



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

Solicitation

NUMBER
PTR13001

PAGE
1

ADDRESS CORRESPONDENCE TO ATTENTION OF:
PAUL REYNOLDS 304-558-0468

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
09/21/2012

BID OPENING DATE: 10/23/2012 BID OPENING TIME 1:30PM

LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
0001		EA		968-20		
ADDENDUM NO. 1 ADDENDUM IS CREATED TO: ADD REVISED DBE PAGES ADD BID FORMS BID OPENING DATE REMAINS UNCHANGED BID OPENING DATE: OCTOBER 23, 2012 AT 1:30 P.M. BUILDING CONSTRUCTION						

SIGNATURE		TELEPHONE	DATE
TITLE	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE	

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

SOLICITATION NUMBER: PTR13001
Addendum Number: 1

The purpose of this addendum is to modify the solicitation identified as PTR12001 ("Solicitation") to reflect the change(s) identified and described below.

Applicable Addendum Category:

- Modify bid opening date and time
- Modify specifications of product or service being sought
- Attachment of vendor questions and responses
- Attachment of pre-bid sign-in sheet
- Correction of error

Description of Modification to Solicitation: Add Required Bid Forms to Solicitation

Additional Documentation: Documentation related to this Addendum (if any) has been included herewith as Attachment A and is specifically incorporated herein by reference.

Terms and Conditions:

1. All provisions of the Solicitation and other addenda not modified herein shall remain in full force and effect.
2. Vendor should acknowledge receipt of all addenda issued for this Solicitation by completing an Addendum Acknowledgment, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

ATTACHMENT A

1. Modify Bid Specifications Add Required Bid Forms to Solicitation
2. The addendum acknowledgement is attached. This document should be signed and returned with your bid. Failure to sign and return may result in disqualification.

PRE-BID CONFERENCE
SIGN IN SHEET

1/3

Request for Quotation Number:

PTR13001

Date:

9/19/2012 0:00

Project Description:

Administrative Office Construction and Renovation of Maintenance Facility

PLEASE PRINT LEGIBLY. THIS INFORMATION IS ESSENTIAL TO CONTACT THE ATTENDEES IN A TIMELY MANNER. FAILURE TO DO SO MAY RESULT IN DELAYS IN YOUR COMPANY GETTING IMPORTANT BID INFORMATION.

Firm Name:	<u>MCP Enterprises</u>
Firm Address:	<u>3845 Teays Valley Rd</u> <u>Hurricane WV 25516</u>
Representative Attending:	<u>Kevin Haynes</u>
Phone Number:	<u>304-539-4956</u>
Fax Number:	<u>304-513-6484</u>
Email Address:	<u>Kevin.Haynes@MCPEnterprisesLLC.com</u>

Firm Name:	<u>OVAL Const</u>
Firm Address:	<u>P.O. Box 401</u> <u>CHARLESTON WV 25302</u>
Representative Attending:	<u>JAMES STILTNER/ERIC COFFEY</u>
Phone Number:	<u>304 347 8820</u>
Fax Number:	<u>304 347 8821</u>
Email Address:	<u>ecoffey@ovalconstruction.com</u>

Firm Name:	<u>FOSTER SUPPLY</u>
Firm Address:	<u>PO Box 488</u> <u>SCOTT DEPOT WV 25360</u>
Representative Attending:	<u>DERICK SEARS</u>
Phone Number:	<u>304-553-6565</u>
Fax Number:	<u>304-755-8280</u>
Email Address:	<u>dsears@fostersupply.com</u>

Firm Name:	<u>SWOPE CONSTRUCTION</u>
Firm Address:	<u>1325 Blvd. Ave</u> <u>Bluefield, WVa 24201</u>
Representative Attending:	<u>William Tickle</u>
Phone Number:	<u>304-920-2462</u>
Fax Number:	<u>304-327-9444</u>
Email Address:	<u>wtickle@swopeco.com</u>

Firm Name:	<u>GRAE-CON CONSTRUCTION</u>
Firm Address:	<u>101 INDUSTRY ROAD</u> <u>MARIETTA, OH 45750</u>
Representative Attending:	<u>TIM COLLINS</u>
Phone Number:	<u>740-373-0849</u>
Fax Number:	<u>740-373-0963</u>
Email Address:	<u>pthompson@graecon.com</u>

Firm Name:	<u>Venture One Construction</u>
Firm Address:	<u>3283 Virginia Avenue</u> <u>Cincinnati OH 45227</u>
Representative Attending:	<u>Randy Zins</u>
Phone Number:	<u>513 527 4055</u>
Fax Number:	<u>513 527 4066</u>
Email Address:	<u>zak@v1cinc.com</u>

PRE-BID CONFERENCE
SIGN IN SHEET

2/3

Request for Quotation Number:

PTR13001

Date:

9/19/2012 0:00

Project Description:

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Firm Name:	<u>The Summit Electric Group</u>
Firm Address:	<u>Box 254 Hurricane WV 25526</u>
Representative Attending:	<u>Tom Keatley</u>
Phone Number:	<u>304-562-7091</u>
Fax Number:	<u>304-475-9030</u>
Email Address:	<u>tm@tseginc.com</u>

Firm Name:	<u>Danhill Construction Company</u>
Firm Address:	<u>P.O. Box 1685 Canby Bridge, W.V. 25885</u>
Representative Attending:	<u>Chris Dozier</u>
Phone Number:	<u>304-632-1600</u>
Fax Number:	<u>304-632-1501</u>
Email Address:	<u>Cdozier33@yahoo.com</u>

Firm Name:	<u>Southern Air Inc</u>
Firm Address:	<u>848 Mercer Mall Road Bluefield WV 24701</u>
Representative Attending:	<u>Jeff Justice</u>
Phone Number:	<u>304-324-4272</u>
Fax Number:	<u>304-324-4274</u>
Email Address:	<u>jeff.justice@southern-air.com</u>

Firm Name:	<u>Paramount Builders LLC</u>
Firm Address:	<u>501 6TH AVE St Albans W 25177</u>
Representative Attending:	<u>Chris Shaw</u>
Phone Number:	<u>304 727 2770</u>
Fax Number:	<u>304 727 0302</u>
Email Address:	<u>C.shaw@paramountwv.com</u>

Firm Name:	<u>Southern Air Inc</u>
Firm Address:	<u>848 Mercer Mall Road Bluefield WV 24701</u>
Representative Attending:	<u>David Stowers</u>
Phone Number:	<u>304-324-4272</u>
Fax Number:	<u>304-324-4274</u>
Email Address:	<u>David.Stowers@southern-air.com</u>

Firm Name:	<u>Cindy Fish / Division of Public Transit</u>
Firm Address:	<u>Bldg. 5, Rm. 906 1906 Kanawha Blvd., E Charleston, WV 25305-0432</u>
Representative Attending:	<u>Cindy Fish</u>
Phone Number:	<u>304-558-0428</u>
Fax Number:	<u>304-558-0174</u>
Email Address:	<u>Cindy.E.Fish@wv.gov</u>

PRE-BID CONFERENCE
SIGN IN SHEET

3/3

Request for Quotation Number:

PTR13001

Date:

9/19/2012 0:00

Project Description:

Administrative Office Construction and Renovation of Maintenance Facility

PLEASE PRINT LEGIBLY. THIS INFORMATION IS ESSENTIAL TO CONTACT THE ATTENDEES IN A TIMELY MANNER. FAILURE TO DO SO MAY RESULT IN DELAYS IN YOUR COMPANY GETTING IMPORTANT BID INFORMATION.

Firm Name:	<u>Susan O'Connell</u>
Firm Address:	<u>Division of Public Transit</u>
Representative Attending:	
Phone Number:	
Fax Number:	
Email Address:	

Firm Name:	<u>B & N</u>
Firm Address:	<u>4424 EMERSON AVE.</u>
	<u>PARKERSBURG</u>
Representative Attending:	<u>JAY WILLIAMS</u>
Phone Number:	<u>304 485 8541</u>
Fax Number:	
Email Address:	

Firm Name:	<u>Jammy Bennett</u>
Firm Address:	<u>Bluefield Area Transit</u>
Representative Attending:	
Phone Number:	
Fax Number:	
Email Address:	

Firm Name:	<u>Quirk</u>
Firm Address:	<u>DPT</u>
Representative Attending:	
Phone Number:	
Fax Number:	
Email Address:	

Firm Name:	<u>Patrick McKinney</u>
Firm Address:	<u>Bluefield Area Transit</u>
Representative Attending:	
Phone Number:	
Fax Number:	
Email Address:	

Firm Name:	
Firm Address:	
Representative Attending:	
Phone Number:	
Fax Number:	
Email Address:	

INVITATION TO BID-PTR13001

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

Bluefield Area Transit
New Construction Administrative Offices and Renovation of Bus Maintenance Facility
Bluefield, WV

All bids must be submitted in accordance with the Bidding Documents issued by the Architect and the Request for Quotations (PTR13001) issued by the West Virginia Department of Administration, Purchasing Division. Bidding documents may be obtained from the Purchasing website. Paul Reynolds is the sole contact for questions and clarifications for this RFQ.

Plan documents may be purchased from Burgess and Niple for \$200.00, which is NON-REFUNDABLE, plus shipping and handling. Bidders and material suppliers may procure additional sets at actual cost. Only complete sets will be issued. Please find contact info for Burgess and Niple and Paul Reynolds below:

Burgess and Niple
Engineers and Architects
4424 Emerson Avenue
Parkersburg, WV 26104
Telephone: (304) 485-8541 x5117

WV Purchasing Division
Paul Reynolds, Senior Buyer
Building 15
2019 Washington Street, East
Charleston, WV 25305
Phone: 304-558-0468 Fax: 304-558-4115
Email: Paul.Reynolds@wv.gov

A mandatory pre-bid meeting is scheduled for PTR13001:

Time: 10:30 AM
Date: September 19, 2012
Place: 3208 John Nash Blvd.,
Bluefield, West Virginia 24701

Failure to attend the mandatory pre-bid meeting shall disqualify Contractor from bidding.

DBE goal for this project is 5%.

Sealed Bids will be received by the Department of Administration, Purchasing Division, 2019 Washington Street East, Charleston, WV 25305-0130 until 1:30 p.m. on October 23, 2012, in accordance with the Instructions to Bidders, the Supplementary Instructions to Bidders, and Request for Quotations. Bid prices shall remain in effect for 90 days.

IN-STATE VENDOR PREFERENCE DOES NOT APPLY.

Upon award of the contract, the contractor will be required to enter into an AIA A101 contract with the owner.

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 Mercer 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>

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>

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 Federal Transit Administration's "Third Party Contracting Circular" (4220.1F), requires grantees (the WV Division of Public Transit) to conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Therefore, the in-state vendor preference shall not apply to this procurement since it is partially or entirely funded with Federal Transit Administration funds.

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)(i)(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 with 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 locally 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 loading 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 #4** 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 #5**.

Restrictions on Lobbying

Every Contractor who applies or bids for an award of \$100,000 or more shall file the certification on **Bid Form #7** 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 the Purchasing Division's documents and specifications and submit that form with their bid.

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

You may find the state bid protest procedures at <http://www.state.wv.us/admin/purchase/rule148-01.pdf>

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.

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

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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/eeo/DBE/Pages/default.aspx>.

IV. DBE GOAL

- A. The DBE goal determined by the West Virginia Division of Public Transit for this contract is 5% 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. Furnishing the goal so indicated is a mandatory requirement of the bid submission 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 plan 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 EBO 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 responsible 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.

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**.

Bld Form #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 your Advertisement for Bids, Bidder hereby proposed to perform all work for the new construction of an Administrative Office and Bus maintenance facility in Bluefield, Mercer 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 agrees to commence work under this Contract upon receipt of 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 #3



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

STATE OF West Virginia
COUNTY OF Mercer, 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 #4: 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 # 5: 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 #6: 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 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 #7: 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 sub awards at all tiers (including subcontracts, sub grants, sub agreements, 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

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

**BID FORM #8: WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF PUBLIC TRANSIT
DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION**

CONTRACTOR'S PLAN FOR DBE PARTICIPATION

[1]	[2]	[3]	[4]
DBE Sub-Contractor or Supplier	Description	Type of Work (from DBE Directory)	Total Cost

[5] CONTRACTOR'S DBE GOAL: TOTAL COST OF ALL DBE PARTICIPATION \$ _____, PERCENT OF TOTAL BID AMOUNT: _____

EXPLANATORY NOTES:

- "DBE Sub-Contractor" (column [1]), for the purpose of this certificate, means a disadvantaged business as defined by Special Provisions in this Proposal.
- If material is to be supplied, the figure in column [4] shall not exceed 60% of the actual cost unless the material is manufactured by a DBE; if material IS manufactured by a DBE, 100% of the cost may be recorded.
- If material is not supplied by a regular dealer as defined in 49 C.F.R. 26.556(2)(ii), the figure in column [4] shall only include a reasonable and customary fee or commission for providing a bona fide service.
- For line [5], enter the total cost of DBE participation and the percentage of the total contract bid amount that this total DBE cost represents.
- The Contractor shall submit written and signed documentation of commitment (Bid Form 8) to use a DBE subcontractor whose participation the contractor proposes to meet a contract goal.
- The Contractor shall submit written and signed confirmation from the DBE (Bid Form 9) that it is participating in the contract as provided in the prime contractor's commitment.

Authorized Signature _____ Title _____

**BID FORM #9: DISADVANTAGED BUSINESS ENTERPRISE
PARTICIPATION CONFIRMATION CERTIFICATION**

NOTE: BID FORM #9 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 #8). 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.*

BID FORM #10

RFQ No. 13001

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

MANDATE: Under W. Va. Code §5A-3-10a, 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: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

EXCEPTION: The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. 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.

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.

"Employer default" means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

AFFIRMATION: By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (W. Va. Code §61-5-3) that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

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	Drug Free Workplace
_____ Bid Form #4	Buy America Certification
_____ Bid Form #5	Vendor's Certification of Understanding and Acceptance
_____ Bid Form #6	Certification of Primary Participant Regarding Debarment...
_____ Bid Form #7	Certification of Restrictions on Lobbying
_____ Bid Form #8	Contractor's Plan for DBE Participation
_____ Bid Form #9	DBE Participation Confirmation Certification
_____ Bid Form #10	Purchasing Affidavit

NOTICE

In all cases, materials shall be furnished as specified. Where brand names, manufacturer's names are listed or processes are used in the specifications, consider the term "approved equal" to follow. However, a request for approval for any proposed substitution or "approved equal" shall be included in writing under the terms stated in Section 013300-Submittals.

ADDENDUM ACKNOWLEDGEMENT FORM
SOLICITATION NO.: PTR13001

Instructions: Please acknowledge receipt of all addenda issued with this solicitation by completing this addendum acknowledgment form. Check the box next to each addendum received and sign below. Failure to acknowledge addenda may result in bid disqualification.

Acknowledgment: I hereby acknowledge receipt of the following addenda and have made the necessary revisions to my proposal, plans and/or specification, etc.

Addendum Numbers Received:

(Check the box next to each addendum received)

- | | |
|---|--|
| <input type="checkbox"/> Addendum No. 1 | <input type="checkbox"/> Addendum No. 6 |
| <input type="checkbox"/> Addendum No. 2 | <input type="checkbox"/> Addendum No. 7 |
| <input type="checkbox"/> Addendum No. 3 | <input type="checkbox"/> Addendum No. 8 |
| <input type="checkbox"/> Addendum No. 4 | <input type="checkbox"/> Addendum No. 9 |
| <input type="checkbox"/> Addendum No. 5 | <input type="checkbox"/> Addendum No. 10 |

I understand that failure to confirm the receipt of addenda may be cause for rejection of this bid. I further understand that 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.

Company

Authorized Signature

Date

NOTE: This addendum acknowledgement should be submitted with the bid to expedite document processing.