proposal, the successful firm agrees to be bound by all the Federal terms contained in this EOI.

**Bid Forms #1 to #6 should be submitted with the proposal.**

## PART 4 EVALUATION & AWARD

### 4.1 Evaluation and Award Process:

- a) Expressions of Interest will be evaluated and awarded in accordance with **§5G-1-3 “Contracts for architectural and engineering services; selection process where total project costs are estimated to cost two hundred fifty thousand dollars or more.”**

“In the procurement of architectural and engineering services for projects estimated to cost two hundred and fifty thousand dollars or more the director of purchasing shall encourage such firms engaged in the lawful practice of the profession to submit an expression of interest, which shall include a statement of qualifications, and performance data and may include anticipated concepts and proposed methods of approach to the project. All such jobs shall be announced by public notice published as a Class II legal advertisement in compliance with the provisions of article three [§59-3-1et seq.] A committee comprised of three to five representatives of the agency initiating the request shall evaluate the statements of qualifications and performance data and other material submitted by the interested firms and select three firms which in their opinion are the best qualified to perform the desired service. Interviews with each firm selected shall be conducted and the committee shall conduct discussions regarding anticipated concepts and the proposed methods of approach to the assignment. The committee shall then rank in order of preference no less than three professional firms deemed to be the most highly qualified to provide the services required, and shall commence scope of service and price negotiations with the highest qualified professional firm for architectural or engineering services or both. Should the agency be unable to negotiate a satisfactory contract with the professional firm considered to be the most qualified, at a fee determined to be fair and reasonable, price negotiations with the firm of second choice shall commence. Failing accord with the second most qualified professional firm, the committee shall undertake price negotiations with the third most qualified professional firm. Should the agency be unable to negotiate a satisfactory contract with any of the selected professional firms, it shall select additional professional firms in order of their competence and qualifications and it shall continue negotiations in accordance with this section until an agreement is reached.”

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b) The evaluation criteria and assigned point values are as follows:

4.2

**Evaluation Criteria:**

The following are the evaluated factors and maximum points possible for technical point scores:

A. Firm's understanding of the work to be preformed.	20 Points Possible
B. Prior experience of firm in constructing a project of this type.	30 Points Possible
C. Qualifications of staff to be assigned work.	40 Points Possible
<u>D. Firm's interview by committee.</u>	<u>10 Points Possible</u>

**TOTAL                      100 Points Possible**

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**BID FORM # 1: Letter of Intent**

Name of Bidder/Offeror's firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Name of DBE firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone: \_\_\_\_\_

Description of work to be performed by the DBE firm:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_ (Signature) \_\_\_\_\_ (Title)

If the Bidder/Offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

(Submit this page for each DBE subcontractor.)

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**BID FORM #2: DISADVANTAGED BUSINESS ENTERPRISE (DBE)  
UTILIZATION**

The undersigned Bidder/Offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

\_\_\_\_\_ The Bidder/Offeror is committed to a minimum of 5.3% DBE utilization on this contract.

\_\_\_\_\_ The Bidder/Offeror (if unable to meet the DBE goal of 5.3%) is committed to a minimum of 5.3% DBE utilization of this contract and submits documentation demonstrating good faith efforts.

Name of Bidder/Offeror's firm: \_\_\_\_\_

By: \_\_\_\_\_

(Signature)

(Title)

**BID FORM#3**

\_\_\_\_\_ 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.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company Name

**BID FORM #4**

**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),

\_\_\_\_\_ (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),

\_\_\_\_\_, 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.

\_\_\_\_\_  
Signature and Title of Authorized Official



**BID FORM #5**

**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, \_\_\_\_\_, 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.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

**BID FORM#6**

RFQ No. \_\_\_\_\_

STATE OF WEST VIRGINIA  
Purchasing Division

**PURCHASING AFFIDAVIT**

**West Virginia Code §5A-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 instrumentality established by a county or municipality; any separate corporation or instrumentality 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 exceed 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.

**LICENSING:** Vendors must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agencies or political subdivision. Furthermore, the vendor must provide all necessary releases to obtain information to enable the Director or spending unit to verify that the vendor is licensed and in good standing with the above entities.

**CONFIDENTIALITY:** The vendor agrees that he or she will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the agency's policies, procedures and rules. Vendors should visit [www.state.wv.us/admin/purchase/privacy](http://www.state.wv.us/admin/purchase/privacy) for the Notice of Agency Confidentiality Policies.

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

Vendor's Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Notification of Federal Participation**

Federal funding for this project is being provided by the Federal Transit Administration through CFDA 20509 for 100 % of the project cost.

**No Federal Government Obligations to Third Parties**

(1) The WV Division of Public Transit and Vendor 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, Vendor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor to the extent the Federal Government deems appropriate.

(2) The Vendor 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 Vendor, to the extent the Federal Government deems appropriate.

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

**Audit and Inspection**

The Vendor agrees to permit the WV Division of Public Transit, the Secretary of the United States Department of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all Contract work, materials, payrolls, and other data and records with regard to the Contract. The Vendor also agrees to permit an audit of the books, records, and accounts of the Vendor and its subcontractors.

**Disadvantaged Business Enterprise (DBE)**

The Vendor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The requirements of 49 C.F.R. Part 26 and the WV Department of Transportation's (WVDOT) U.S. Department of Transportation (USDOT) approved Disadvantaged Business Enterprise (DBE) Program are incorporated in the Contract by reference. The Vendor agrees to take all necessary and reasonable steps under the requirements of 49 C.F.R. Part 26 and the USDOT approved Disadvantaged Business Enterprise (DBE) Program (where required) to ensure that eligible DBEs have the maximum feasible opportunity to participate in USDOT approved Contracts. Failure by the Vendor to carry out these requirements is a material breach of the Contract, which may result in the termination of this Contract or such other remedy as the WV Division of Public Transit deems appropriate.

**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, 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 Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Vendor 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 Vendor 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 Vendor agrees to comply with any implementing requirements FTA may issue.

(3) The Vendor 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 Vendor 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.

#### Clean Air & Clean Water Requirements

(1) The Vendor 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 Vendor shall note that federal, state and local requirements may change and the changed requirements will apply to this Contract as required.

#### Labor Provisions

The Vendor 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 Vendor or subcontractor 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 Vendor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Vendor 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 Vendor or subcontractor under any such contract or any other Federal contract with the same prime Vendor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Vendor, such sums as may be determined to be necessary to satisfy any liabilities of such Vendor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (3) of this section.

Subcontracts. The Vendor 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 Vendor 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 Vendor 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 Vendor 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.

Vendors 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.

## Termination

### (a) Termination for Convenience

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

### (b) Termination for Default (Breach or Cause)

If the Vendor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Vendor fails to perform in the manner called for in the contract, or if the Vendor fails to comply with any other provisions of the contract, the WV Division of Public Transit may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Vendor is in default. The Vendor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

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

### (c) Opportunity to Cure

The WV Division of Public Transit in its sole discretion may, in the case of a termination for breach or default, allow the Vendor an appropriately short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

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

### (d) Waiver of Remedies for Any Breach

In the event that the WV Division of Public Transit elects to waive its remedies for any breach by Vendor of any covenant, term or condition of this Contract, such waiver by the WV Division of Public Transit shall not limit the WV Division of Public Transit's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

## Bankruptcy

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

### **FTA Role in Bid Protests**

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.

### **Prohibited Interest**

No employee, officer, board member, agent or their family members of the WV 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 Vendor selected for the Contract.

### **Preference for Recycled Products**

The Vendor 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.

### **Metric System**

As required by U.S. DOT or FTA, the Vendor agrees to use the metric system of measurement in its Project activities, as may be required by Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 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 U.S. DOT or FTA.

#### **Hold Harmless**

The Vendor 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 Vendor 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 Vendor 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 Vendor. The Vendor is liable for any and all taxes due as a result of the Contract.

#### **Compliance with Laws and Permits**

The Vendor 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 Vendor shall furnish to the WV Division of Public Transit certificates of compliance with all such laws, orders, and regulations.

#### **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.

#### **Cargo Preference**

The Vendor 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 Vendor 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**

Vendor 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. Vendor'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.

**Debarment and Suspension**

Vendor agrees to comply, and assures the compliance of any other participant at any tier of the project, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.S. § 6101 note, and U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OBM) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180.

The vendor agrees to, and assures that any other participant at any tier of the project will review the "Excluded Parties Listing System" at <http://epls.gov/> before entering into any other arrangement in connection with the project.

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 2 CFR Part 1200, 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.

**Accessibility**

Vendor agrees that products provided shall be in accordance with the 42 U.S.C. Sections 12101 et seq. and DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; and Joint ATBCB/DOT regulations, "American with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38.

**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, 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 Vendor shall not perform any act, fail to perform any act, or refuse to comply with any WV Division of Public Transit requests that would cause the WV Division of Public Transit to be in violation of the FTA terms and conditions.

03/11/2009