



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
PTR12010

PAGE
1

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

VENDOR

RFQ COPY
TYPE NAME/ADDRESS HERE

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
12/05/2011				
BID OPENING DATE: 02/09/2012		BID OPENING TIME 01:30PM		

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	EA		968-20		
<p>CONSTRUCTION OF A PRE-ENGINEERED METAL AND BRICK</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 STRUCTURE ADMINISTRATIVE OFFICE AND MAINTENANCE FACILITY FOR THE LITTLE KANAWHA TRANSIT AUTHORITY LOCATED IN GRANTSVILLE, WV.</p> <p>MANDATORY PRE-BID MEETING: 01/12/12 @ 1:30 PM, BLDG 5, RM 122, 1900 KANAWHA BLVD, E, CHARLESTON, WV 25305. 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 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</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. Prior to any award, the apparent successful vendor must be properly registered with the Purchasing Division and have paid the required \$125 fee.
4. 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.
5. Payment may only be made after the delivery and acceptance of goods or services.
6. Interest may be paid for late payment in accordance with the *West Virginia Code*.
7. Vendor preference will be granted upon written request in accordance with the *West Virginia Code*.
8. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
9. The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
10. The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern the purchasing process.
11. Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
12. **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.
13. **HIPAA BUSINESS ASSOCIATE ADDENDUM:** The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, is available online at www.state.wv.us/admin/purchase/vrc/hipaa.html and 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.
14. **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. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/noticeConfidentiality.pdf>.
15. **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, and the West Virginia Insurance Commission. 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.
16. **ANTITRUST:** In submitting a bid to any agency for the State of West Virginia, the bidder offers and agrees that if the bid is accepted the bidder will convey, sell, assign or transfer to the State of West Virginia all rights, title and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to the bidder.

I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, or person or entity submitting a bid for the same material, supplies, equipment or services and is in all respects fair and without collusion or Fraud. I further certify that I am authorized to sign the certification on behalf of the bidder or this bid.

INSTRUCTIONS TO BIDDERS

1. Use the quotation forms provided by the Purchasing Division. Complete all sections of the quotation form.
2. 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. Unit prices shall prevail in case of discrepancy. All quotations are considered F.O.B. destination unless alternate shipping terms are clearly identified in the quotation.
4. 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
5. Communication during the solicitation, bid, evaluation or award periods, except through the Purchasing Division, is strictly prohibited (W.Va. C.S.R. §148-1-6.6).



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<p>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 ALL TECHNICAL QUESTIONS IS 01/17/2011 AT 4:00 PM. ALL TECHNICAL QUESTIONS WILL BE ADDRESSED BY ADDENDUM AFTER THE DEADLINE.</p> <p>BIDDING DOCUMENTS CONSIST OF THE REQUEST FOR QUOTATION, PLANS AND SPECIFICATIONS.</p> <p>REQUEST FOR QUOTATION MAY BE OBTAINED BY CONTACTING:</p> <p>FRANK WHITTAKER, SENIOR BUYER WEST VIRGINIA PURCHASING DIVISION 2019 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 AND ARCHITECTS 5088 WEST WASHINGTON STREET CHARLESTON, WV 25313 TELEPHONE: 304-769-0821</p>						

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<p>PLANS & SPECIFICATIONS MAY BE PURCHASED AT \$210.00 PLUS \$25.00 SHIPPING AND HANDLING.</p> <p>EXHIBIT 5</p> <p>WEST VIRGINIA CODE 21-1D-5 PROVIDES THAT: ANY SOLICITATION 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 ARTICLE 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.</p> <p>NOTICE TO PROCEED: THIS CONTRACT IS TO BE PERFORMED WITHIN 365 CALENDAR DAYS AFTER THE NOTICE TO PROCEED IS RECEIVED. UNLESS OTHERWISE SPECIFIED, THE FULLY EXECUTED PURCHASE ORDER WILL BE CONSIDERED NOTICE TO PROCEED.</p> <p>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.</p> <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>						

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<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>() 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 THE 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 ACCEPTABLE IN LIEU OF THE 5% BID BOND, PERFORMANCE BOND, OR LABOR AND MATERIAL BOND.</p>						

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<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 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>						

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<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 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</p> <p>NO. 2</p> <p>NO. 3</p> <p>NO. 4</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>						

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<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>CONTRACTORS LICENSE</p> <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:</p>						

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				CONTRACTORS LICENSE NO.:		
				THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FURNISH A COPY OF THEIR CONTRACTORS LICENSE PRIOR TO ISSUANCE OF A PURCHASE ORDER/CONTRACT		
				APPLICABLE LAW		
				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.		
				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.		
				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.		
				REV. 5/2009		
				NOTICE		
				A SIGNED BID MUST BE SUBMITTED TO:		
				DEPARTMENT OF ADMINISTRATION PURCHASING DIVISION BUILDING 15 2019 WASHINGTON STREET, EAST		

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				CHARLESTON, WV 25305-0130		
				THE BID SHOULD CONTAIN THIS INFORMATION ON THE FACE OF THE ENVELOPE OR THE BID MAY NOT BE CONSIDERED:		
				SEALED BID		
				BUYER: 44		
				REQ. NO.: PTR12010		
				BID OPENING DATE: 02/09/2012		
				BID OPENING TIME: 1:30 PM		
				PLEASE PROVIDE A FAX NUMBER IN CASE IT IS NECESSARY TO CONTACT YOU REGARDING YOUR BID:		

				PLEASE PRINT OR TYPE NAME OF PERSON TO CONTACT CONCERNING THIS QUOTE:		

				***** THIS IS THE END OF RFQ PTR12010 ***** TOTAL:		_____

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WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
 DIVISION OF PUBLIC TRANSIT
 SPECIAL PROVISION
 FOR
 DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION

I. GENERAL..... SP1
 II. DEFINITIONS SP2
 III. DBE CERTIFICATION REQUIREMENTS..... SP2
 IV. DBE GOAL SP3
 V. CONTRACTOR'S DBE PLAN..... SP3
 VI. CONTRACT AWARD REQUIREMENTS SP5
 VII. CONTRACT COMPLIANCE REQUIREMENTS SP8
 VIII. DBE PARTICIPATION REQUIREMENTS SP9
CONTRACTOR'S PLAN FOR DBE PARTICIPATION.....SP15

I. GENERAL

The West Virginia Division of Public Transit (Division) is committed to assuring the participation of Disadvantaged Business Enterprises (DBEs) in our transit construction program. In support of this commitment and in compliance with the requirements for contracts funded, in whole or part, with assistance from the United States Department of Transportation (USDOT), the Division requires that any 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 USDOT-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 Division 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 (DBEs).

If a formal goal has not been designated for this contract, all contractors are encouraged to consider DBEs 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 the DBE in which the DBE promises not to provide subcontracting quotations to other bidders/proposers are prohibited.

II. DEFINITIONS

- A. **“Disadvantaged business enterprise”** means a firm that is certified as a DBE, in accordance with the provisions of 49 CFR §26, by the West Virginia Department of Transportation’s DBE Unified Certification Program.
- B. **“USDOT-assisted contract”** means any contract between the Division and a contractor (at any tier) funded in whole or part with USDOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.
- C. **“Good faith efforts”** means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.
- D. **“Joint venture”** means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsive for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.
- E. **“Primary industry classification”** means the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the *North American Industry Classification Manual—United States, 1997* which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161; by calling 1 (800) 553-6847; or via the Internet at: <http://www.ntis.gov/product/naics.htm>.

III. DBE CERTIFICATION REQUIREMENTS

- A. In order to be classified as a DBE under this specification, a firm must be approved by the DBE Unified Certification Program prior to the bid opening date of any project in which a firm wants to participate as DBE.
- B. Under 49 CFR Part 26.71(n), DBE firms are not certified in general terms, in a way that makes every type of work performed eligible for DBE credit. Rather, the WVDOT, through its Unified Certification Program (UCP), will grant certification to a firm only for specific

types of work which the socially and economically disadvantaged owners have the ability to control.

- C. The DBE rule requires all certification actions, including those expanding the types of work a firm is authorized to perform for DBE credit, to be made final before the date on which bidders on a prime contract must respond to a solicitation [49 CFR 26.81(c)]. The rule refers to such timely certification action as "pre-certification."
- D. The DBE Uniform Certification Application and related documents, as well as the directories of certified DBE consulting and contracting firms, may be obtained online at:
<http://www.transportation.wv.gov/eo/DBE/Pages/default.aspx>.

IV. DBE GOAL

- A. The DBE goal determined by the West Virginia Division of Public Transit for this contract is 6% of the contract bid amount.
- B. The contractor shall indicate its goal in the appropriate space in the *Contractor's Plan for DBE Participation*, of the Notice contained in the project proposal. The goal so indicated will be used in determining the award of the contract in accordance with this Special Provision and the Standard Specifications.

V. CONTRACTOR'S DBE PLAN

- A. **Plan requirements.** All bidders shall submit their DBE Participation Plan (Contractor's Plan for DBE Participation) with their bid. A Participation Plan form is attached to this provision for example purposes only. The Plan shall include the following:
 1. Name of DBE Subcontractor(s) or Supplier(s).
 2. Type of work from DBE Directory that is to be performed by the subcontractor. Type of work must appear in DBE Directory.
 3. The dollar value of each proposed DBE subcontract and the percentage of the total contract value represented by combined DBE participation; the extent to which payments to DBEs may be counted as DBE participation is set forth in Section VIII., DBE Participation Requirements, below.
 4. Written and signed documentation of the bidder's commitment to use a DBE subcontractor whose participation is being utilized to meet the DBE contract goal.
 5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment.
- B. **Effect of Failure to Submit a Plan.** Any bidder who does not submit a fully completed and signed DBE Participation Plan with their bid shall not be considered for award.

- C. **Qualification of DBEs in Plan.** In order to be accepted under this program all **DBE subcontractors and suppliers** of materials or services must be certified for the applicable Type of Work and NAICS code, in accordance with Section III of this provision, at the time of the bid opening. If a DBE firm has not been certified in a timely manner for the type of work it is **intending to perform on a given contract, then the Division of Public Transit cannot count the firm's participation on that contract toward meeting DBE contract goals or the agency's overall DBE goal.** If a bidder has submitted a bid with DBE participation in response to the DBE goal, and the DBE firm named in the bid documents has not been certified in the type of work that the DBE firm would perform on the contract, then the bid shall not be considered because it does not qualify as a responsive bid.
- D. **Changes to DBE Participation Plan.** Any changes to the contractor's DBE Participation Plan after contract award must be approved by the Division; failure to obtain approval of any material post-award change to a DBE Participation Plan may result in sanctions as set forth in Section VII.C, below.
- E. **Termination of a DBE from DBE Participation Plan.** After bid award, a prime contractor cannot terminate a DBE subcontractor listed on an approved DBE Participation Plan without good cause, documented by the prior written consent of the Division. For the purposes of this paragraph, good cause includes, but is not limited to, the following circumstances:
1. The listed DBE subcontractor fails or refuses to execute a written contract;
 2. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
 3. The listed DBE subcontractor fails or refuses to meet the prime contractor's after-bid-award reasonable, non-discriminatory bond requirements;
 4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
 5. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215, and 1200 or applicable State law;
 6. The WV Department of Transportation has determined that the listed DBE subcontractor is not a responsive contractor;
 7. The listed DBE subcontractor voluntarily withdraws from the project and provides written notice to the Division of its withdrawal;
 8. The listed DBE is ineligible to receive DBE credit for the type of work required;

9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;

10. Other documented good cause as determined by the Division.

F. **Termination without Good Cause.** Good cause does not exist if the prime contractor seeks to terminate a DBE upon which it relied to obtain the contract if the reason for the proposed termination is so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

G. **Procedure for Terminating DBE from DBE Participation Plan.** In order to obtain Division approval to terminate and/or substitute a DBE subcontractor, the following steps are required:

1. The prime contractor must give notice in writing to the DBE subcontractor, with a copy to the Division, of its intent to request to terminate and/or substitute; the notice must state the reason for the termination and/or substitution and must give the DBE subcontractor five (5) days to respond to the notice.
2. The DBE subcontractor must respond to the notice within the five day period and advise the Division and the prime contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Division should not approve the prime contractor's action; if required in a particular case as a matter of public necessity (e.g. safety), the Division may provide a response period shorter than five days.
3. In addition to post-award terminations, the provisions of this *Procedure for Terminating DBE from DBE Participation Plan* apply to pre-award deletions of, or substitutions for, DBE firms put forward by offerors in negotiated procurements.

VI. CONTRACT AWARD REQUIREMENTS

A. **Good Faith Efforts Required.** In order to be deemed responsive and be awarded this contract, a bidder must demonstrate good faith efforts to meet the DBE goal established by the Division, if a DBE goal has been set forth in section IV. A. of this provision. The bidder can meet this good faith requirement in either of two ways:

1. The bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose on a Contractor's Plan for DBE Participation (a sample is attached to this Special Provision), or
2. The bidder can document adequate good faith efforts showing that the bidder took all necessary and reasonable steps to achieve a DBE goal which, by their scope, intensity, and appropriateness to the objective, would be reasonably expected to obtain sufficient DBE participation, even if they were not fully successful.

The following is a list of types of actions that will be considered as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

- a. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- b. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- c. Providing interested DBEs with adequate information about the plans, specifications and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- d. Negotiating in good faith with interested DBEs.
 - i. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
 - ii. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- e. Not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
 - f. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by the Division or contractor.
 - g. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
 - h. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- B. Determining Good Faith Efforts.** In determining whether a bidder has made good faith efforts, the Division may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, the Division may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, the Division may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.
- C. Documentation of Good Faith Efforts.** All documentation of good faith efforts must be submitted at the time of bid opening. Efforts to increase the goal after bid submission will not be considered in justifying the good faith effort. Contractors who fail to demonstrate that good faith efforts were made prior to the bid shall not be eligible to be awarded the contract. The Division may take any efforts it deems appropriate to assure the completeness and accuracy of documentation submitted to demonstrate good faith efforts.
- D. Bidder's Assurance.** The bidder's shall be written assurance he/she will comply with this special provision. The Contractor's proposed DBE goal percent must be completed or the bid will be deemed irregular.
- E. Failure to Demonstrate Good Faith Efforts.** A bid that fails to demonstrate good faith efforts MUST be excluded from consideration as non-responsive. Under 49 CFR 26.53(a), when there is a contract goal the Division "must award the contract only to a bidder who makes good faith efforts to meet it." Federal funds cannot be used to fund contract activities that are not in compliance with 49 CFR Part 26. If the Division determines that the apparent successful bidder has failed to meet the requirements to demonstrate good faith efforts, the

Division will, before awarding the contract, provide the bidder an opportunity for administrative reconsideration of the Division's determination.

1. As part of this reconsideration, the bidder will have the opportunity to provide written documentation or argument concerning the issue of whether it made adequate good faith efforts, by either meeting the contract goal or by documenting its efforts to do so.
2. The Division's decision on reconsideration will be made by an official who did not take part in the original determination that the bidder failed to make adequate good faith efforts.
3. The bidder will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it made adequate good faith efforts.
4. The Division will send the bidder a written decision on reconsideration, explaining the basis for finding that the bidder did or did not make good faith efforts.
5. The result of the reconsideration process is not appealable to the U.S. Department of Transportation.

VII. 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 to 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 to ensure non-discrimination in the award and administration of USDOT-assisted contracts, to create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts, to ensure that the DBE program is narrowly tailored in accordance with applicable law, to ensure that only firms that fully meet eligibility standards are permitted to participate as DBEs, to help remove barriers to the participation of DBEs in USDOT-assisted contracts, and to assist in the development of firms that can compete successfully in the marketplace outside the DBE program. Consequently, the DBE requirements of 49 CFR Part 26 apply to this contract.
- B. **DBE Obligation.** By submitting a bid on this contract, the contractor expressly accepts and agrees to the following assurance, and further agrees to include this assurance in each and every subcontract executed between the prime contractor and a subcontractor: **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 USDOT-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 contractor in an amount equal to the unmet portion of the contract goal.
 3. Termination of the contract.
 4. Such other remedy as the Division deems appropriate.
- D. **Records and Reports.** All contractors must keep detailed records and provide regular reports to the Division on a quarterly basis, or as requested, on their progress in meeting contractual DBE obligations. These records may include, but shall not be limited to, payroll, lease agreements, cancelled payroll checks, cancelled supply and material checks, and executed subcontracting agreements. 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 USDOT-assisted contracts.

VIII. DBE PARTICIPATION REQUIREMENTS

The DBE must perform a commercially useful function. A commercially useful function is generally being performed when a DBE is responsive for the execution of a distinct element of the work and is carrying out its responsibilities by actually performing, managing and supervising the work involved in accordance with normal industry practice (except where such practices are inconsistent with the DBE regulations and these guidelines) and when the DBE firm receives due compensation as agreed upon for the work performed. 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 does not meet the commercially useful function requirement, sanctions against the DBE firm and the prime contractor may be pursued.

- A. **DBE Management:** The DBE must manage the work it has contracted. The management shall include scheduling work operations, ordering equipment and materials (if materials are a part of the contract), preparing and submitting payrolls and all other required reports and forms, and hiring and firing employees, including supervisory employees. The DBE must perform the work of the contract with its own work force.

The DBE must supervise the daily operations of the work contracted. There are only two acceptable ways for the DBE to supervise the daily operations. The DBE owner may act as superintendent and directly supervise the work or a skilled and knowledgeable superintendent employed by and paid wages by the DBE may directly supervise the work. If the latter is

used, the DBE owner must be actively involved in making the operational and managerial decisions of the firm. This means that all administrative functions must be performed by personnel responsive to or employed by the DBE at facilities or locations under the control of the DBE.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the Division will presume that the DBE is not performing a commercially useful function; the DBE may present evidence to rebut this presumption.

The Division's decisions on commercially useful function are reviewable by the Federal Transit Administration but are not appealable to the USDOT.

B. DBE's Work Force: In order to meet the commercially useful function requirements of the regulations and the contract, the following statements are applicable:

1. The DBE shall supervise and perform the work of the contract with workers on its payroll and under the direct supervision of the DBE. The DBE or his/her superintendent must, on a full time basis, supervise and control the work of the contract. The supervision of the contract work by personnel normally employed by another contractor or by personnel not under the control of the DBE constitutes failure to perform a commercially useful function.
2. Except in the instances defined below, the DBE shall perform its work with employees normally employed by and under the DBE's control. In all instances, the DBE shall be responsive for its payroll and labor compliance requirements concerning all workers under its control. The DBE must also be responsive, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself.
 - a. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.
 - b. As a subcontractor, a DBE may not subcontract work of the contract to non-disadvantaged firms/persons. Exceptions will not normally be considered. As a prime contractor, a DBE firm may subcontract as much of the work of the contract as the Division of Public Transit permits.
 - c. Prior to allowing any argument, the Division's EEO office will ensure that:
 - i. The arrangement is not designed to provide the DBE with the basic labor requirements of the contract.

- ii. The arrangement is on a limited basis and not long term; repetitive use by the DBE firm of personnel primarily employed by a non-disadvantaged firm will be construed as an attempt to artificially inflate DBE participation and will not be allowed;
- iii. Exclusive of the arrangement, the majority of the DBE's work force and his or her superintendent and/or foreman are regular employees of the DBE; and
- iv. The arrangement should be indicative of normal industry practices and should not represent a significantly greater portion of the contract work than would be expected on the basis of normal industry practices.

C. Equipment: In order to perform a commercially useful function the DBE subcontractor shall be responsive for any equipment necessary to complete the work within the approved Participation Plan.

1. In certain circumstances the DBE may lease specialty equipment or incidental equipment, but these arrangements must be consistent with standard industry practices.
 - a. The DBE shall be responsive for negotiating the cost, arranging for the delivery of, and paying for leased equipment.
 - b. Copies of the lease agreements shall be submitted for approval by the Division prior to the work being performed.
 - c. The DBE subcontractor shall provide paid invoices to the Division for all leased equipment.
2. The cost of equipment leased from the prime contractor or its affiliates will not be counted towards the goal. If an emergency incident arises that presents a safety concern to either the workers or the traveling public, the DBE subcontractor may find it necessary to lease equipment from the prime contractor in this situation. The Division may approve the leasing of the equipment providing specific details of the incident are submitted to the Division. All leases in these situations must be approved by the Division's EEO Office.
3. Incidental equipment leasing agreements between the prime contractor and the DBE subcontractor must be submitted to and approved by the WVDOT EEO Office prior to performance of the work. The approval of all leases will be contingent upon evidence of the DBE's independent performance and the performance of a commercially useful function.

D. Materials: The DBE shall negotiate the cost, determine quality and quantity, arrange delivery of, install (where applicable) and pay for the materials and supplies required for the work of the contract. Invoices for materials should be in the name of the DBE firm not the prime contractor. The Division will count expenditures by DBEs for materials or supplies toward DBE goals as provided in the following;

1. If the materials or supplies are obtained from the DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals. For the purposes of this paragraph, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
2. If the materials or supplies are purchased from the DBE's regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals. A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
 - a. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
 - b. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (2) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
 - c. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.
3. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of materials or supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.
4. A prime contractor may occasionally find it necessary to pay suppliers directly for materials used by subcontractors. It is acceptable for the prime contractor to do so for DBEs, provided such a payment arrangement is available to all subcontractors and not restricted exclusively to DBEs. When such payments are made by the prime contractor, the payments must be made by jointly endorsable checks signed by the prime contractor and the DBE. The DBE must also participate in scheduling delivery of the materials and is fully responsive for ensuring that the materials meet specifications.
5. DBEs will not be considered as supplying material when payment for the material is effected by making a deduction from the prime contractor's payment to the DBE unless

such transaction is clearly documented as part of a formal written agreement between the two parties and approved by the DOT EEO office.

6. If the materials or supplies are obtained from the prime contractor or an affiliate of the prime contractor, the cost of the materials or supplies will not be counted toward the goal.

E. DBE Trucking Firms: To be certified as a DBE trucking firm, the firm must own at least one fully operational truck that is fully licensed and insured and that is used on a day to day basis. DBE trucking firms must be covered by a subcontract or a written agreement approved by the DOT EEO office 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. The DBE trucking firm must be responsive for the management and supervision of the entire trucking operation for which it is responsive on this contract, and therefore cannot be a contrived arrangement for the purpose of meeting DBE goals.

1. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
2. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
3. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by DBE-owned trucks on the contract. The DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract.

Example – DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with firm Z.

4. A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

G. 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 performed by an approved DBE substitute or unless the Prime Contractor elected 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.

H. North American Industrial Classification (NAIC):

1. DBE work can only be counted toward meeting the contract DBE goal if the work to be performed by the DBE is:
 - a. Within the Type of Work for which the DBE is certified AND
 - b. Within the classification of the North American Industry Classification System (6 digit NAIC codes) approved for the DBE.
2. Approval for Types of Work and NAIC codes are requested by the DBE at the time of initial certification and may be approved by the Uniform Certification Program (UCP) Committee based upon factual evidence supporting such approval.
3. Additional Types of Work and/or additional NAIC codes may be approved by the UCP
 - a. Upon request by the DBE, if existing factual evidence is already present in the DBE's record to support further designations, OR
 - b. Upon request and submission of factual evidence by the DBE to adequately support recognition of the DBE's capacity to control additional Types of Work, or work performed under additional NAIC codes.
4. Payments made to DBEs cannot be counted toward meeting contract goals if the DBE is not certified for the Type of Work; the proper certification must be in place prior to the award of the contract.

TERMS & CONDITIONS

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(i)(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(18), dated 10-1-11.

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.

(iii) 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(18) dated October 1, 2011) 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 #9**.

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.

Access for Individuals With Disabilities

The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same rights as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for them. The Contractor also agrees to comply with all applicable provisions of Section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the American With Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable.

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.

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 # PTR12010.**"

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 offerer 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 offerer 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.

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.

United States Department of Transportation Federal Transit Administration

Master Agreement

FTA MA(18)

October 1, 2011

The FTA Master Agreement MA(18) dated October 1, 2011 is a requirement of the 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/18-Master.pdf>

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

REQUIREMENT OF RFQ

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

The vendor must 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.wdol.gov/dba.aspx#0>

STATE:

<http://www.sos.wv.gov/administrative-law/wagerates/Pages/2011BuildingConstruction.aspx>

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
BF#1

Proposal of _____ hereinafter called Bidder, organized and existing under the laws of the State of _____ doing business as _____. 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: _____

(Amount to be shown in both words and numbers) \$ _____

Bid Form #2

GENERAL CONTRACTOR

GENERAL WORK

This price to include all work shown and noted in the contrast 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 the 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 305 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 \$200.00 per day if substantial completion is not obtained within 305 days calendar days of the Contractor's proceed date and liquidated damages shall be assessed at \$100.00 per day if final completion is not achieved within 60 calendar days of substantial completion.

Authorized Signature

Date

Title

 **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:

ADDRESS:

SUBMITTED BY:

NAME:

ADDRESS:

PRINCIPAL OFFICE:

- Corporation
- Partnership
- Individual
- Joint Venture
- Other

NAME OF PROJECT: *(If applicable)*

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.

§ 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.

§ 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?

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

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

§ 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.)

§ 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:

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

§ 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 _____ day of _____ 20____

Name of organization:

By:

Title:

§ 6.2

M _____ being
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 _____ day of _____ 20____

Notary Public:

My commission expires:

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

BID BOND BF#4

KNOW ALL MEN BY THESE PRESENTS, That we, the undersigned, _____ of _____, _____, as Principal, and _____ of _____, _____, a corporation organized and existing under the laws of the State of _____ with its principal office in the City of _____, as Surety, are held and firmly bound unto the State of West Virginia, as Obligee, in the penal sum of _____ (\$ _____) 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

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 _____ day of _____, 20_____.

Principal Corporate Seal

(Name of Principal)

By _____
(Must be President or Vice President)

(Title)

Surety Corporate Seal

(Name of Surety)

Attorney-in-Fact

IMPORTANT - Surety executing bonds must be licensed in West Virginia to transact surety insurance. Raised corporate seals must be affixed, a power of attorney must be attached.

AGENCY (A)
RFQ/RFP# (B)

Bid Bond

- (A) WV State Agency (Stated on Page 1 "Spending Unit") Request for Quotation Number (upper right corner of page #1)
(C) Your Company Name
(D) City, Location of your Company
(E) State, Location of your Company
(F) Surety Corporate Name
(G) City, Location of Surety
(H) State, Location of Surety
(I) State of Surety Incorporation
(J) City of Surety Incorporation
(K) Minimum amount of acceptable bid bond is 5% of total bid. You may state "5% of bid" or a specific amount on this line in words.
(L) Amount of bond in figures
(M) Brief Description of scope of work
(N) Day of the month
(O) Month
(P) Year
(Q) Name of Corporation
(R) Raised Corporate Seal of Principal
(S) Signature of President or Vice President
(T) Title of person signing
(U) Raised Corporate Seal of Surety
(V) Corporate Name of Surety
(W) Counter Signature by WV agent
(X) Signature of Attorney in Fact of the Surety

KNOW ALL MEN BY THESE PRESENTS, That we, the undersigned, (C) of (D), (E) as Principal, and (F) of (G), (H), a corporation organized and existing under the laws of the State of (I) with its principal office in the City of (J), as Surety, are held and firmly bound unto The State of West Virginia, as Obligee, in the penal sum of (K) (\$ (L)) 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 (M)

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 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 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 hereto and these presents to be signed by their proper officers, this (N) day of (O), 20 (P).

NOTE: Dated, Power of Attorney with Raised Surety Seal must accompany this bid bond.

Principal Corporate Seal

(R)

(Q)
(Name of Principal)
By (S)
(Must be President or Vice President)
(T)
Title

(U)
Surety Corporate Seal

(V)
(Name of Surety)

Countersigned:

(W)
Resident West Virginia Agent

(X)
Attorney-in-Fact

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

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: _____

CONTRACTOR'S LICENSE NO: _____

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



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

STATE OF WEST VIRGINIA,

COUNTY OF _____, TO-WIT:

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

- 1. I am an employee of _____; and,
(Company Name)
- 2. I do hereby attest that _____
(Company Name)

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.

(Company Name)

By: _____

Title: _____

Date: _____

Taken, subscribed and sworn to before me this _____ day of _____.

By Commission expires _____

(Seal)

(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.

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.

Date

Authorized Signature

Company Name

Name

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**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.

Date

Authorized Signature

Title

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 #9

**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 #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 influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress regarding the award of a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance, or the extension, continuation, renewal, amendment, or modification of any Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance.
2. If any funds other than Federal appropriated funds have been or will be paid to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with any application for a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance, the undersigned assures that it will complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," Rev. 7-97; and
3. The undersigned understands that the language of this certification shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, subagreements, and contracts under grants, loans (including a line of credit), cooperative agreements, loan guarantees, and loan insurance.

Undersigned understands that this certification is a material representation of fact upon which reliance is placed by the Federal government and that submission of this certification is a prerequisite for providing a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance for a transaction covered by 31 U.S.C. 1352. The undersigned also understands that any person who fails to file a 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.

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

_____ Date Authorized Signature

_____ 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 _____

No. 2 _____

No. 3 _____

No. 4 _____

No. 5 _____

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

If no addendums are issued, please check this box and sign this form.

Signature

Company

Date

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.

Date

Authorized Signature

Title

Company Name

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

RFQ No. PTR12010

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 owned 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.

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: _____

Authorized Signature: _____ Date: _____

State of _____

County of _____, to-wit:

Taken, subscribed, and sworn to before me this ____ day of _____, 20__.

My Commission expires _____, 20__.

AFFIX SEAL HERE

NOTARY PUBLIC _____

Bid Form Checklist

- _____ Bid Form #1
- _____ Bid Form #2
- _____ Bid Form #3 Contractor's Qualification Statement (AIA A305)
- _____ Bid Form #4 Bid Bond
- _____ Bid Form #5 Contractor's License
- _____ Bid Form #6 Drug free Workplace
- _____ Bid Form #7 Buy American Certificate
- _____ Bid Form #8 Vendor's Certificate
- _____ Bid Form #9 Certification of primary participant
- _____ Bid Form #10 Certification of Restrictions on lobbying
- _____ Bid Form #11 Addendum Acknowledgement
- _____ Bid Form #12 Contractor's Plan for DBE Participation
- _____ Bid Form #13 DBE Participation Confirmation Certification
- _____ Bid Form # 14 Purchasing Affidavit



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

PRODUCER
INSURANCE AGENCY'S NAME AND ADDRESS

INSURERS AFFORDING COVERAGE

INSURER A: INSURER'S NAME NAIC #

INSURER B: INSURER'S NAME

INSURER C: INSURER'S NAME

INSURER D:

INSURER E:

INSURED
CONTRACTOR'S NAME AND ADDRESS

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.

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.

INSTR ADDL LTR INSTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC				EACH OCCURRENCE - \$1,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
B	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO EXCESS / UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory I'd III) <input type="checkbox"/> Y/N If yes, describe under SPECIAL PROVISIONS below OTHER				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 (Mandolidis).
 Owner, Architect and Architect's Consultants are to be named as additional insureds. (Insert project's name and address)

CERTIFICATE HOLDER

STATE AGENCY'S NAME AND ADDRESS

CANCELLATION

IF SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO 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.

AUTHORIZED REPRESENTATIVE

ACORDTM CERTIFICATE OF PROPERTY INSURANCE		DATE
PRODUCER INSURANCE AGENCY'S NAME AND ADDRESS	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.	
COMPANIES AFFORDING COVERAGE		
COMPANY A INSURER'S NAME		
COMPANY B		
COMPANY C		
COMPANY D		
INSURED CONTRACTOR'S NAME AND ADDRESS		

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. LTR.	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	\$
A	<input checked="" type="checkbox"/> INLAND MARINE TYPE OF POLICY Inst/Builder's Risk CAUSES OF LOSS <input type="checkbox"/> NAMED PERILS <input type="checkbox"/> OTHER TYPE OF POLICY <input type="checkbox"/> CRIME <input type="checkbox"/> BOILER & MACHINERY <input type="checkbox"/> OTHER	(if applicable)			<input checked="" type="checkbox"/> BUILDING <input checked="" type="checkbox"/> TRANSIT <input checked="" type="checkbox"/> OFF-SITE STORAGE	CONTRACT AMT \$ 20% \$ 20%

LOCATION OF PREMISES/DESCRIPTION OF PROPERTY
 PROJECT NAME AND ADDRESS

SPECIAL CONDITIONS/OTHER COVERAGES
 Owner is to be named as additional insured.

CERTIFICATE HOLDER STATE AGENCY'S NAME AND ADDRESS	CANCELLATION 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. AUTHORIZED REPRESENTATIVE
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