

Request for Proposals and Qualifications for Tri-Valley Transit (TVT)

Civil Engineering Service: Engineering, Design, Permitting, Supervision and Acceptance of Infrastructure projects at all TVT Facilities & Properties

Agency Background

TVT is a 501(c)3 tax exempt organization that plays a vital role in providing essential community transportation services across Addison, Orange, Northern Windsor, and (effective July 1, 2026) Washington Counties.

Agency Mission and Vision

TVT's mission is to enhance the economic, social, and environmental health of the communities we serve by providing public transportation services for everyone that are safe, reliable, accessible, and affordable. TVT's vision is to be the leading transportation alternative for the residents and visitors in the communities we serve.

Agency Services

TVT's services include local and commuter bus routes that are accessible to the general public, as well as door-to-door Dial-a-Ride (demand-response) services designed to assist vulnerable residents who face challenges in accessing or using traditional transportation options.

Project Overview

TVT is seeking qualified Civil Engineering firms to provide any and all CE services related to the needs of TVT's current and future facilities and properties, both owned and leased.

Current Facilities and Properties

1. Addison County Community Transportation Center
297 Creek Road, Middlebury, VT 05753
Current use: offices, vehicle maintenance, parking
2. Randolph-Area Administrative Offices
1 L Street, Randolph, VT 05760
Current Use: offices, parking
3. Randolph-Area Fleet Storage
13 Hedding Drive, Randolph, VT 05760
Current Use: fleet storage, light vehicle maintenance, parking

4. Upper Valley Community Transportation Center
2 Plateau Acres, Bradford, VT 05033
Current Use: fleet storage, light vehicle maintenance, parking
5. Berlin Transit Facility
6088 Route 12, Berlin, VT 05602
Current Use: fleet storage, light vehicle maintenance, parking

Civil Engineer General Scope of Work

1. Develop site plan(s) for multiple projects, always in accordance with best practices and local, state and Federal regulations to achieve the goals of each project.
2. Analyze each project and provide recommendations for solutions, create detailed designs that ensure safety, functionality, and sustainability.
3. Oversee the entire lifecycle of projects, including supervision during all phases of construction activities to ensure compliance with design specifications, environmental and safety regulations.
4. Working with staff, contractors and regulatory agencies to ensure successful project execution. (including permitting for Section 106 National Historic Preservation Act, ACT 250, zoning, development review boards, Federal and State officials).
5. Supervise construction activities, during all phases, to ensure compliance with design specifications, environmental and safety regulations.
6. Conduct site assessments as to which geological and environmental conditions may exist and determine necessary actions.
7. Work with design team to coordinate all site drawings, when relevant.
8. Work will be assigned to selected contractor via issuance of task orders for each location and task to be performed.

Tri-Valley Transit's Responsibilities During the Projects

Provide Civil Engineer with available data and background information on land and buildings for each project.

Provide availability to receive updates and provide timely feedback and decisions required in completing the project.

Manage and administer project activities with the Civil Engineer, Project Committee, relevant municipalities, and FTA and VTrans officials as necessary.

Coordinate public participation throughout the duration of the project if necessary.

Review draft documents and provide recommendations as needed.

Aid in coordination of any additional related work. Examples could include but not be limited soil borings, geo tech work, traffic studies, etc.

Fee Hours Estimate

Include a list of fully burdened hourly billing rates by job description including titles. Indirect Cost rates will be independently audited per Brooks Act processes and requirements by FTA. Please prepare the following documentation as a separate submission to this RFQ:

[AASHTO ICQ incl Indirect Cost Certification](#)
[Indirect Cost Certification Form - All Engineering Consulting and Design Contracts](#)
[AF38 Revised JULY2023 Fillable.pdf](#)

Mileage may be reimbursed at the federal mileage reimbursement rate. Travel time will not be reimbursed. Maintenance of office equipment, overhead, insurance, etc. must be included in fully burdened billing rates (indirect cost rates).

Proposals must be valid for a minimum of sixty (60) days from the date of submittal.

Questions

All questions related to this RFQ will be addressed to Angela Barrows, Tri- Valley Transit via e-mail: angela@trivalleytransit.org. The deadline for receipt of Questions **January 23, 2026**.

Responses to questions will be sent out to interested parties and posted on the website no later than **January 28, 2026**.

Deadline & Method for Submitting Proposals

Potential proposers must obtain the RFQ directly from the Tri-Valley Transit website. Proposers shall submit their qualifications via email to angela@trivalleytransit.org and the email should be clearly marked "Tri-Valley Transit Civil Engineer Proposal" and should be read receipt.

Qualifications should be submitted **no later than 3:00 p.m., local time (EST)**, Friday, February 6, 2026. (Late proposals will not be considered.)

Ownership of Reports and Documents

Tri-Valley Transit shall retain ownership of all reports, estimates, surveys, maps, drawings, and any other documents produced as part of this work. Any future use by Tri-Valley Transit of these documents shall be unrestricted.

Billing/Payment

Billing must be submitted to Tri-Valley Transit monthly and should be broken down by task order number, location hours and tasks performed. Tri-Valley Transit will reimburse the contractor for completed work within 30 days after acceptance of work.

Contract Term

This is intended to be a contract for three years, with up to 2 one-year options for renewal.

Non-Exclusivity

Tri-Valley Transit may retain other firms or associated Businesses at its sole discretion at any time during the term of this agreement.

Form of Contract

Tri-Valley Transit intends for this request for qualifications and the consultant's qualifications and subsequent cost proposal to serve as the contract. Tri-Valley Transit does not intend to negotiate contract terms or to prepare a separate contract document. If a contract is awarded under this RFQ, the selected contractor will be required to adhere to the applicable Federal Transit Administration (FTA) Terms & Conditions & TVT's Addendum of processes and procedures. Any proposed exceptions to Tri-Valley Transit's RFQ, Federal Transit Administration (FTA) Terms & Conditions & TVT's Addendum of processes and procedures shall be explicitly noted in a section of the Civil Engineer's proposal named "Proposed Exceptions to Tri-Valley Transit's requirements." Any proposed changes or elimination of language in Tri-Valley Transit's RFQ shall be returned with the Civil Engineer's proposal with proposed changes and eliminations clearly noted.

All Civil Engineer's proposed contract terms or conditions shall be reviewed by the Civil Engineer in advance of submitting a proposal and included in the Civil Engineer's proposal. Any conflicts in Civil Engineer's terms or conditions with Tri-Valley Transit's RFQ shall be reflected in the Civil Engineer's proposal to Tri-Valley Transit as noted in the above paragraph.

Miscellaneous Terms

1. All proposals submitted in response to this RFQ will become the property of Tri-Valley Transit. Tri-Valley Transit has the right to disclose information contained in the proposals after an award has been made.
2. All products and borrowed materials shall be delivered to Tri-Valley Transit's Executive Director prior to final payment.
3. Tri-Valley Transit reserves the right to withdraw this RFQ, to waive minor irregularities in proposals, to accept or reject any or all proposals, and/or to advertise for new proposals if it is in the best interest of Tri-Valley Transit to do so, and to award a contract as deemed to be in the best interest of Tri-Valley Transit.
4. Prior to making a decision concerning the proposals, Tri-Valley Transit reserves the right to request additional information or interviews from any and all firms submitting proposals.

Proposal Contents

1. Background, Qualification, and Experience: A brief description, history and structure of the firm or individual submitting the proposal. The resume of the primary contact, as well as the resumes of other personnel who may be assigned to work with Tri-Valley Transit including their educational background, certifications, work history areas of responsibility, and a statement of their expertise and experience related to this type of project
2. Representative Projects: Prepare a list of at least 5 representative projects completed in the last ten years including: role in project, project budget, owner name, and brief project description.
3. Exceptions: Disclose exceptions as required in the RFQ or note in writing that there are no exceptions.
4. Registration with Vermont Secretary of State: please submit a copy of registration.
5. References: A minimum of five (5) references for services within the last five (5) years. List should include names, addresses, telephone numbers, FAX numbers and e- mail addresses. Tri-Valley Transit reserves the right to investigate the references and past performance of any proposer with respect to performance of work on similar projects, including references that are not listed.
6. Federal Transit Administration (FTA) Certification Signoffs: as applicable. (located in the addendum of the Federal Transit Administration (FTA) Terms & Conditions & TVT's Addendum of processes and procedures document)

Selection Criteria

Tri-Valley Transit reserves the right to reject any and all proposals received as a result of this RFQ and is not held responsible for any costs associated with the preparation of any proposals. If a proposal is selected, it will be the most advantageous and best value to Tri-Valley Transit based on the selection criteria outlined below. Tri-Valley Transit intends to award a contract to the applicant who is deemed to best meet Tri-Valley Transit's needs. The selection criteria listed are as follows:

- Past performance
- Qualifications & Experience
- References
- Capacity and capability to do the work

Negotiations on Qualification based contract

The Brooks Act requires a qualifications-based procurement method for the selection

of A-E firms. Price is excluded as an evaluation factor, and negotiations are conducted with the most qualified firm only. If an agreement cannot be reached on price with the most qualified firm, negotiations are formally terminated with that firm, thereby rejecting that firm's proposal, and the grantee cannot return to this firm at a later date to resume negotiations. Negotiations are then conducted with the next most qualified firm. This process continues until a negotiated agreement is reached which the grantee considers to be fair and reasonable.

We hope to have a completed contract with the selected contractor in place by late February/early March for spring task orders to be submitted.

**FEDERAL TERMS AND CONDITIONS:
FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENTS**

(Revised 12/2025)

Contractor shall comply with the following FTA requirements. For purposes of these clauses, SUBRECIPIENT is the FTA subrecipient (procuring entity) that is entering into the Contract with Contractor.

1. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES. . [These requirements apply to all contracts and subcontracts]

SUBRECIPIENT and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation of this 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 SUBRECIPIENT, Contractor or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the Contract. Contractor shall include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. NOTIFICATION TO FTA. [These requirements apply to all contracts and subcontracts in excess of \$25,000.]

If a current or prospective legal matter that may affect the Federal Government emerges, Contractor must promptly notify SUBRECIPIENT, which must then promptly notify the Tri-Valley Transit Inc (angela@trivalleytransit.org), who will notify the FTA Chief Counsel and FTA Regional Counsel for Region 1. Contractor must include an equivalent provision in its subagreements at every tier for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

- A. Types of Legal Matters Requiring Notification.** The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or instances where the Federal Government was named as a party to litigation or a legal disagreement in any forum for any reason.
- B. Matters Affecting the Federal Government.** Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the Contract, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
- C. Additional Notice to U.S. DOT Inspector General.** If Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA, then Contractor must promptly notify SUBRECIPIENT, which must then promptly notify the Tri-Valley Transit Inc (angela@trivalleytransit.org), who will notify the U.S. DOT Inspector General, in addition to the FTA Chief Counsel or Regional Counsel for Region 9. The notification provision applies if a principal, officer, employee, agent, third-party participant (including subcontractors at any tier), or any other person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Contract or another

agreement between SUBRECIPIENT and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of SUBRECIPIENT. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of Contractor. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision also applies to all divisions of SUBRECIPIENT, including divisions tasked with law enforcement or investigatory functions.

3. PROGRAM FRAUD & FALSE/FRAUDULENT STATEMENTS OR RELATED ACTS.

[These requirements apply to all contracts and subcontracts]

- A. 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 CFR part 31, apply to its actions pertaining to this Project. Upon execution of the Contract, 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 Contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, 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 Contractor to the extent the Federal Government deems appropriate.
- B. 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. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on Contractor, to the extent the Federal Government deems appropriate.
- C. Contractor shall include the above two paragraphs 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.

4. ACCESS TO RECORDS, REPORTS, & SITES. [These requirements apply to all contracts and subcontracts]

- A. **Record Retention.** Contractor shall both maintain and retain, and will require its subcontractors of all tiers to maintain and retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- B. **Retention Period.** Contractor shall comply with the record retention requirements in accordance with 2 CFR § 200.333. Contractor shall 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 records shall be maintained until the disposition of all such litigation, appeals,

claims or exceptions related thereto.

- C. **Access to Records.** Contractor shall provide sufficient access to the U.S. Secretary of Transportation, Comptroller General of the United States, FTA, Tri-Valley Transit Inc, SUBRECIPIENT, and their duly authorized representatives to inspect and audit records and information, including such records and information SUBRECIPIENT or Contractor may regard as confidential or proprietary, related to performance of this contract as reasonably may be required.
- D. **Access to the Sites of Performance.** Contractor shall permit the FTA, Tri-Valley Transit Inc, SUBRECIPIENT, and their duly authorized representatives access to the sites of performance under this Contract as reasonably may be required. Contractor shall permit the U.S. Secretary of Transportation, Comptroller General of the United States, FTA, Tri-Valley Transit Inc, SUBRECIPIENT, and their duly authorized representatives to inspect all work and material related to the award and to audit information related to the award if such information is under the control of the Contractor, including in the Contractor's books, records, accounts, or other locations.

5. **FEDERAL CHANGES. [These requirements apply to all contracts and subcontracts]**

Contractor shall at all times comply with all applicable federal laws, regulations, requirements, policies, procedures, guidance, and directives, including without limitation those listed directly or by reference in the FTA Master Agreement between the Tri-Valley Transit Inc and the FTA, as they may be amended or promulgated from time to time during the term of the Contract. Contractor's failure to so comply shall constitute a material breach of the Contract.

6. **CIVIL RIGHTS. [These requirements apply to all contracts and subcontracts]**

SUBRECIPIENT must comply with applicable federal civil rights laws, regulations, and requirements, and follow applicable federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless SUBRECIPIENT or the federal program, including any Indian Tribe or Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with each civil rights statute, including compliance with equity in service requirements.

A. **Nondiscrimination in Federal Public Transportation Programs.**

1. Contractor must prohibit: **(a)** discrimination based on race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age; **(b)** exclusion from participation in employment or a business opportunity for reasons identified in 49 U.S.C. § 5332; **(c)** denial of program benefits in employment or a business opportunity identified in 49 U.S.C. § 5332; and **(d)** discrimination identified in 49 U.S.C. § 5332, including discrimination in employment or a business opportunity identified in 49 U.S.C. § 5332.
2. Contractor must follow the most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance. However, FTA does not require an Indian Tribe to comply with FTA program specific guidelines for Title VI when administering its agreement supported with federal assistance under the Tribal Transit Program.

B. **Nondiscrimination – Title VI of the Civil Rights Act.**

1. Contractor must prohibit discrimination based on race, color, or national origin;
2. Contractor must comply with: **(a)** Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, et seq.; **(b)** U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 CFR Part 21; and **(c)** Federal transit law, specifically 49 U.S.C. § 5332; and
3. Contractor must follow: **(a)** the most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance; **(b)** U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3; and **(c)** all other applicable federal guidance that may be issued.

C. Equal Employment Opportunity.

1. Federal Requirements and Guidance. Contractor must prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor must also comply with: **(a)** Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.; **(b)** Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.; **(c)** Executive Order No. 11246, "Equal Employment Opportunity" September 24, 1965 (42 U.S.C. § 2000e note), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs; **(d)** federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement; and **(e)** FTA Circular 4704.1 "Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients." Further, Contractor must follow other federal guidance pertaining to EEO laws, regulations, and requirements.
2. Affirmative Action. If required to do so by U.S. DOT regulations (49 CFR Part 21) or U.S. Department of Labor regulations (41 C.F.R. chapter 60), Contractor must take affirmative action that includes, but is not limited to: **(a)** recruitment advertising, recruitment, and employment; **(b)** rates of pay and other forms of compensation; **(c)** selection for training, including apprenticeship, and upgrading; and **(d)** transfers, demotions, layoffs, and terminations.
3. Indian Tribe. Contractor recognizes that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer."
4. 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.
5. Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age.

7. EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS FOR CONSTRUCTION ACTIVITIES. [These requirements apply to all contracts and subcontracts involving construction in excess of \$15,000.]

When undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), Contractor must comply with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Chapter 60 (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," and Executive Order 13672, "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity," 42 U.S.C. § 2000e note). During the performance of this Contract, the Contractor agrees as follows:

- A.** The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B.** The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C.** The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.
- D.** The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and the Contractor shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E.** The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F.** The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G.** In the event of the Contractor's noncompliance with the nondiscrimination clauses of

this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- H. The Contractor will include the provisions of paragraphs (A) through (G) above, and this paragraph (H), in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

8. INCORPORATION OF FTA TERMS. [These requirements apply to all contracts and subcontracts]

The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the FTA Master Agreement, FTA Circular 4220.1G, and 2 C.F.R. Part 200 (as adopted by DOT) 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 the contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests of SUBRECIPIENT that would cause SUBRECIPIENT to be in violation of the FTA terms and conditions. Contractor shall include this clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA.

9. FREE SPEECH & RELIGIOUS LIBERTY. [These requirements apply to all contracts and subcontracts]

All Federal funding must be expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements, including but not limited to those prohibiting discrimination and protecting free speech, religious liberty, public welfare, and the environment.

10. DEBARMENT, SUSPENSION, INELIGIBILITY, & VOLUNTARY EXCLUSION. [These requirements apply to contracts and subcontracts in excess of \$25,000 and to all contracts for federally-required audit services.]

- A. Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-Wide Debarment and Suspension (Non-procurement)," 2 CFR part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the

contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount.

- B.** Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally-funded contract (which includes review of SAM at sam.gov, if necessary to comply with U.S. DOT regulations, 2 CFR Part 1200) and are not presently declared by any Federal department or SUBRECIPIENT to be: **(1)** debarred from participation in any federally-assisted Award; **(2)** suspended from participation in any federally-assisted Award; **(3)** proposed for debarment from participation in any federally-assisted Award; **(4)** declared ineligible to participate in any federally-assisted Award; **(5)** voluntarily excluded from participation in any federally-assisted Award; or **(6)** disqualified from participation in any federally-assisted Award.
- C.** By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by SUBRECIPIENT. If it is later determined by SUBRECIPIENT that Contractor knowingly rendered an erroneous certification, in addition to remedies available to SUBRECIPIENT, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Contractor shall comply with the requirements of 2 CFR part 180, subpart C, as supplemented by 2 CFR part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- D.** Contractor agrees that it will not enter into any “covered transaction” (as defined at 2 CFR 180.220 and 1200.220) with any “third party participant” (as defined in Section 1 of FTA’s Master Agreement (Version 31, dated May 2, 2024), as may be updated or amended) that is, or whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions except as otherwise authorized by applicable Federal laws, regulations, or requirements regarding participation with debarred or suspended Recipients or Third Party Participants. Contractor further agrees that it will review the Federal Government’s “System for Award Management — Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs,” if required by USDOT regulations (2 C.F.R. Part 1200).

11. TERMINATION. *[These requirements apply to all contracts in excess of \$15,000.]*

The Contractor acknowledges that SUBRECIPIENT may terminate the Contract for cause or for convenience under the Contract’s terms and conditions, which provide the manner by which termination will be made effective and the basis for settlement. See Appendix II(B) to 2 CFR part 200, “Contract Provisions for Non-Federal Entity Contracts Under Federal Awards,” and FTA Circular 4220.1G, chapter IV, paragraph 2(b)(9)(b), “Termination.”

12. RESOLUTION OF DISPUTES, BREACHES, AND OTHER LITIGATION. *[These requirements apply to contracts and subcontracts in excess of the simplified acquisition threshold (currently set at \$350,000).]*

Unless otherwise provided for by SUBRECIPIENT, the following provisions shall apply:

- A. Dispute Resolution.** Disputes arising in the performance of this Contract that are not

resolved by agreement of the parties shall be decided in writing by the authorized representative of SUBRECIPIENT. This decision shall be final and conclusive unless within ten calendar days from the date of receipt of its copy, Contractor mails or otherwise furnishes a written appeal to the authorized representative of SUBRECIPIENT. In connection with any such appeal, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the authorized representative of SUBRECIPIENT shall be binding upon Contractor, and Contractor shall abide by the decision.

- B. Performance During Disputes.** Notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the Contract, Contractor shall continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by an Arizona Court of competent jurisdiction.
- C. Rights and Remedies.** The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by SUBRECIPIENT or Contractor shall constitute a waiver of any right or duty afforded any of them under this Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed upon in writing.

13. LOBBYING RESTRICTIONS. [These requirements apply to contracts and subcontracts in excess of \$100,000.]

- A.** Contractors who apply or bid for an award of \$100,000 or more shall certify that it has not used and will not use Federal appropriated funds to pay any person or organization for influencing or attempting 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 in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352 (Byrd Anti-Lobbying Amendment), as required by 49 C.F.R. Part 20, "New Restrictions on Lobbying." Contractors shall obtain the certification required by 49 C.F.R. Part 20 from any and all subcontractors at any tier.
- B.** Contractors shall complete and submit the disclosure form required by 49 C.F.R. Part 20, "New Restrictions on Lobbying" (Standard Form LLL, "Disclosure Form to Report Lobbying"), if the Contractor has made or has agreed to make any payment using non-Federal funds (to include profits from any covered Federal action), which would be prohibited under paragraph (1) of this clause if paid for with Federal appropriated funds. Contractors shall obtain such disclosures, if required, from its subcontractors at any tier for whom a contract in excess of \$100,000 is contemplated. Such disclosures shall be forwarded from tier to tier up to SUBRECIPIENT.
- C.** Contractors shall complete and submit a disclosure form at the end of each calendar quarter in which there occurs an event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously submitted in accordance with paragraph (2) above. An event that materially affects the accuracy of the information reported includes: (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or (b) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or (c) A change in the officer(s), employee(s), or member(s) contacted to influence or attempt to influence a covered Federal action. Contractors shall obtain such disclosures, if required, from its

subcontractors at any tier for whom a contract in excess of \$100,000 is contemplated. Such disclosures shall be forwarded from tier to tier up to SUBRECIPIENT.

- D. Contractors shall include this clause in each subcontract and require subcontractors to flow down this clause to each lower-tier subcontractor.

14. CARGO PREFERENCE (USE OF U.S.-FLAG VESSELS). *[These requirements apply to all contracts involving equipment, material, or commodities that may be transported by ocean vessels.]*

- A. At least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this Contract, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available (46 U.S.C. § 55305, and U.S. Maritime Administration regulations, "Cargo Preference – U.S.-Flag Vessels," 46 CFR Part 381);
- B. Within 20 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 46 CFR § 381.7(a)(1) shall be furnished to both SUBRECIPIENT (through the Contractor in the case of subcontractor bills-of-lading) and the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590; and
- C. Contractor shall 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.

15. Intentionally Omitted

16. EMPLOYEE PROTECTIONS.

A. Prevailing Wage & Anti-Kickback. *[These requirements apply to all prime construction, alteration, or repair contracts in excess of \$2,000.]*

1. Contractor shall comply with the Davis-Bacon Act, 40 U.S.C. § 3141-3144 and 3146-3148, as supplemented by DOL regulations at 29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction." The contract clause at 29 C.F.R. § 5.5 is incorporated in full into this Contract except all references to "contracting officer" shall be replaced with "SUBRECIPIENT." In accordance with the statute, Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor agrees to pay wages not less than once a week.
2. Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

B. Contract Work Hours/Safety Standards for Awards Involving Construction. *[These requirements apply to all contracts involving construction in excess of \$100,000 that involve the employment of mechanics or laborers.]*

1. Contractor shall comply with the Contract Work Hours and Safety Standards Act

(40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 CFR part 5. Under 40 U.S.C. § 3702 of the Act, Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

2. In the event of any violation of the clause set forth herein, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 this clause 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 this clause.
3. The FTA 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 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 this section.
4. 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 Contract.

C. Contract Work Hours/Safety Standards for Awards Not Involving Construction.
[These requirements apply to all contracts (not involving construction) in excess of \$100,000 that involve the employment of mechanics or laborers.]

1. Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR part 5.
2. Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and

actual wages paid.

3. Such records maintained under this paragraph shall be made available by Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and Contractor will permit such representatives to interview employees during working hours on the job.
4. Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

17. SEISMIC SAFETY. *[These requirements apply only to contracts for the construction of new buildings or additions to existing buildings, as well as related architectural and engineering services.]*

Contractor shall design and construct any new building or addition to an existing building in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations (49 CFR part 41) and will certify its compliance to the extent required by the regulation. Contractor shall 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.

18. VETERAN'S PREFERENCE. *[These requirements apply only to capital projects. See 49 U.S.C. § 5302(3).]*

Contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in U.S.C. Section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the Contract. This requirement shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

19. Intentionally Omitted

20. Intentionally Omitted

21. Intentionally Omitted

22. Intentionally Omitted

23. Intentionally Omitted

24. SAFE OPERATIONS OF MOTOR VEHICLES. *[These requirements apply to all contracts and subcontracts]*

- A. **Seat Belt Use.** Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company- rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by Contractor or SUBRECIPIENT.
- B. **Distracted Driving.** Contractor shall adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work

performed under this Contract. Contractor agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

- C. **Subcontracts.** Contractor shall insert the substance of this clause, including this paragraph, in all subcontracts that exceed the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

25. Intentionally Omitted

26. BUY AMERICA. *[These requirements apply to contracts over \$150,000 if they involve the purchase of iron, steel, and manufactured products.]*

Contractor shall comply with 49 U.S.C. 5323(j) and 49 CFR part 661, which provide that federal funds may not be obligated unless all 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. Contractor must submit to SUBRECIPIENT the appropriate Buy America certification with its offer. Offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

27. BUILD AMERICA, BUY AMERICA. *[These requirements apply to contracts for infrastructure projects.]*

Contractor agrees to comply with the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget's "Buy America Preferences for Infrastructure Projects," 2 CFR Part 184, and the provisions of those acts and their implementing guidance and regulations are hereby incorporated by reference into this Contract. Contractor shall ensure that all relevant provisions of the Buy America Act and the Build America, Buy America Act and their implementing guidance and regulations are incorporated into every applicable subcontract and supplier agreement.

28. PROHIBITED TELECOMMUNICATIONS/SURVEILLANCE SERVICES/EQUIPMENT. *[These requirements apply to all contracts and subcontracts]*

- A. Pursuant to Public Law 115-232, Section 889, and 2 C.F.R. Part 200, including §§ 200.216 and 200.471, SUBRECIPIENT is prohibited from procuring or obtaining equipment, services, or systems that use "Covered Telecommunications Equipment or Services" as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, Section 889, "Covered Telecommunications Equipment or Services" is:

1. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
2. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
3. Telecommunications or video surveillance services provided by such entities or using such equipment.
4. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of

Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

- B. Contractor shall not use or provide to SUBRECIPIENT Covered Telecommunications Equipment or Services in the performance of this Contract.
- C. If Contractor later learns that prohibited telecommunications services, equipment or systems have been supplied, installed, or utilized under this Contract, Contractor shall immediately inform SUBRECIPIENT in writing. SUBRECIPIENT may treat such occurrence as an event of default and may require the Contractor to promptly replace such prohibited service, equipment and systems at the Contractor's sole cost or take such other actions permitted under the Contract.

29. **Intentionally Omitted**

30. **Intentionally Omitted**

31. **Intentionally Omitted**

32. **ENVIRONMENTAL PROTECTIONS.** *[These requirements apply to all contracts and subcontracts]*

Contractor shall comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.

A. National Environmental Policy Act.

- 1. Contractor shall comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to: **(a)** federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139; **(b)** the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321 et seq., as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations 40 C.F.R. part 1500 – 1508; **(c)** joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. part 771 and 49 C.F.R. part 622; **(d)** Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note; and **(e)** other federal environmental protection laws, regulations, and requirements applicable to Contractor.
- 2. Contractor shall follow federal guidance to the extent that the guidance is consistent with applicable authorizing legislation, which may include: **(a)** joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319, Accelerated Decision making in Environmental Reviews," January 14, 2013; **(b)** joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Pub. L. 109-59)," 71 Fed. Reg. 66576, November 15, 2006; and **(c)** other federal environmental guidance applicable to the Contractor.

B. Environmental Justice. Contractor shall promote environmental justice by following: **(1)** Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order; **(2)** U.S. DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997; and **(3)** the most recent edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

C. Other Environmental Federal Laws. Contractor shall comply or facilitate compliance

with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to "Protection of Wetlands," and Executive Order Nos. 11988 and 13690 relating to "Floodplain Management."

- D. Use of Certain Public Lands.** Contractor shall comply with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as "section 4(f)"), and joint FHWA and FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. part 774, and referenced in 49 C.F.R. part 622.
- E. Historic Preservation.** Contractor shall comply with: **(1)** U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as "section 4(f)"), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places; **(2)** federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108; **(3)** the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501 et seq.; **(4)** U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic Properties," 36 C.F.R. part 800; and **(5)** other federal requirements and federal guidance to avoid or mitigate adverse effects on historic properties.
- F. Indian Sacred Sites.** Contractor shall facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, "Indian Sacred Sites," May 24, 1996, 42 U.S.C. § 3161 note.

33. CLEAN AIR ACT & FEDERAL WATER POLLUTION CONTROL ACT. *[These requirements apply to all contracts and subcontracts in excess of \$150,000.]*

Contractor shall ensure that it: **(A)** will not use any violating facilities; **(B)** will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities" to SUBRECIPIENT; **(C)** understands and agrees that SUBRECIPIENT will report violations of use of prohibited facilities to FTA; and **(D)** will comply with the inspection and other requirements of the Clean Air Act, as amended (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387).

34. ENERGY CONSERVATION. *[These requirements apply to all contracts and subcontracts]*

Contractor shall comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §§ 6321 et seq.).

35. RECYCLED PRODUCTS (SOLID WASTES). *[These requirements apply to all contracts and subcontracts involving the purchase of items designated by the EPA (that contain the highest percentage of recovered materials practicable) in excess of \$10,000 (or if the value of the quantity of such items acquired during the preceding fiscal year exceeded \$10,000). See 40 C.F.R. part 247 for federal designation of items.]*

Contractor shall provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act,

as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 CFR part 247. The requirements of Section 6002 include: **(A)** procuring only items designated in guidelines of the U.S. EPA at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; **(B)** procuring solid waste management services in a manner that maximizes energy and resource recovery; and **(C)** establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. 2 CFR § 200.323 outlines the requirements for procuring recovered materials when using federal funds, mandating that the procuring governmental entities and their contractors prioritize purchasing items made with recoverable materials when the purchase price or the value of the quantity acquired during the preceding fiscal year exceeds a certain threshold.

36. INTELLECTUAL PROPERTY/PATENT RIGHTS & RIGHTS IN DATA. *[These requirements apply to contracts for the performance of experimental, developmental, or research work.]*

- A.** This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. Contractor shall grant SUBRECIPIENT intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 5 U.S.C. § 200, et seq., 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions: except for its own internal use, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this Contract, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.
- B.** The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes": **(1)** any subject data developed under the Contract, whether or not a copyright has been obtained; and **(2)** any rights of copyright purchased by Contractor using federal assistance in whole or in part by the FTA. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
- C.** Unless FTA determines otherwise, Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the

experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

- D. Unless prohibited by state law, upon request by the Federal Government, Contractor shall indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- E. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- F. Data developed by Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the Contract is exempt from the requirements herein, provided that Contractor identifies those data in writing at the time of delivery of the Contract work.
- G. Contractor shall include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

37. COMPLIANCE WITH NATIONAL ITS ARCHITECTURE POLICY. *[These requirements apply only to contracts for National Intelligent Transportation System projects.]*

Contractor shall conform to the National Intelligent Transportation Systems (ITS) Architecture requirements of 23 U.S.C. § 517(d), unless it obtains an exemption from those requirements, and follow FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 Fed. Reg. 1455, January 8, 2001, and all other applicable federal guidance.

38. NTD REPORTING. *[These requirements apply to all contracts and subcontracts]*

- A. As a condition of benefitting from federal assistance for public transportation operations, Contractor and its subcontractors must: **(A)** facilitate compliance with 49 U.S.C. § 5335(a), which authorizes the National Transit Database (NTD); **(B)** conform to the NTD reporting system and the Uniform System of Accounts and Records; **(C)** comply with FTA regulations, "Uniform System of Accounts and Records and Reporting System," 49 CFR Part 630; **(D)** report when required to the National Transit Database in accordance with FTA regulation 49 CFR Part 630, "National Transit Database," and applicable FTA instructions: **(1)** any information relating to a transit asset inventory or condition assessment; and **(2)** such other information as FTA may require; **(E)** comply with any other applicable reporting regulations, and requirements; and **(F)** follow FTA guidance.
- B. Contractor and its subcontractors must facilitate compliance with 49 CFR part 630 and report when required **(1)** any data on assaults on transit workers; and **(2)** any data on fatalities that result from an impact with a bus.

39. TRAFFICKING IN PERSONS. *[These requirements apply to all contracts and subcontracts]*

Contractor and its subcontractors or their employees shall not: **(A)** engage in severe forms of trafficking in persons during the Contract Term as defined Section 103 of the Trafficking Victims Protection Act of 2000 ("TVPA"), as amended, 22 U.S.C. § 7102; **(B)** procure a commercial sex act during the Contract Term as defined Section 103 of the TVPA, as amended, 22 U.S.C. § 7102; or **(C)** use forced labor in the performance of the Contract.

Contractor shall inform SUBRECIPIENT immediately of any information Contractor receives from any source alleging a violation of a prohibition in this section. SUBRECIPIENT may terminate this Contract for any violation of this section; such right of termination is in addition to all other remedies for noncompliance that are available to SUBRECIPIENT.

40. PRIVACY ACT. [These requirements apply to all contracts and subcontracts]

Contractor agrees to: (A) 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, Contractor agrees to obtain the express consent of the Federal Government before Contractor or its employees operate a system of records on behalf of the Federal Government. 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; and (B) 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.

41. ACCESS FOR ELDERLY INDIVIDUALS AND INDIVIDUALS WITH DISABILITIES. [These requirements apply to all contracts and subcontracts]

Contractor agrees to comply with all applicable provisions of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq., and the Architectural Barrier Act of 1968, as amended, 42 U.S.C. § 4151, et seq. In addition, Contractor agrees to comply with applicable Federal implementing regulations.

42. SECTION 508 COMPLIANCE. [These requirements apply to all contracts and subcontracts]

Any reports or information that will be provided to DOT or any other Federal agency must comply with Section 508 of the Rehabilitation Act of 1973.

43. DISADVANTAGED BUSINESS ENTERPRISE & PROMPT PAYMENT TO SUBCONTRACTORS. [These requirements apply to all contracts and subcontracts]

TVT and VPTA member agencies have active DBE programs required and authorized by the State of Vermont. TVT and VPTA member agencies attempt to hire contractors and subcontractors that represent the community that they serve. A DBE is described as a small business concern owned and controlled by socially and economically disadvantaged individuals.

(1) No Discrimination

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 DOT 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 Purchaser or TVT deems appropriate.

The Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 15 days from receipt of each payment the Contractor receives from the Purchaser. The Contractor agrees further to return retainage payments to each subcontractor within 30 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 Purchaser. This clause applies

to both DBE and non-DBE subcontractors.

Sanctions/consequences of noncompliance with the prompt payment clause may include:

Requiring documentation of all payment to subcontractors for all previous payments from the Purchaser to the Contractor before any future payments from the Purchaser to the Contractor are made.

Termination of contract for Default

Inability of Contractor to bid on any future TVT or VPTA member agency procurements.

TVT may ensure that the prompt payment clause of the Contract is enforced by:

Requiring Contractors (in sub-contracts in excess of \$10,000) to provide subcontractors with all contract provisions, including the prompt payment provision to ensure that subcontractors are knowledgeable of the prompt payment requirement.

Because our contract requires prompt payment by the prime to the sub, the sub is entitled to prompt payment.

Because subcontractors will be aware of this right, and it is in their greatest financial interest to assure that this right is respected, we believe it is reasonable to expect that subcontractors not receiving prompt payment will contact TVT.

If TVT is contacted by a subcontractor regarding possible violation of the prompt payment clause by the Contractor, we will make inquiries to the Contractor. Depending on the response from the Contractor, TVT may implement the sanctions/consequences listed in the above section.

(2) Legal and Contract Remedies

In the event a Contractor fails to comply with its stated contract goals, and cannot show that a good faith effort has been made to do so, TVT may initiate the following actions:

If any findings are discovered during the process of fulfilling the contract are deemed to be fraudulent or dishonest conduct in connection with the DBE program, TVT may notify the Department of Transportation's Inspector General, who in turn under 49 CFR 26 may sanction criminal prosecution, action under suspension and debarment or Program Fraud and Civil Penalties rule provided in 26.109.

TVT will also consider similar action under our own legal authorities, including responsibility determination in future contracts. Such actions can include termination for default or prohibition from bidding on future TVT and VPTA procurements.

(3) Monitoring and Enforcement Mechanisms

Contractors must maintain records and documents of payments to DBEs for three years following completion of the performance of the contract. These records will be made available for inspection upon request by any authorized representative of TVT or DOT. This requirement also extends to any certified DBE subcontractor.

(4) DBE Financial Institutions

TVT encourages the Contractor to use the financial service institutions owned and controlled by socially and financially disadvantaged groups. TVT maintains a list of such institutions and will provide it to any contractors interested in utilizing them.

The Contractor will include the above statements in this section in all subcontracts over \$10,000.

44. **Brooks Act (40 USC 1102): Qualifications-based Competitive Proposal Procedures** [These requirements **apply to all Architect and Engineering contracts and subcontracts**]

6.5 ARCHITECT - ENGINEER SERVICES

REQUIREMENT

FTA Circular 4220.1G states:

8.b. Prohibition Against Geographic Preferences However, geographic location may be a selection criterion in procurements for architectural and engineering (A-E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

IV.2.h. Procurement of Architectural and Engineering Services (A-E). Grantees shall use qualifications-based competitive proposal procedures (i.e., Brooks Act procedures) when contracting for A&E services as defined in 40 U.S.C. Section 1102 and U.S.C. Section 5325(d). Services subject to this requirement are program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services. 34

Qualifications-based competitive proposal procedures require that:

- (1) An offeror's qualifications be evaluated;
- (2) Price be excluded as an evaluation factor;
- (3) Negotiations be conducted with only the most qualified offeror; and
- (4) Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee.

These qualifications-based competitive proposal procedures can only be used for the procurement of the services listed above. This method of procurement cannot be used to obtain other types of services even though a firm that provides A&E services is also a potential source to perform other types of services.

These requirements apply except to the extent the grantee's State adopts or has adopted by statute a formal procedure for the procurement of these services. 35

9.g Procurement of Design-Build: Grantees must procure design-build services through means of qualifications-based competitive proposal procedures based on the Brooks Act as set forth in Section 9.e when the preponderance of the work to be performed is considered to be for architectural and engineering (A&E) services as defined in Section 9.e.

Qualifications-based competitive proposal procedures should not be used to procure design-build services when the preponderance of the work to be performed is not of an A&E nature as defined in Section 9.e, unless required by State law. [36](#)

The FTA [Master Agreement](#), FTA MA(12), Section 15.i - *Architectural, Engineering, Design or Related Services*, requires grantees, when awarding contracts for architectural, engineering, or related services, to accept undisputed audits conducted by other governmental agencies for the purpose of establishing indirect cost rates if such rates are not currently under dispute. This requirement to accept undisputed audits conducted by other governmental agencies originates in 49 U.S.C. Section 5325(b). It should also be noted that this language has been interpreted by FTA's Chief Counsel's Office as precluding grantees from imposing (requiring) ceilings (or "caps") on overhead rates in contracts for architect-engineer services. [37](#)

DISCUSSION

Selection of Contractor - [FTA Circular 4220.1E](#) requires the procurement of A-E services in accordance with the "qualifications based procurement methods" of the Brooks Act. The "A&E services" that must be procured according to the Brooks Act procedures are defined in two statutes: 40 U.S.C. Section 1102 and 49 U.S.C. Section 5325(b). Both of these statutes must be taken into consideration when deciding what constitutes "A&E services." The easiest way to conceptualize the requirements of these two statutes is to first apply the definition in 49 U.S.C. Section 5325(b) and determine if the services are "program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services." If the services fall into one of these categories, they are services that must be procured pursuant to the Brooks Act. [38](#) If the services do not fall into one of these categories, then the three-part test from 40 USC 1102 must be applied. The three-part test from that statute states:

"The term "architectural and engineering services" means-

(A) professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services as described in this paragraph;

(B) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

(C) other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management,

conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operation and maintenance manuals, and other related services.”

This is the portion of A&E services that relies on indicators such as licensing and whether A&E firms normally do the specific sort of task under consideration. If the function fits within this definition of A&E services, ‘Brooks Act procedures’ apply.

The Brooks Act (40 USC 1102) defines the competitive procedures to be used in the selection of A-E firms, and these procedures will apply to grantee procurements of A-E services unless the grantee's State has adopted formal procurement procedures for A-E services, in which case the State procedures will govern. A qualifications-based selection process must be followed for all A-E procurements regardless of dollar value.

The Brooks Act requires a *qualifications based procurement method* for the selection of A-E firms. Price is excluded as an evaluation factor, and negotiations are conducted with the most qualified firm only. If an agreement cannot be reached on price with the most qualified firm, *negotiations are formally terminated with that firm, thereby rejecting that firm’s proposal, and the grantee cannot return to this firm at a later date to resume negotiations*. Negotiations are then conducted with the next most qualified firm. This process continues until a negotiated agreement is reached which the grantee considers to be fair and reasonable.

Negotiating Indirect Costs 39

- A. Grantees must (as a general rule) accept undisputed audits that have been conducted by any Federal or State agency of the consultant’s indirect cost rate if the audit report has been developed in accordance with the cost principles contained in the FAR Part 31. However, if the audit is conducted by another State agency, and the grantee can fully document and justify to FTA why the other State agency’s audit should not be accepted, then FTA may permit the grantee to conduct its own audit.
- B. Undisputed audited rates must be used for the purpose of contract estimation, negotiation, administration, reporting and contract payment. This requirement applies to the undisputed audited rates of A&E subcontractors that are performing under cost-reimbursement subcontracts as well as prime contractors.
- C. If there is more than one audit, the grantee may use whichever audit it wishes. However, as a practical matter, the audits should have virtually identical results if they are conducted in accordance with FAR Part 31. Also, if the audits resulted in different findings, it is likely that someone would be disputing one or more of the audit findings.
- D. If a consultant has not been audited by any Federal or State government agency, the grantee or State government agency should conduct an audit and become the cognizant agency. However, in the case of a consultant contract involving a very small dollar amount, the grantee should be able to rely on its own cost and price analysis in order to negotiate the contract price.

- E. Many consultant firms have multiple indirect cost rates such as a national or corporate-wide rate, a regional or State rate, and a business segment rate. If a consultant proposes a particular rate such as a regional rate or a rate for a particular service (e.g., design services or construction management), that rate must have been audited by a cognizant Federal or State governmental agency before the grantee would be required to accept it. If another governmental agency's audited rate is not applicable to the contract in question, the grantee may perform its own audit applicable to the unaudited rate. For example, if the consultant has an audited rate for design services but not for construction management services, the grantee does not have to accept the rate proposed for construction management services.
- F. Grantees may not require or impose a cap or ceiling on an A&E consultant's overhead rates even if the consultant agrees to such a cap by contract. The key words here are *require or impose*. In its final rule, Section 172.7(b) - *Audits for Indirect Cost Rate*, FHWA made the following concession in response to a Wisconsin DOT expressed concern that a State may not be able to accept a lower overhead rate freely offered by a consultant firm:

The FHWA agrees there are many reasons why an overhead rate for a firm may be unusually high for a short period of time. In such cases, a firm may believe that it would be in its best interest to offer a lower rate. The FHWA agrees that a consultant should be free to offer a lower overhead rate than the one determined by a cognizant Federal or State government agency, and that the contracting agency should be free to accept it provided such rate is offered voluntarily by the consultant. Under no circumstances, however, shall a contracting agency require a lowering of the overhead rate.

- G. Grantees may not negotiate an overhead rate that is fixed for the entire contract, or for any particular fiscal year, and not subject to adjustment based on an audit of actual costs incurred. Grantees may, however, use provisional billing rates where a billing rate is established for a particular contract period and is subject to adjustment based on an audit of actual costs incurred for that period.
- H. If the cognizant Federal or State agency for a consultant is behind schedule in finalizing audits and the latest accepted audit of indirect cost rates lags by three or four years, the grantee may use another agency's audit if it was conducted in accordance with the FAR and its findings were undisputed. If an audit has been performed by a private firm in accordance with FAR Part 31 and is undisputed, that audit could also be used. If there are no audits available under these assumed parameters where the cognizant agency is three or four years behind, the grantee may conduct its own audit in accordance with FAR principles to determine the actual overhead rates. Otherwise, the last audit performed by the "cognizant Federal or State" agency would be used.
- I. Grantees may not use a negotiated overhead rate procedure in lieu of using the actual undisputed and accepted audit by a cognizant Federal or State governmental agency. The reason is that price negotiations on the indirect cost rate or any

component thereof can be viewed as an administrative or de facto ceiling prohibited by 49 U.S.C. Section 5325(b). Nevertheless, the State has the right and obligation to negotiate a fair and reasonable total price for the contract. Any component of the price, except the indirect cost rate, may be negotiated.

- J. FTA has elected to follow the provisions of FHWA in its implementation of TEA-21 contracting requirements for architect-engineer services. FTA is not bound by the FHWA rule, however, and may permit exceptions in compelling and unusual circumstances.

Best Practices

The basic approach used to select A-E contractors using Brooks Act procedures makes use of *Statements of Qualifications*. This basic approach is outlined below.

Statements of Qualifications Process

Consultant Resource File - Grantees may wish to maintain a *consultant resource file* with the names of A-E firms and their respective disciplines, personnel resources, corporate experience, etc. This file would provide an initial mailing list for issuance of a request for *Contract-Specific Statements of Qualifications*. The initial list of potential offerors that a grantee might maintain would be supplemented by a public announcement of the project, calling for interested A-E firms to respond to a questionnaire from the grantee identifying the firm's basic experience and personnel resources. For an example of a questionnaire used by the Federal Government to identify potential A-E firms who would then be solicited to submit their contract-specific qualifications, see the Federal Standard Form 330 (SF 330), *Architect-Engineer Qualifications*. [40](#) The SF 330, Part 2, is the Federal equivalent of a *consultant resource file*. This questionnaire will provide the following types of information about each of the firm's branch offices:

- The location of the company's offices and a point of contact within each office.
- The number of personnel by discipline (e.g., architects, civil engineers, geologists, surveyors, soils engineers, etc.).
- Summary of professional services fees received for each of the last five years.
- Profile of firm's project experience for last five years. The questionnaire lists over 100 different types of project codes (airports, tunnels, towers, gas systems, etc.)
- Summary of annual average professional services revenues for last three years showing totals for Federal and Non-Federal work.

Note that the SF 330, Part 2, does not ask the A-E firm to identify specific personnel or approaches that it would propose to use for the specific project that the grantee is advertising. Project specific information would come later in a statement of "Contract Specific Qualifications" (SF 330, Part1) discussed below.

Public Announcements - Agencies must publicize requirements for A&E services in accordance with State law. These notices could be placed in *local newspapers* in publications such as *Passenger Transport, Engineering News Record, Dodge Report*, etc. These notices should describe the Agency's requirements and the criteria to be used in the evaluation of A-E qualification statements. The public announcements would advise interested A-E firms to submit expressions of interest to the procurement office. These expressions of interest may take the form of a questionnaire regarding the A-E firm's basic resources and corporate experience, along the lines of the SF 330, Part 2, used by the Federal Government. From these expressions of interest, and the list of firms identified in the consultant resource file, the grantee can then solicit *Project Specific Qualification Statements* from prospective A-E firms that the grantee judges to have the basic capabilities to perform the project.

Pre-proposal Conference - Pre-proposal conferences are generally used in more complex acquisitions as a means of briefing prospective offerors as to the project requirements as well as the agencies selection criteria. This allows the firms to better understand the agency's objectives and ask pertinent questions that will help them in preparing their proposals or project specific qualification statements (see below). For further guidance on pre-proposal conferences, see [Section 4.3.2.4](#) - *Pre-Bid and Pre-Proposal Conferences*.

Request for Contract/Project Specific Qualification Statements - Interested A-E firms would be required to submit their *Project Specific Qualification Statements* to the procurement office. For an example of a questionnaire used to solicit project-specific qualifications, see the Federal Standard Form 330 (SF 330), Part 1, *Contract-Specific Qualifications*. ⁴¹ The SF 330, Part 1, goes beyond the general information requested in the SF 330, Part 2. Part 1 asks the firm to identify (1) the proposed project team, showing all firms and their roles in the project, (2) an organizational chart of the proposed team, showing the names and roles of all key personnel and the firm they are associated with, (3) resumes of all key personnel being proposed for the project, and (4) relevant project experience of each of the proposed team's firms.

From these Qualification Statements, the grantee's A-E evaluation committee would score and rank the firms on the basis of their technical qualifications. It would be advisable not to have a predetermined cut-off score to determine those firms that are the most qualified.

Scoring should be a tool for the individual committee member to determine the relative strengths and weaknesses of the firms being evaluated. Also, it would be best not to determine the most qualified firms by averaging the individual committee member scores. The numerical scores should help each member rank the various firms in order to allow the procurement officer to determine a "short list" for conducting oral presentations and discussions. Once each committee member has ranked the firms (using the published evaluation criteria, the relative weights and scoring system), the committee should meet to discuss the findings of the individual members and reach a consensus on a ranking of the various firms.

Some agencies have found a qualitative (adjective) rating system to be more effective than a numerical scoring system. For example, firms are evaluated with respect to their qualifications statements in each of the evaluation criteria elements as being "excellent," "satisfactory," or "unsatisfactory." After rating each firm's qualifications for each criterion, the committee members then give each firm an overall evaluation rating. The overall ratings for

the firms are then compared and the firms with the most “excellent” ratings are short-listed. Whether you use a numerical or qualitative (adjective) rating system, a written narrative by each evaluator justifying their decision should be prepared.

Request for Technical Proposals - If you determine to require detailed technical proposals after the short list has been determined, you will need to establish the evaluation criteria to be used in selecting the successful contractor and to advise the firms of the criteria in your RFP. Criteria will normally involve such matters as the following:

1. Past Performance - The solicitation should advise offerors of your approach in evaluating past performance, including evaluating offerors that have no relevant performance history, and should also advise offerors to identify past relevant contracts for efforts similar to your requirement. The solicitation should also allow offerors to provide information on problems encountered on the identified contracts and corrective measures taken. This evaluation should also consider the past performance of key personnel and subcontractors that will perform major or critical aspects of the work. This evaluation of past performance, as one indicator of an offeror’s ability to perform the contract successfully, is separate from the responsibility determination discussed in [Section 5.1](#).
2. Technical Criteria - Technical factors regarding the specific methods, designs, and systems proposed to be used by the offeror will be considered and they must be tailored to the specific requirements of your solicitation. These factors must represent the key technical areas of importance that you intend to consider in the source selection decision. Technical factors should be chosen to support meaningful comparison and discrimination between competing proposals. If the agency has established minimum standards for determining technical acceptability of proposals, these standards must be clearly set forth in the solicitation.
3. Key Personnel - An evaluation of key personnel is often suggested when the procurement involves services or requirements where management of the work is a critical factor in determining its success. Qualifications and experience of key personnel may be an important evaluation factor. Some agencies have required oral presentations by key personnel during which the agency officials may ask these key personnel relevant questions to determine the depth of their knowledge in critical areas.
4. Specialized Criteria - Grantees may also want to include specialized criteria such as experience in complying with the Americans with Disability Act requirements and previous work on landmark or historic structures.

Design Competition - The question is sometimes raised as to whether the A&E contractor can be selected on the basis of a conceptual design competition rather than qualifications statements. The Brooks Act would permit grantees to select an A&E firm on this basis. The FAR discusses this approach in Subpart 36.602-1 - Selection Criteria, paragraph (b). Of course the FAR is not binding on grantees but the Federal parameters for using design competitions may prove useful to grantees. Grantees will have to consider the payment of proposal stipends to those firms that are requested to submit design proposals. [42](#) The amount of the proposal stipend would be uniform for all competitors. It would almost

assuredly attract greater competitive interest and should give the grantee title to the proposal design concepts since the proposal is being paid for by the grantee. Against the advantages is the cost to the grantee of paying for the proposals.

Architect-Engineer Selection Committee - When establishing their A-E Selection Committees, agencies will need to appoint members who have specific expertise in the disciplines needed for performing the contract. It would also be well to have a DBE advisor. It may be helpful to appoint some members to this Committee who are organizationally outside the engineering office that will be managing the A-E contract. The problem to be avoided when establishing this Selection Committee is one of “control;” i.e., care must be taken that one office does not control the selection process to the point where only a select group of “favorite” contractors are winning contract awards. This committee performs the initial review of A-E contractor qualifications and determines the rankings.

Developing the Short List - Determination of the *short list* or competitive range of qualified firms with whom oral discussions/ presentations will take place should be the prerogative of the procurement officer. The short list should be a number appropriate for adequate competition and should consist of those firms that have a reasonable chance of getting the award. These firms would then be invited to make presentations to the evaluation committee. Grantees should check their state laws to see if a minimum number of firms is required to be short-listed.

Oral presentations by A-E firms - Having evaluated the qualifications of the A-E firms who submitted detailed qualification statements (or technical proposals), and developed the short list of qualified firms, the A-E Selection Committee would establish a schedule for each firm to make oral presentations, although presentations are not always necessary or appropriate. If discussions are necessary, they can be written or by phone or videoconference. The Committee would advise the firms in advance of any questions the Committee had regarding the firm and its capabilities. These questions would be addressed by the A-E firm at the oral presentation. The Committee may also wish to specify those key personnel of the A-E firm that should present in order to answer the Committee’s questions. It is important that the user organization be comfortable with the actual project managers being assigned to the project, and for this reason the presentations should be made by the firm’s proposed key staff, not by a sales executive.

Final ranking of A-E firms - At the conclusion of the oral presentations, each of the Selection Committee members would perform a final scoring and ranking of the short-listed firms. These final scores would then be discussed, and the procurement officer chairing the panel should strive for consensus - finding a firm that is valued by most members and acceptable to the rest. This process should not be a mechanical “majority-rules” vote. Failure to obtain a consensus can result in internal fighting if the project gets into difficulty, and can even create these difficulties. Once an agreement is reached on the highest qualified firm, that firm is then requested to submit a cost proposal for negotiation of a contract.

Contract Negotiations - The Brooks Act requires a *qualifications based procurement method* for the selection of A-E firms. Price is excluded as an evaluation factor, and negotiations are conducted with the most qualified firm only. If an agreement cannot be reached on price with the most qualified firm, *negotiations are formally terminated with that*

firm. Once negotiations are terminated, that firm is irrevocably out of contention for the contract and cannot be brought back in. Negotiations are then conducted with the next most qualified firm. This process continues until a negotiated agreement is reached which the grantee considers to be fair and reasonable.

In-house Cost Estimate - One of the biggest problems noted in FTA Procurement Systems Reviews is the failure of agencies to prepare detailed in-house cost estimates prior to receiving cost proposals. This is especially critical in A-E procurements where there are no competing proposals to provide a comparison. *In order to meaningfully evaluate and negotiate the A-E firm's cost proposal, it is critical that the grantee's technical staff prepare a detailed in-house cost estimate (work estimate) of the work required by the A-E firm before the solicitation is issue.* In order to be useful as a tool in evaluating the cost proposal, this in-house estimate needs to be prepared in the same level of detail that the grantee is requiring the A-E firm to submit its proposal. In other words, *the grantee's technical staff prepares its in-house estimate as if the grantee were the contractor proposing on the contract.* It is also important that grantees require A-E firms to submit their cost proposals in the same format in which the in-house estimate was prepared. Grantees should consider issuing their Request for Proposal with a sample cost proposal format and a list of position descriptions for each of the direct labor categories used by grantee's in-house cost estimating team. This should allow for a one-for-one comparison of the cost proposal and the in-house estimate, thus facilitating the evaluation and negotiation process.

Terms and Conditions - The RFP should contain all of the agency's required *terms and conditions* (clauses, etc.). This will allow the contractor to address these terms and conditions in its proposal, which can then be discussed at negotiations. The A-E contractor should be advised before it submits its proposal what contract clauses are negotiable and what are not. This will save both the contractor and the grantee a lot of needless effort in discussing non-negotiable terms and conditions. For example, Federally required clauses would not be subject to negotiation and contractors should be so advised before they put their proposals together. Any exceptions taken by the contractor to terms and conditions should be included in the price proposal only. This will avoid influencing the technical evaluation, and it recognizes that contract terms involve risk allocation and therefore cost.

Controlling the Negotiations - An experienced contract specialist who can control the meeting should lead the negotiation team. Resource personnel (engineers, architects, lawyers, cost analysts, etc.) are a valuable resource to the contract specialist for advice, but these personnel should not be the ones making business decisions and committing the agency during the negotiations. Care must be taken that the contractor does not create a situation where the agency's contract specialist and resource personnel become divided in their positions. When the agency's team needs to discuss alternatives or possible concessions during negotiations, they should do so in private caucuses and not in the presence of the contractor. There should be one spokesperson for the agency-the contract specialist-who controls the meeting.

Contract Type - Grantees will need to choose the type of contract that is most appropriate for the scope of work anticipated. BPPM [Section 2.4.3](#) contains a discussion of contract types, including fixed price, cost reimbursement, time and materials, and labor hour contracts. This section should be reviewed for general guidance as to the circumstances when each type of contract may be appropriate.

Indirect Cost Rates - The FTA Master Agreement requires grantees to accept undisputed audits of other Federal or State government agencies for purposes of establishing indirect cost rates that are used for pricing, negotiation, reporting and contract payments. See the paragraph above entitled “Negotiating Indirect Costs” in the DISCUSSION section.

Profit Analysis Factors - Suggested profit analysis factors include:

- Skill and expertise of the A-E personnel required for the work,
- Contract cost risk based on contract type and the degree of risk in completing the work within the negotiated price,
- Potential liability (e.g., third-party liability) of the A-E firm based on the nature of the project,
- Prior performance record of the firm,
- Degree of contractor investment, as it may contribute to more efficient and economical contract performance.

Profit on Change Orders - It is common practice in the construction industry for A-E firms to request increases in their contract fees/profit based on the percentage increase in the cost of the construction contract. Grantees should avoid this practice even though it is commonplace in the construction industry. A-E contractors’ profits should be based on their work effort and should never be negotiated on a predetermined percentage basis of a cost increase in the contract whose cost the A-E firm is affecting by its designs. Grantees are prohibited from any type of cost-plus-percent-of-cost contracting. (See BPPM [Section 2.4.3.5](#) - *Cost Plus Percentage of Cost Contracts (CPPC)*).

A-E Role in Construction Change Orders, Claims and Litigation - The A-E firm can provide assistance to the agency in the evaluation of changes to the construction contract, whether the changes originate with the agency or with the construction contractor. When changes are suggested by the construction contractor, they must be evaluated, before they are adopted, as to their total system impact on the project, and the A-E is in the best position to do this. The A-E can also prepare a cost estimate of the changed work that the grantee can use to evaluate the construction contractor’s price proposal for the change, and the A-E can assist the grantee in negotiations as a technical resource if the grantee so desires. The A-E also has a role to play in the evaluation of *claims* submitted by the construction contractor, although in this case the A-E’s participation is somewhat defensive. For example, the A-E may be called in to defend its designs or specifications, or the time the A-E took to review and approve the construction contractor’s documentation, and in this case the A-E’s efforts may not be reimbursable under the terms of the A-E’s contract with the agency. The same would hold true for issues that go to *litigation*--the A-E should be required to defend its designs and specifications without additional charge to the agency. Grantees would do well to make this a subject for an “advance understanding” in their A-E contracts, so that when claims and litigation occur, the parties will understand their respective obligations. If the claims or litigation are caused by the agency’s actions, however, and are not due to the A-E’s work products or actions, then the A-E can expect to be reimbursed by the agency for its efforts in defending the claim and assisting the agency in the litigation.

ABA Model Procurement Code (MPC) - The American Bar Association's *Model Procurement Code* Section 5-501, *Architect-Engineer and Land Surveying Services*, contains a comprehensive and very worthwhile presentation of procurement procedures using *Statements of Qualifications* for the award of A-E contracts. The *MPC* covers the entire spectrum of events leading to a contract award, with detailed recommendations for the procuring Agency to follow.

Federal Procedures - The Federal Government procedures for procuring Architect-Engineer services may be found in FAR 36.6, *Architect-Engineer Services*.

A-E Contract Provisions

Design within funding limitations - You may wish to include a clause requiring the A-E firm to design the project so that the construction costs do not exceed your budget, an amount that would be stated in the A-E contract as a “design-to-cost” requirement. If the price offered by the low bidder in your construction IFB exceeds the stated limit in the A-E contract, the A-E firm should be responsible to redesign the project at no increase in the price of the A-E contract. If the higher than anticipated construction cost is due to reasons beyond the control of the A-E firm, such as an unexpected increase in the cost of certain materials, then the A-E firm should not be obligated to redesign the project at its own expense. Likewise, if the grantee has required features in the facility that contribute to the bids being in excess of the budget, then a change order to these requirements may be in order, and this too would be something beyond the A-E firm’s ability to control, thus relieving the A-E from redesign responsibility. Grantees will need, therefore, to examine the elements of the construction contractor’s bid to see why the bid price exceeds the “design-to-cost” amount that the A-E was attempting to achieve. An example of a contract clause used by one transit agency follows:

Design Within Funding Limitations 43

- A. The contractor shall accomplish the design services required under this contract so as to permit the award for the construction of the proposed facility at a price that does not exceed the estimated construction contract price as set forth in paragraph (C) below. When bids or proposals for the construction contract are received that exceed the estimated price, the Agency shall analyze the reasons for the excessive prices and, if appropriate, the Contractor shall perform such redesign and other services as are necessary to permit contract award within the funding limitation. These additional services shall be performed at no increase in the price of this contract. However, the Contractor shall not be required to perform such additional services at no cost to the Agency if the unfavorable bids, or proposals are the result of conditions beyond the its reasonable control.
- B. The Contractor will promptly advise the Director of Purchasing if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations. Upon receipt of such information the Director of Purchasing will review the Contractor's revised estimate of construction cost. The Agency may, if it determines that the estimated construction cost contract price set forth in this contract is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in paragraph (C) below.
- C. The estimated construction contract price for the project described in this contract is \$_____.

Design errors or deficiencies - If the A-E firm's designs, drawings or specifications contain errors or deficiencies, the A-E firm should be required to correct them at no increase in price to the grantee. When errors are discovered during construction, A-E's are generally liable for correction of the drawings at their own cost, and for the difference between what the "correct" construction will cost (as a change order issued to the construction contractor) and what it would have cost in the original contract had the drawings been correct. This includes any tear-out that needs to be done, etc.

State licensing laws also result in many multi-state A-E's that are set up as shell companies to hold licenses in different states. Agencies should obtain a performance guarantee from the parent company in these situations.

A-E Insurance - Agencies should require A-E's to have *General Liability as well as Errors and Omissions* insurance. When A-E's propose to be self-insured, agencies must look carefully at the adequacy of the firm's assets before accepting this self-insurance approach. See also BPPM [Section 6.6](#) - *Insurance*.

FTA CERTIFICATIONS

**EACH CERTIFICATION PROVIDES
INSTRUCTION DESCRIBING WHEN
THE CERTIFICATION IS APPLICABLE**

**INAPPLICABLE FTA CERTIFICATIONS
MAY BE LEFT BLANK**

**OFFERS THAT DO NOT INCLUDE
COMPLETED CERTIFICATIONS,
IF APPLICABLE,
WILL BE REJECTED AS NONRESPONSIVE.**

A1- TAX LIABILITY CERTIFICATION. *[This certificate applies to all contracts. Offers that do not include this completed certification will be rejected as nonresponsive.]*

The Proposer certifies that:

1. It has no unpaid federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability;
2. It has not been convicted of a felony criminal violation under any federal law within the preceding 24 months; and
3. It shall require that the language of this certification be included in the award documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

A2- DEBARMENT AND SUSPENSION CERTIFICATION. *[This certification applies to contracts and subcontracts in excess of \$25,000 and all contracts and subcontracts for federally-required audits. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.]*

Check one box below (and provide explanation if necessary):

- ☐ The Proposer certifies that the Proposer and its principals:
1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily or involuntarily excluded from covered transactions by any federal department or agency;
 2. Have not, within the preceding three years, 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 or private agreement or transaction; violation of federal or state antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or commission of any other offense indicating a lack of business integrity or business honesty;
 3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any offense described in Paragraph 2 of this certification;
 4. Have not, within the preceding three years, had one or more public transactions (federal, state, or local) terminated for cause or default.

– OR –

- ☐ The Proposer is unable to certify to all of the statements in this certification, and attaches its explanation to this certification. (In the explanation, the Proposer must certify to those statements that can be certified and explain why the other statements cannot be certified.)

The Proposer shall require that the language of this certification be included in the contract documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

A3- LOBBYING CERTIFICATION. *[This certification applies contracts and subcontracts in excess of \$100,000. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.]*

The Proposer certifies that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Proposer, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Proposer shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The Proposer shall require that the language of this certification be included in the contract documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

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

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Per paragraph 2 above, complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," if applicable.

A4- BUY AMERICA CERTIFICATION. *[This certification applies to contracts over \$150,000 if they involve the purchase of iron, steel, manufactured goods, or rolling stock. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.]*

If this Offer is valued in excess of \$150,000 and **involves the procurement of steel, iron, or manufactured products (as defined in 49 CFR §§ 661.3 and 661.5)**, the Proposer hereby certifies that it:

- ☐ Will comply with the requirements of 49 U.S.C. § 5323(j)(1) and the applicable regulations in 49 CFR part 661;

– OR –

- ☐ Cannot comply the requirements of 49 U.S.C. § 5323(j) (and 49 CFR part 661) but may qualify for an exception to the requirements pursuant to 49 U.S.C. § 5323(j)(2), as amended, and the applicable regulations in 49 CFR § 661.7.

If this Offer is valued in excess of \$150,000 and **involves the procurement of buses or other rolling stock (including associated equipment)**, the Proposer hereby certifies that it:

- ☐ Will comply with the requirements of 49 U.S.C. § 5323(j) and the applicable regulations of 49 CFR § 661.11;

– OR –

- ☐ Cannot comply with the requirements of 49 § U.S.C. 5323(j) (and 49 CFR § 661.11), but may qualify for an exception to the requirements consistent with 49 U.S.C. § 5323(j)(2)(C), as amended, and the applicable regulations in 49 CFR § 661.7.

The Proposer also certifies that it shall require that the language of this certification be included in the contract documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

A5- BUILD AMERICA, BUY AMERICA CERTIFICATION (CONSTRUCTION MATERIALS). *[This certification applies to federally-funded infrastructure projects.]*

The Proposer hereby certifies that it:

- ☐ Will comply with the requirements of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911-70927 (2021), as implemented by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA, for construction materials used in the project.

– OR –

- ☐ Cannot comply with the requirements of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911-70927 (2021), as implemented by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA, for construction materials used in the project, but it may qualify for an exception to the requirements pursuant to Section 70914(b) of the Build America, Buy America Act.

The Proposer also certifies that it shall require that the language of this certification be included in the contract documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

A6- Intentionally Omitted

A7- Intentionally Omitted

A8- Intentionally Omitted

A9- Intentionally Omitted

A10- ACKNOWLEDGEMENT OF RECEIPT OF FEDERAL CONTRACT PROVISIONS. [This certificate applies to all contracts over \$2,000. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.]

I acknowledge receipt of the “Federally Required Third Party Contract Clauses” provisions addendum as part of the bid/quote package and potential future contract as required by the Federal Transit Administration (FTA), State of Vermont Department of Transportation (VTrans) and Tri-Valley Transit, Inc. (TVT).

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Additional Addendum Related to TVT Processes & RFP/Contract Procedures:

1 Firm Information for TVT Bidders List

Fill out all applicable certifications in the above section in their entirety and return with proposal or proposal. In addition, for EACH subcontractor who may be working for your firm under this contract, copy and fill out sub-contractor information at the end of this document.

2 References

If references are mentioned in the RFP or Proposal Specification as an evaluation criterion and the proposer/bidder is a past (within 10 years) or current contractor, internal references (including references of any TVT member) may, at TVT's sole discretion, be substituted entirely or in part for external references. This section supersedes all portions of the RFP or Proposal which reference this issue.

3 Miscellaneous

This Agreement shall be governed by and shall be construed in accordance with the laws of the State of Vermont. The RFP, timeline, TVT General Contract Provisions, TVT Special Contract Provisions, bid documents of contractor, and attachments to any of the above, constitute the entire agreement and may not be amended, supplemented or modified by any oral communications between the parties, or by any written communications from contractor unless accepted in writing by TVT. No waiver of any provision of these documents by TVT shall be deemed or constitute a waiver of any other provision. No waiver shall be binding on TVT unless executed in writing by TVT. The provisions of the contract shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties.

4 Interest of Member of, or Delegates to, Congress

No member of, or delegate to, the Congress of the United States, shall be admitted to any share or part of this contract, or to any benefit arising therefrom.

5 Conflict of Interest

The officers, employees or agents of the Vermont Public Transportation Association and entities with rights to order buses from this procurement shall neither solicit nor accept gratuities, favors, or anything of monetary value from Contractors, potential Contractors, or parties to sub-agreements.

6 Prohibited Interests

No employee, officer, board member, or agent of TVT, or entity that purchases software through this procurement who is involved in contract specifications, solicitations, selection, or award, shall have any interests in this contract, or the proceeds thereof. In addition, no immediate family members or partners of an employee, officer, board member, or agent of TVT, or entity with rights to purchase software from this procurement who is involved in contract specifications, solicitations, selection, or award, shall have any interests in this contract, or the proceeds thereof. Nor shall any organization that employs or is about to employ an employee, officer, board member, or agent of TVT, or entity with rights to purchase software from this procurement who is involved in contract specifications, solicitations, selection, or award, shall have any interests in this contract, or the proceeds thereof. Finally, no organization that employs or is about to employ any immediate family members or partners of an employee, officer, board member, or agent of TVT, or party to this

procurement who is involved in contract specifications, solicitations, selection, or award, shall have any interests in this contract, or the proceeds thereof.

7 Lawful Business Conduct

The Contractor shall conduct its business and perform services pursuant to this contract in a lawful manner, and shall fully comply at all times with all federal, state, and local laws in connection with its business operations.

8 Proposal Acceptance or Rejection

TVT may accept any proposal or reject any or all proposals (even after opening) or may award the contract on such basis as TVT deems in its best interest.

9 Proposal Rejection or Cancellation

TVT reserves the right to waive any minor proposal informalities or irregularities which are not crucial to the proposal or prejudice against other bidders and/or to reject, for compelling reasons, any and all proposals submitted. TVT may reject all proposals or cancel the solicitation before opening if it is deemed by TVT to be in its best interest to do so.

10 Late Proposals

Proposals received after the exact due date and time, if noted, are late proposals and will not be considered for award, unless it is determined by TVT that there was mishandling on TVT's part.

11 Modifications and Withdrawals of Proposals

Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before the exact date and time set for receipt of proposals. A proposal may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of proposals, the identity of the person requesting withdrawal is established as an authorized officer of the company and the person signs a receipt for the proposal.

12 Protest Procedures:

Protests concerning TVT's purchasing policies, the contract requirements, the specifications, the bidding procedures, or the contract award, or any other request for explanation or clarification must be submitted in writing and must include the following information:

- The name and address of the protester.
- The name and telephone number of the protester's contact person having responsibility.
- A complete statement of the grounds of the protest with full documentation of the protester's claim.

a. Pre-award Protests

Pre-award protests must be received by TVT no less than ten (10) working days before the scheduled bid opening. TVT will respond to the protest in writing and render its final decision at least five (5) working days prior to bid opening. TVT will report such protests to the FTA regional office.

b. Post-award Protests

Post-award protests will be received no later than five (5) working days after notification of the award bid. TVT will have ten (10) working days after receipt of the formal protest package to

evaluate, and issue a response, except in cases where the original bid has been awarded by the Board. In such cases, the decision regarding the protest will be handled at the next regularly scheduled Board meeting, following completion of the staff review of the protests. TVT will report such protests to the FTA regional office.

c. Appeals to FTA

It is the responsibility of TVT to settle procurement issues and disputes. TVT is committed to using good sound administrative practices and business judgments, as well as professional ethics. Reviews of protests by FTA will be limited to alleged failure by TVT to have followed proper protests procedures, or its failure to review a complaint or protest. Protesters dissatisfied with TVT's final decision may appeal to FTA regional or Headquarters Office within five (5) working days of the date the protester knew or should have known of the violation.⁴¹

13 Additional Contractor's Insurance Requirements

- a. The Contractor shall obtain, maintain, and pay the premiums for insurance policies of the types and in the limits of not less than the following:

- (i) (a) Worker's Compensation and (b) Employer's Liability Insurance, which shall cover all the Contractor's Employees engaged in the performance of the work.

Worker's compensation shall be provided for all employees of the company, including owners, even if under State law owners are exempt from such insurance requirements. However, owners who have received an approved To Exclude Corporate Officers from Workers' Compensation Coverage, Form 29 and who submit it with their proposal to each Purchaser are exempted from providing the coverage that the form approved. The Purchaser acknowledges that there are other methods for excluding owners from Workers' compensation but has elected NOT to accept any other method.

- (ii) Comprehensive General Liability Insurance Coverage with limits not less than required by the Umbrella Liability Insurance below and covering at least:
- (a) Operations – Premises Liability
 - (b) Independent Contractor's Liability
 - (c) Broad Form Contractor's Liability covering the Contractor's obligations
 - (d) Personal Injury Liability including claims arising from employees of the Contractor
 - (e) Broad Form Property Damage Liability
 - (f) Product Liability Insurance (if providing goods or services)
 - (h) Products and Completed Operations Insurance (with a provision that coverage shall extend for a period of at least two years from the date of final completion of the work). Each Purchaser shall be a named as additional insured on this extension of coverage.
 - (i) Comprehensive General Liability (including bodily injury and death)
- (iii) Comprehensive Automobile Insurance including property and liability coverage for all owned, hired, and non-owned vehicles with limits not less than One Million Dollars (\$1,000,000) Combined Single Limit.
- (iv) Policy limits required for each line of coverage listed above in 1, 2 and 3 are \$1,000,000. Purchasers will accept underlying line coverage, underlying with excess, or underlying with umbrella so long that the total (including umbrella or excess) for each line coverage totals at least \$1,000,000.
- (v) The Contractor shall also obtain and maintain other policies of insurance of the types and

limits that the Contractor deems sufficient for its own protection.

- b. All such insurance as indicated above shall be provided by insurance companies licensed in the State of Vermont and having a Best's rating of not less than A:XII, as shown in the current issue of Best's Key Rating Guide, Property-Casualty.
- c. Proof that such insurance coverage exists shall be furnished to each Purchaser in the form of certificates from the insurance companies before the Contractor commences any portion of the contracted work.

The Purchaser shall be endorsed as an additional insured under such policies with the exceptions of Contractor's workers compensation policy and professional liability (if applicable).

Such certificates and/or endorsements shall provide that 15 days' notice in writing shall be given to the Purchaser prior to any change or cancellation of underlying policies due to non-payment of premium, and 45 days' notice in writing shall be given to the Purchaser prior to any change or cancellation of underlying policies due to non-renewal.

- d. The Contractor and all of its insurers shall waive all rights of recovery or subrogation against the Purchasers and their insurance companies.
- e. The Contractor shall be responsible for compliance with all safety rules and regulations of the Federal Occupational Safety and Health Act of 1970 and those of all applicable State Acts, Laws, or Regulations during the conduct of the Contractor's performance of this Contract. The Contractor shall indemnify, defend and hold the Purchasers harmless from any fines, penalties, and corrective measures that result from the acts of commission or omission of the Contractor, its subcontractors, if any, and the Contractor's and/or subcontractor's agents, employees and assigns for their failure to comply with such safety rules and regulations.
- f. The Purchasers will give to the Contractor prompt notice in writing of the institution of any suit or proceeding and permit the Contractor to defend the same, and will give all needed information, assistance, and authority to enable the Contractor to do so. The Contractor shall similarly give purchasers immediate notice of any suit or action filed or prompt notice of any claim arising out of the performance of the Contract. The Contractor shall furnish immediately to the Purchasers copies of all pertinent pleadings, correspondence and other documents received by the Contractor.
- g. The Contractor shall require its subcontractors, if any, to obtain an amount of insurance coverage which is deemed adequate by the Contractor.
- h. The Purchasers reserve the right to inspect, in person, prior to commencement of the work, all of the Contractor's insurance policies in regard to insurance required herein.

14 Non-Collusion

The bidder guarantees that the proposal submitted is not a product of collusion with any other bidder and no effort has been made to fix the proposal price for any bidder or to fix any overhead, profit or cost element of any proposal price. An affidavit of Non-Collusion, as per attached format, must be signed and submitted with proposal (Attachment A.)

15 Firm Information for TVT Bidders List

Fill out General Contract Provisions Attachment B in entirety and return with proposal or

proposal. In addition, for EACH subcontractor who may be working for your firm under this contract, copy and fill out sub-contractor information. shall furnish immediately to the Purchasers copies of all pertinent pleadings, correspondence and other documents received by the Contractor.

16 Award Based on Initial Proposals

Awards to proposers may be made, at TVT's sole discretion, without discussion of proposals with proposers. Proposals should be submitted initially on the most favorable terms possible, from a price and technical standpoint.

17 Indemnification of Purchasers

The Contractor agrees to indemnify, defend and hold each Purchaser harmless from any and all claims and lawsuits by third parties (including, but not limited to, employees and agents of the Purchasers and the Contractor), including the payment of all damages, expenses, penalties, fines, costs, royalties, charges and attorneys' fees incurred by the Purchasers which arise out of, or relate to Contractor's performance of the work required under this Contract, whether concerning personal injury (or death), damage to property, or any other type of loss or claim, whether these claims or lawsuits are based upon negligence, intentional misconduct, breach of warranty, strict liability in tort, any failure by the Contractor to comply with any laws pertaining to the contract documents, the use of patent appliances, products or processes, use of copyrighted materials, or any breach by the Contractor of any of its other duties, representations, covenants, or the agreements in the contract documents. The Contractor will defend all suits brought upon all such claims and lawsuits and will pay all costs and expenses incidental thereto, but the Purchaser shall have the right, at its option, to participate in the defense of any suit, without relieving the Contractor of any of its obligations hereunder.

18 Order of Precedence - Proposal

In the event of inconsistency between provisions of this solicitation prior to the parties entering into a contract, the inconsistency will be resolved by giving precedence in the following order: 1) the TVT project completion timeline for performance as set forth in the solicitation (if any); 2) solicitation instructions and technical specifications, if included; 3) TVT General Contract Provisions, and TVT Special Contract Provisions, which are included in the solicitation documents; and 4) in the event of any inconsistencies between the technical specifications and a written request for approval that has been approved by TVT, the request for approval will have precedence.

19 Order of Precedence – Contract

In the event of inconsistency between various documents that constitute the Contract, the inconsistency will be resolved by giving precedence in the following order: 1) any modifications approved by the Purchaser after the Contract was signed; 2) any contract documents the Purchaser executes to award the Contract (such as a purchase order, letter of contract award, or negotiated contract signed by both parties); 3) the Contractor's proposal including any approved equals or modifications approved by the Purchaser; and 4) the solicitation.

20 Use of the Purchaser's Name in Contractor Advertising or Public Relations

The Contractor will not allow TVT's logo(s) or any of said party's-related copy to be published in the Contractor's advertisements or public relations programs without said party's written approval and then only upon submitting such material to said party for review. The Contractor will agree that published information on the Purchasers or its services will be factual and in no way imply that TVT endorsed the Contractor's firm, service, or product.

21 Subcontracting and Assignability

The Contractor shall not assign, sublet, pledge or transfer its rights under this Agreement, in whole or in part, nor delegate or subcontract any of its duties or obligations under this Agreement nor grant any licenses or concessions hereunder, without the prior written approval from TVT. Such approval may be withheld at the sole discretion of TVT. The Contractor shall advise TVT before entering into any subcontract in relation to this Contract and shall not enter into any subcontract to which TVT has made timely objection. All subcontracts shall be in writing and each subcontractor shall, to the extent of the work or services to be performed by the subcontractor, assume toward the Contractor all of the obligations and responsibilities that the Contractor, by this Contract, assumes toward TVT. As used in this Contract, the term "contractor" shall mean the contractor and any of its subcontractors. Nothing in this Contract shall be deemed to establish a contractual relationship between a subcontractor and TVT.

Attachment A

Affidavit of Non-Collusion

I hereby swear (or affirm) under penalty of perjury:

1. That I am the bidder (if the bidder is an individual), a partner in the proposal (if the bidder is a partnership), or an officer or employee of the bidding corporation having authority to sign on its behalf (if the bidder is a corporation);
2. That the attached bid or proposals has been arrived at by the bidder independently and have been submitted without collusion and without any agreement, understanding, or planned common course of action with any other vendor of materials, supplies, equipment, or service described in the Request for Proposals, designed to limit independent proposals or competition;
3. That the contents of the bid or proposals has not been communicated by the bidder or its employees or agents to any person not an employee or agent of the bidder or its surety on any bond furnished with the bid or proposals, and will not be communicated to any such person prior to the official opening of the bid or proposals; and
4. That I have fully informed myself regarding the accuracy of the statements made in this affidavit.

Date _____

Signature _____

Company Name _____

Title _____

Subscribed and sworn to me before this _____ day of _20____

Notary Public

My commission expires _____

Proposers E.I Number _____
(number used on employers Quarterly Federal
Tax Return)

Attachment B (page 1 of

Firm Information for TVT Bidders

1. Prime Contractor Information

- a. Firm Name _____
- b. Age of Firm _____
(number of years doing business under current name and or incorporation)
- c. Firm's Annual Gross Receipts (most recent completed/audited year) _____
- d. Name of Project for which was submitted _____
- e. Is firm a VAOT approved DBE? ☐ Yes ☐ No

2. Subcontractor Information

Subcontractor 1

- a. Firm Name (Subcontractor 1) _____
- b. Age of Firm _____
(number of years doing business under current name and or incorporation)
- c. Firm's Annual Gross Receipts (most recent completed/audited year) _____
- d. Name of Project for which Proposal was submitted _____
- e. Is firm a VAOT approved DBE? ☐ Yes ☐ No
- f. If yes, what is the amount of the proposed contract with this DBE firm? \$ _____

Subcontractor 2

- a. Firm Name (Subcontractor 2) _____
- b. Age of Firm _____
(number of years doing business under current name and or incorporation)
- c. Firm's Annual Gross Receipts (most recent completed/audited year) _____
- d. Name of Project for which Proposal was submitted _____
- e. Is firm a VAOT approved DBE? ☐ Yes ☐ No
- f. If yes, what is the amount of the proposed contract with this DBE firm? \$ _____

Firm Information for TVT Bidders

Subcontractor 3

- a. Firm Name (Subcontractor 3)_____
- b. Age of Firm_____ (number of years doing business under current name and or incorporation)
- c. Firm's Annual Gross Receipts (most recent completed/audited year)_____
- d. Name of Project for which Proposal was submitted _____
- e. Is firm a VAOT approved DBE? ☐ Yes ☐ No
- f. If yes, what is the amount of the proposed contract with this DBE firm? \$_____

Subcontractor 4

- a. Firm Name (Subcontractor 4)_____
- b. Age of Firm_____ (number of years doing business under current name and or incorporation)
- c. Firm's Annual Gross Receipts (most recent completed/audited year)_____
- d. Name of Project for which Proposal was submitted _____
- e. Is firm a VAOT approved DBE? ☐ Yes ☐ No
- f. If yes, what is the amount of the proposed contract with this DBE firm? \$_____

Subcontractor 5

- a. Firm Name (Subcontractor 5)_____
- b. Age of Firm_____ (number of years doing business under current name and or incorporation)
- c. Firm's Annual Gross Receipts (most recent completed/audited year)_____
- d. Name of Project for which Proposal was submitted _____
- e. Is firm a VAOT approved DBE? ☐ Yes ☐ No
- f. If yes, what is the amount of the proposed contract with this DBE firm? \$_____

Attachment B (page 2 of

Firm Information for TVT Bidders

Subcontractor 6

- a. Firm Name (Subcontractor 6) _____
- b. Age of Firm _____
(number of years doing business under current name and or incorporation)
- c. Firm's Annual Gross Receipts (most recent completed/audited year) _____
- d. Name of Project for which Proposal was submitted _____
- e. Is firm a VAOT approved DBE? ☐ Yes ☐ No
- f. If yes, what is the amount of the proposed contract with this DBE firm? \$ _____

Subcontractor 7

- a. Firm Name (Subcontractor 7) _____
- b. Age of Firm _____
(number of years doing business under current name and or incorporation)
- c. Firm's Annual Gross Receipts (most recent completed/audited year) _____
- d. Name of Project for which Proposal was submitted _____
- e. Is firm a VAOT approved DBE? ☐ Yes ☐ No
- f. If yes, what is the amount of the proposed contract with this DBE firm? \$ _____

TVT Internal Use Only

Procurement Officer determine status:

- 1. VT UCP DBE (Y/N) _____
- 2. Included on Bidder List (date) _____