



COORDINATING COMMITTEE

PUR-1437
REQUEST FOR PROPOSALS REGARDING
QUALIFICATIONS AND EXPERIENCE / TECHNICAL PROPOSALS
AND
PRICE PROPOSALS TO PROVIDE SERVICES FOR
SALE OF EXTERIOR FULL WRAP ADVERTISING ON BUSES
FOR WASHINGTON COUNTY TRANSIT (WCT)

The Board of County Commissioners of Washington County, Maryland is requesting Qualifications and Experience / Technical Proposal Submittals and Price Proposals from qualified firms specializing in the **"SALE OF EXTERIOR FULL WRAP ADVERTISING ON BUSES"** on buses operated by Washington County Transit (WCT). The successful firm will provide services for the sale of advertising with the intent to increase the transit system's revenues.

The Washington County Coordinating Committee will evaluate responses to this request and select those firms that it deems to be responsive, most qualified and experienced. The Committee reserves the right to interview prospective firms to discuss Qualifications and Experience / Technical Proposals and Price Proposals.

The format for submittals, information regarding the scope of work, and the selection criteria used by the Committee is available from either the Washington County Purchasing Department, Washington County Administration Complex, 100 West Washington Street, Third Floor, Room 3200, Hagerstown, Maryland 21740, telephone 240-313-2330 or from the Washington County website: www.washco-md.net by accessing the "Quick Links/Open Bid Invitations-Purchasing". Inquiries should be directed to Rick Curry, CPPO – Director of Purchasing, at the above address.

A Pre-Proposal Conference will be held on **Thursday, January 23, 2020 at 10:00 A.M., (EDT/EST)** at the Washington County Administration Complex, 100 West Washington Street, Second Floor Conference Room 2001, Hagerstown, Maryland. Attendance at this conference is not mandatory for those wishing to submit proposals, but it is strongly encouraged.

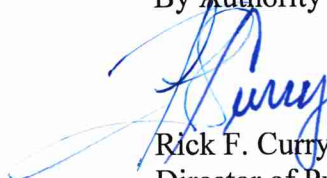
One (1) original and five (5) copies of submittals and six (6) flash drives of Qualifications and Experience/Technical Proposals enclosed in a sealed opaque envelope marked **"Q & E / Technical Proposal – Sale of Exterior Full Wrap Advertising on Buses"**, and one (1) original and five (5) copies and six (6) flash drives of the Price Proposal enclosed in a *separately* sealed opaque envelope marked **"Price Proposal – Sale of Exterior Full Wrap Advertising on Buses"** are due into the Office of Rick F. Curry, CPPO – Director of Purchasing, Washington County Purchasing Department, Washington County Administration Complex, 100 West Washington Street, Third Floor, Room 3200, Hagerstown, Maryland, 21740, no later than **4:00 P.M., (EDT/EST), Thursday, February 13, 2020**. Failure to provide the above-required information for the Committee's review may result in disqualification of that firm.

NOTE: All Proposers must enter the Washington County Administrative Complex through either the front door at the 100 West Washington Street entrance or through the rear entrance (w/blue canopy roof) which is handicap accessible and must use the elevator to access the Purchasing Department to submit their proposal and/or to attend the Pre-Proposal Conference. Alternate routes are controlled by a door access system. Washington County Government has announced new security protocols being implemented at the Washington County Administrative Complex at 100 West Washington Street, Hagerstown. The new measures took effect Tuesday, February 14, 2017. The general public will be subject to wand search and will be required to remove any unauthorized items from the building prior to entry. Prohibited items include but are not limited to: Weapons of any type; Firearms, ammunition and explosive devices; Cutting instruments of any type - including knives, scissors, box cutters, work tools, knitting needles, or anything with a cutting edge, etc.; Pepper spray, mace or any other chemical defense sprays; and Illegal substances.

Washington County shall make positive efforts to utilize Disadvantaged Business Enterprises for its supplies and services and shall allow these sources the maximum feasible opportunity to compete for contracts. The County Commissioners of Washington County do not discriminate on the basis of race, color, national origin, sex, religion, age and disability in employment or the provision of services. Individuals requiring special accommodations are requested to contact 240-313-2330 Voice, TTY dial 7-1-1 to make arrangements no later than seven (7) calendar days before the Pre-Proposal Conference.

The Board of County Commissioners of Washington County, Maryland reserves the right to accept or reject any and/or all proposals, to waive technicalities and to take whatever action is in the best interest of Washington County.

By Authority of:



Rick F. Curry, CPPO
Director of Purchasing

BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY, MARYLAND



COORDINATING COMMITTEE

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SALE OF EXTERIOR FULL WRAP ADVERTISING ON BUSES
FOR WASHINGTON COUNTY TRANSIT (WCT)

January 17, 2020

I. INTRODUCTION

The Board of County Commissioners of Washington County, Maryland, (hereinafter referred to as "County"), on behalf of Washington County Transit (hereinafter referred to as "WCT") is requesting proposals from persons/firms (hereinafter referred to as the "Contractor") to act as the exclusive sales agent for exterior FULL WRAP advertising on the transit buses. It is anticipated that the successful Contractor can significantly increase WCT's revenues for this service.

II. BACKGROUND

WCT strives to fulfill its duty to the citizens of Washington County with regard to operational efficiency, fiscal responsibility, and responsiveness to the transportation needs of the community. Our mission is to provide safe, affordable, dependable and accessible public transportation that enhances the mobility of our customers.

Providing general public transportation throughout Washington County, the Department is under the County's Division of Public Works and is the sub-grantee for the Federal Transit Administration (FTA) grant funds administered by the Maryland Department of Transportation/ Maryland Transit Administration (MDOT/ MTA).

WCT is located at 1000 West Washington Street, in Hagerstown Maryland, the transit facility houses the administrative offices, transit operations, and maintenance shop. WCT also supports the function of a connection center (Transfer Center), located at 123 W. Franklin Street, in Hagerstown. Transit service is provided to most shopping & medical facilities, senior housing centers and areas such as Chewsville, Funkstown, Halfway, Long Meadow, Maugansville, Robinwood, Smithsburg, Williamsport, and throughout the City of Hagerstown.

WCT also provides Paratransit service along the fixed-routes for persons with disabilities and offers a Ride-Assist Voucher program for the elderly and persons with disabilities. In addition, WCT operates a subscription transportation service for the Washington County Department of Social Services.

WCT operates a fleet of twenty-two (22) vehicles. The overall ridership in FY'18 (July 1, 2017 – June 30, 2018) for all transit services was over 512,000, breaking an all-time record. Annually WCT's vehicles travel over 515,000 miles.

Daily operation hours are generally 5:45 AM – 10:00 PM, six (6) days a week, Monday – Saturday. WCT recognizes the following holidays; New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas Day.

III. SCOPE OF WORK

- A. Through this request, the County seeks to determine the best-qualified Contractor for the operation of WCT's FULL WRAP bus advertising services. The selected Contractor will enter into and fully execute a contract with the County within ten (10) calendar days after notice of award.

NOTE: The Commuter has a limited staff that will reasonably cooperate with the Contractor. The Contractor is not to submit a proposal with the assumption that the County's Staff will be relied upon as part of the advertising team.

- B. The successful Contractor will be expected to market this advertising medium to prospective local, regional and national clients; to respond promptly and professionally to inquiries about advertising from prospective clients; to produce and install advertising full wrap signage on each of their buses, to invoice clients in a timely and accurate manner; and to remit sales proceeds in a timely manner.
- C. The Contractor shall conduct all ad sales and shall be responsible for all sales expenses including salesperson's commission, promotional materials, sales contracts, billing, scheduling information, advertising full wrap design, production arrangements, delivery, installation and removal.

The Contractor shall provide a quarterly sales report electronically to WCT, as well as all other correspondence excluding revenue checks that are addressed elsewhere in this document. Accounts receivables accompanied by a commission schedule and remittance shall be forwarded to WCT quarterly or annually dependent upon client's agreement with contractor. WCT shall receive a detailed statement quarterly showing revenue to date, space sold/unsold/percentage of sold space, length of agreements and a list of contacts made during the previous quarter.

- D. Illustrated FULL WRAP buses are only to be included as part of advertising sales. An illustrated bus is an individual transit vehicle that is completely "wrapped" to promote a single advertising client's promotional campaign.
1. The Contractor shall be fully responsible for the original wrapping of the transit vehicle and for the return of the vehicle to its original paint scheme at the conclusion of the term of the illustrated bus campaign. WCT may require that the Contractor escrow funds for the repainting of the vehicle to its original paint scheme if, in its sole discretion, WCT deems such requirement to be in its best interest. Contractor will be required to remove any and all evidence of an expired advertisement within thirty (30) days of the date of expiration.

2. Any graphic scheme proposed for an illustrated bus campaign shall be approved by WCT prior to the start of bus illustration design.
 3. All graphic schemes shall comply with all applicable traffic laws and will be reviewed by WCT for safety.
 4. In no case shall applied graphics interfere with the visibility of vehicle occupants. Graphic schemes that include coverage of windows shall utilize "Contra vision" or an approved equal material applied by a qualified Contractor, at the sole expense of the advertising client.
 5. All required exterior vehicle lighting and signaling must remain highly visible. Driver compartment windows must remain void of any material adhered to the glass. All WCT branding must be incorporated into the graphic design of the advertisement. This includes but is not limited to transit system name, bus numbers, website address, tire pressure information, fare postings, boarding/ departing instructions, etc...
 6. WCT vehicles shall not be removed from service for more than forty-eight (48) hours for the purpose of installing or removing advertisement material.
 7. The average down time for vehicle preventative maintenance or bus repair of a WCT vehicle may range from one (1) day to sixty (60) days. If down time is more than sixty (60) days, it would be considered an advertising impact. WCT will credit the Contractor for the advertisement per day based on a 90-day average and based on the income of the advertisement.
- E. The Contractor shall forward a color digital or printed picture to advertising clients of their advertisement upon placement to a vehicle.
- F. The Contractor shall not accept any advertising for tobacco/vaping/e-cigarette products, the promotion of beer, wine or liquor by brand name, sexually explicit or obscene, violence in nature or illegal, nor for political reasons. However, establishments that sell tobacco or alcohol such as restaurants, clubs, bars, liquor stores, et. shall be permitted to advertise. Material considered by WCT to be offensive and/or inappropriate shall also not be acceptable.
- G. The Contractor has the right to adjust advertising rates based on market conditions and demand with the approval of WCT.
- H. The Contractor shall **not** be permitted to trade or barter advertising space unless approved by WCT.
- I. WCT reserves the right to hold two (2) vehicles for its sole discretion in marketing and advertising.
- J. WCT shall have the right to display public welfare, educational advertisements and other such advertisements providing unpaid space exists.

K. There shall be no consideration to keep certain vehicles and/or wrap advertisements in certain areas of the service area. This means that advertisers may not be guaranteed that their advertising will be restricted to only certain, specific areas.

L. Revenue checks are to be mailed to the:

Washington County Treasurer
c/o Washington County Budget & Finance Department
100 West Washington Street, Room 3100
Hagerstown, MD 21740

Mark all submissions: WCT Bus Advertisement Payment for _____ (name of company).

M. To insure an orderly transition of advertising contracts, the successful Contractor shall agree to accept assignment to any and/or all contracts for advertising on vehicles in effect in March 2020, and further agrees to pay for the revenues generated by those advertising contracts to the current Contractor prorated to the term of any existing contract. The revenues referred to in this section shall be remitted on a quarterly basis to the Washington County Treasurer, c/o Washington County Budget & Finance Department. The County shall be responsible for transmittal of these revenues to the current Contractor.

N. Remuneration - In the event that at the end of the contract period the existing agreement is not renewed or extended, and the present Contractor is not awarded a new agreement, a provision will be made whereby the outgoing Contractor will be remunerated the value of all advertising contracts in force as of the termination date. It is understood that the advertising contracts will be turned over to WCT and or their agent in exchange for remuneration as stated above on or before the termination date.

IV. REVENUE/FLEET INFORMATION

A. WCT's revenue receipts for the past three (3) years have been:

FY '17 - \$5,077.00 FY '18 - \$20,812.00 FY '19* - \$10,000 (YTD)*

B. The Commuter's current (advertising) fleet consists of:

Eight (8) 2007 International 26/2 passenger transit coaches (to be replaced in FY '20/'21); two (2) 2010 International 26/2 transit coaches (to be replaced in FY '21/'22); two (2) 2013 International coaches (to be replaced in FY '24/'25).

V. WCT RESPONSIBILITIES

A. WCT shall be responsible for the cleaning and maintaining of all vehicles and bus advertising as necessary.

C. All inquiries for advertising rate information received by WCT shall be forwarded to the Contractor within three (3) days of receipt.

- D. WCT shall have the right to remove or refuse any advertising that is objectionable to WCT or the community at large if it deems refusal to be in the best interest of WCT. Under normal circumstances, approval of advertising will not be unreasonably withheld.
- E. WCT has the absolute right to refuse permission for an illustrated bus campaign. Similarly, if WCT has a vehicle currently under contract for such a campaign, it has the absolute right of non-renewal at the conclusion of its current contract for such vehicle.

VI. USE OF EXISTING DOCUMENTS

WCT will cooperate to the fullest extent in making available to the Contractor for its use all documents pertinent to this project that may be in WCT's possession. WCT makes no warranty as to the accuracy of existing documents nor will WCT accept any responsibility for errors and omissions which may arise as a result of the Contractor having relied upon them.

FEDERALLY REQUIRED ASSURANCES AND CERTIFICATIONS

WCT is a sub-recipient of Federal Transit Administration (FTA) and Maryland Transit Administration (MTA) grants. As such, Federal Assurances, Certifications and other Modal Clauses are required to be included with associated procurements (past or present) that exceed three thousand dollars (\$3,000). Therefore, the Contractor shall at all times comply with applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Washington County Government and FTA, as they may be amended or promulgated from time to time during the term of this contract. All mandated requirements from said Master Agreement have been incorporated in this solicitation/contract document. WCT shall promptly notify contractor of any changes to requirement stipulated by Master Agreement. Contractor's failure to so comply shall constitute a material breach of this contract. For your submission to be considered complete, the below documents must be signed and returned with your proposal.

Failure by the Vendor to complete, sign and or include the below listed documents in their Proposal will result in the rejection of their Proposal.

FEDERAL CLAUSES:

Fly America Requirements – Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro purchases (\$10,000 or less, except for construction contracts over \$2,000). Contractor shall comply with 49 USC 40118 (the “Fly America” Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

Energy Conservation – Applicability – All Contracts except micro purchases (\$10,000 or less, except for construction contracts over \$2,000) Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

Access to Records and Reports – Applicability – As shown below. These requirements do not apply to micro purchases (\$10,000 or less, except for construction contracts over \$2,000) The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$250,000
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i) (11).

FTA does not require the inclusion of these requirements in subcontracts.

Federal Changes – Applicability – All Contracts except micro purchases (\$10,000 or less, except for construction contracts over \$2,000) Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the recipient and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

No Government Obligation to Third Parties – Applicability – All contracts except micro purchases (\$10,000 or less, except for construction contracts over \$2,000)

(1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts – Applicability – All contracts except micro purchases (\$10,000 or less, except for construction contracts over \$2,000)

(1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying 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 underlying contract or 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, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.

(3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Termination – Applicability – All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$250,000

- a. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.
- b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be affected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.
- c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.
- d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.
- g. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for

default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. the recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the recipient resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work. Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses. If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.

i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

j. Termination for Convenience or Default (Cost Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice of termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the

manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

Government Wide Debarment and Suspension (Non-procurement) – Applicability – Contracts over \$25,000
The Recipient agrees to the following:

- (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," [https:// www.sam.gov](https://www.sam.gov), if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third-Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and
- (2) If the Recipient suspends, debars, or takes any similar action against a Third-Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel,

Contracts Involving Federal Privacy Act Requirements – Applicability – When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro purchases (\$10,000 or less, except for construction contracts over \$2,000)

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

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

Civil Rights Requirements – Applicability – All contracts except micro purchases (\$10,000 or less, except for construction contracts over \$2,000) The following requirements apply to the underlying contract:

The Recipient understand and agree that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third-Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute): (1) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 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, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,

b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third-Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin,

(2) 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 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and

(3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, 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) Other applicable Federal guidance that may be issued,

c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by

Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with FTA Circular 4704.1 other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions,

10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer". (3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third-Party Participant, with: (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note,

d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third-Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows: (1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of Map-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third-party contracts exceeding \$250,000 in a Federal fiscal year must: (1) Have a DBE program meeting the requirements of 49 C.F.R. part 26, (2) Implement a DBE program approved by FTA, and (3) Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FT assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq., (2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under Map-21 and previous legislation,

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

g. **Nondiscrimination on the Basis of Disability.** The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of “employer,” (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S.DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. part 37, (b) U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27, (c) U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35, (f) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36, (g) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. part 1194, and (j) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,

h. **Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections.** The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2,

i. **Access to Services for People with Limited English Proficiency.** Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following: 1) Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, “DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Persons,” 70 Fed. Reg. 74087, December 14, 2005.

j. **Other Nondiscrimination Laws.** Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.

k. **Remedies.** Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

Patent and Rights Data - Contracts involving experimental, developmental, or research work (\$10,000 or less, except for construction contracts over \$2,000).

Patent Rights

A. General. The Recipient agrees that:

- (1) Depending on the nature of the Project, the Federal Government may acquire patent rights when the Recipient or Third-Party Participant produces a patented or patentable:
 - (a) Invention,
 - (b) Improvement, or
 - (c) Discovery,
- (2) The Federal Government's rights arise when the patent or patentable information is:
 - (a) Conceived under the Project, or
 - (b) Reduced to practice under the Project, and
- (3) When a patent is issued, or patented information becomes available as described in Patent Rights section A (2), the Recipient agrees to:
 - (a) Notify FTA immediately, and
 - (b) Provide a detailed report satisfactory to FTA,

B. Federal Rights. The Recipient agrees that:

- (1) Its rights and responsibilities, and the rights and responsibilities of each Third-Party Participant, in that federally funded invention, improvement, or discovery will be determined as provided by applicable Federal laws, regulations, and guidance, including any waiver thereof, and
- (2) Unless the Federal Government determines otherwise in writing, irrespective of the Recipient's status or the status of any Third Party Participant as a large business, a small business, a State government, a State instrumentality, a local government, an Indian tribe, a nonprofit organization, an institution of higher education, or an individual, the Recipient agrees to transmit the Federal Government's patent rights to FTA as specified in: (a) 35 U.S.C. § 200 et seq., and (b) U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. part 401, and

c. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19:

- (1) License fees and royalties for patents, patent applications, and inventions derived from the Project are program income, and
- (2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except: (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research type project, and (b) As FTA determines otherwise in writing. Rights in Data and Copyrights

A. Definition of "Subject Data." means recorded information:

- (1) Copyright. Whether or not copyrighted, and
- (2) Delivery. That is delivered or specified to be delivered under the Underlying Agreement,

B. Examples of "Subject Data." Examples of "subject data":

- (1) Include, but are not limited to:
 - (a) Computer software, (b) Standards, (c) Specifications, (d) Engineering drawings and associated lists, (e) Process sheets, (f) Manuals, (g) Technical reports, (h) Catalog item identifications, and (i) Related information, but

(2) Do not include: (a) Financial reports, (b) Cost analyses, or (c) Other similar information used for Project administration,

c. General Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of the Recipient's Project supported by the Underlying Agreement:

(1) Prohibitions. The Recipient may not: (a) Publish or reproduce any subject data in whole or in part, or in any manner or form, or (b) Permit others to do so, but

(2) Exceptions. The prohibitions of Rights in Data and Copyrights C(1) do not apply to: (a) Publications or reproductions for the Recipient's own internal use, (b) An institution of higher learning, (c) The portion of subject data that the Federal Government has previously released or approved for release to the public, or (d) The portion of data that has the Federal Government's prior written consent for release,

d. Federal Rights in Data and Copyrights. The Recipient agrees that:

(1) License Rights. The Recipient must provide a license to its "subject data" to the Federal Government, which license is: (a) Royalty free, (b) Non-exclusive, and (c) Irrevocable,

(2) Uses. The Federal Government's license must permit the Federal Government to take the following actions provided those actions are taken for Federal Government purposes: (a) Reproduce the subject data, (b) Publish the subject data, (c) Otherwise use the subject data, and (d) Permit other entities or individuals to use the subject data, and

e. Special Federal Rights in Data for Research, Development, Demonstration, Deployment, and Special Studies Projects. In general, FTA's purpose in providing Federal funds for a research, development, demonstration, deployment, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to the Recipient and its Third-Party Participants, therefore, the Recipient agrees that:

(1) Publicly Available Report. When the Project is completed, it must provide a Project report that FTA may publish or make available for publication on the Internet,

(2) Other Reports. It must provide other reports pertaining to the Project that FTA may request,

(3) Availability of Subject Data. FTA may make available to any FTA Recipient or any of its Third-Party Participants at any tier of the Project, either FTA's copyright license to the subject data or a copy of the subject data, except as the Federal Government determines otherwise in writing,

(4) Identification of Information. It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA,

(5) Incomplete Project. If the Project is not completed for any reason whatsoever, all data developed under the Project becomes "subject data" and must be delivered as the Federal Government may direct, but

(6) Exception. Rights in Data and Copyrights Section E does not apply to an adaptation of automatic data processing equipment or program that is both: (a) For the Recipient's use, and (b) Acquired with FTA capital program funding,

f. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19:

(1.) License fees and royalties for copyrighted material or trademarks derived from Project are program income, and

(2.) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except: (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research type project, and (b) As FTA determines otherwise in writing,

G. Hold Harmless. Upon request by the Federal Government, the Recipient agrees that:

1 Violation by Recipient. (a) If it willfully or intentionally violates any: 1 Proprietary rights, 2 Copyrights, or 3 Right of privacy, and (b) Its violation occurs from any of the following uses of Project data: 1 Publication, 2 Translation, 3 Reproduction, 4 Delivery, 5 Use, or 6 Disposition, then (c) It will indemnify, save, and hold harmless against any liability, including costs and expenses of: 1 The Federal Government's officers acting within the scope of their official duties,

2 The Federal Government's employees acting within the scope of their official duties, and

3 Federal Government's agents acting within the scope of their official duties, but (2) Exceptions. The Recipient will not be required to indemnify the Federal Government for any liability described in Rights in Data and Copyrights section G (1) if: (a) Violation by Federal Officers, Employees or Agents. The violation is caused by the wrongful acts of Federal employees or agents, or (b) State law. If indemnification is prohibited or limited by applicable State law,

H. Restrictions on Access to Patent Rights. Nothing in this Rights in Data and Copyrights section pertaining to rights in data either:

(1) Implies a license to the Federal Government under any patent, or

(2) May be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent,

I. Data Developed Without Federal Funding or Support. The Recipient understands and agrees that in certain circumstances it may need to provide data developed without any Federal funding or support to FTA. Nevertheless:

(1) Protections. Rights in Data and Copyrights Sections A, B, C, and D generally do not apply to data developed without Federal funding, even though that data may have been used in connection with the Project, and

(2) Identification of Information. The Recipient understands and agrees that the Federal Government will not be able to protect data developed without Federal funding from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential," and

J. Requirements to Release Data. The Recipient understands and agrees that the Federal Government may be required to release Project data and information the Recipient submits to the Federal Government as required by:

(1) The Freedom of Information Act, 5 U.S.C. § 552,

(2) Another applicable Federal law requiring access to Project records,

(3) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," specifically 49 C.F.R. § 19.36(d), or

(4) Other applicable Federal regulations and guidance pertaining to access to Project records

Prompt Payment – Applicability – All contracts except micro purchases (\$3,500 or less, except for construction contracts over \$2,000). The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime 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 Recipient. This clause applies to both DBE and non-DBE subcontracts.

Incorporation of Federal Transit Administration (FTA) Terms – Applicability – All contracts except micro purchases (\$10,000 or less, except for construction contracts over \$2,000)

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All U.S. DOT required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

Other Federal Requirements:

Full and Open Competition - In accordance with 49 U.S.C. § 5325(h) all procurement transactions shall be conducted in a manner that provides full and open competition.

Prohibition Against Exclusionary or Discriminatory Specifications - Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

Conformance with ITS National Architecture - Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

Access Requirements for Persons with Disabilities - Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

Notification of Federal Participation - To the extent required by law, in the announcement of any third-party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third-party contract.

Interest of Members or Delegates to Congress - No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

Ineligible Contractors and Subcontractors - Any name appearing upon the Comptroller General's list of ineligible contractors for federally- assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

Other Contract Requirements - To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

Compliance with Federal Regulations - Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT- required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Real Property - Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by Map-21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Access to Services for Persons with Limited English Proficiency - To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

Environmental Justice - Except as the Federal Government determines otherwise in writing, the Recipient agrees to 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, and (2) 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 and applicable 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, and guidance,

Environmental Protections - Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: The National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

Geographic Information and Related Spatial Data - (NOT APPLICABLE TO THE TRIBAL TRANSIT PROGRAM) Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

Geographic Preference - All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic based hiring preferences as proposes to be amended in 2 CFR Part 1201).

Federal Single Audit Requirements - For State Administered Federally Aid Funded Projects Only Non Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the

Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, "Audits of States, Local Governments, and Non-Profit Organizations" (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable). Non-Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptroller's Office and the U.S. Governmental Accountability Office (GAO). Non-Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments. Catalog of Federal Domestic Assistance (CFDA) Identification Number The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

Veterans Preference - As provided by 49 U.S.C. 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:

- (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third-party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and
- (2) Will not 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

Safe Operation of Motor Vehicles

a. **Seat Belt Use.** The Recipient agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by: (1) Adopting and promoting 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, and (2) Including a "Seat Belt Use" provision in each third-party agreement related to the Award.

b. **Distracted Driving, Including Text Messaging While Driving.** The Recipient agrees to comply with: (1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225), (2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, and (3) The following U.S. DOT Special Provision pertaining to Distracted Driving: (a) Safety. The Recipient agrees to 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 Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award, (b) Recipient Size. The Recipient 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, and (c) Extension of Provision. The

Recipient agrees to include the preceding Special Provision of section 34.b(3)(a) – (b) of this Master Agreement in its third-party agreements and encourage its Third-Party Participants to comply with this Special Provision and include this Special Provision in each third-party sub agreement at each tier supported with federal assistance.

Catalog of Federal Domestic Assistance (CFDA) Identification Number - The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

The CFDA number for the Federal Transit Administration - Nonurbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Nonprofit Organizations," (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable) agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

Organizational Conflicts of Interest - the Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third-Party Participant or another Third-Party Participant performing the Project work, and (b) That impairs that Third-Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements.

Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

Federal Certifications

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

1. It will 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 Governmentwide Debarment and Suspension (Non-procurement)," 2 CFR part 180,
2. To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:
 - a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:

1. Debarred
2. Suspended
3. Proposed for debarment
4. Declared ineligible
5. Voluntarily excluded
6. Disqualified

b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:

1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
2. Violation of any Federal or State antitrust statute, or
3. Proposed for debarment commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property

c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,

d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,

e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a – 2.d above, it will promptly provide that information to FTA,

f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:

1. Equals or exceeds \$25,000,
2. Is for audit services, or
3. Requires the consent of a Federal official, and

g. It will require that each covered lower tier contractor and subcontractor:

1. Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
2. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
 - a. Debarred from participation in its federally funded Project,
 - b. Suspended from participation in its federally funded Project,
 - c. Proposed for debarment from participation in its federally funded Project,
 - d. Declared ineligible to participate in its federally funded Project,
 - e. Voluntarily excluded from participation in its federally funded Project, or
 - f. Disqualified from participation in its federally funded Project, and

3. It will provide a written explanation as indicated on a page attached in FTA's TrAMS-Web or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third-Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

Certification

Contractor _____

Date: ____/____/____

Signature of Authorized Official _____

Name and Title of Contractor's Authorized Official _____

VII. COMPENSATION TO THE CONTRACTOR

The Contractor's compensation shall be the remaining portion of Net Sales after deduction of any contracted guarantee and/or percentage of net revenue to WCT

VIII. TERM OF CONTRACT

- A. The contract shall be for a three (3) year period, tentatively beginning in March 2020, with an option by the County to renew for up to two (2) additional consecutive one (1) year periods, subject to written notice given by the County Commissioners at least sixty (60) calendar days in advance of its expiration date. If the Contractor wishes to renew the contract, he must submit a letter of intent to the County at least ninety (90) calendar days prior to the expiration of the contract. The County reserves the right to accept or reject any request for renewal and any request for an increase/decrease of the percentage of gross revenues paid to WCT and any rate card revisions. All other terms and conditions shall remain unchanged.
- B. In the event that the Contractor shall default (1) in making any of the payments required to be made by it as and when the same shall become due and payable, and such default shall continue for thirty (30) calendar days after written demand for such payment by the County, or (2) in the performance of any of its obligations or if the Contractor shall be adjudged a bankrupt, or a receiver or trustee shall be appointed for said Contractor's property and such adjudication or appointment shall not be advocated within thirty (30) days' time, the County may, upon thirty (30) calendar days' written notice, terminate the agreement for services and remove all advertising matter, provided, however, that such termination shall not relieve and discharge the Contractor from any of its obligations under the Agreement.

IX. PRE-PROPOSAL CONFERENCE

A Pre-Proposal Conference will be held on **Thursday, January 23, 2020 at 10:00 A.M., (EDT/EST)** at the Washington County Administration Complex, 100 West Washington Street, Second Floor Conference Room 2001, Hagerstown, Maryland. Attendance at the Pre-Proposal Conference is not mandatory but is strongly encouraged. It is each proposing Contractor's responsibility to become familiar with all information necessary to prepare a proposal.

X. TERMS AND CONDITIONS

- A. The County reserves the right to reject any or all proposals or to award the contract to the next recommended Contractor if the successful Contractor does not execute a contract within ten (10) calendar days after notice of the award of the contract.
- B. The County reserves the right to request clarification of information submitted and to request additional information of one or more applicants.
- C. Any proposal may be withdrawn up until the date and time set above for the opening of the proposals. Any proposal not so withdrawn shall constitute an irrevocable offer, for a period of ninety (90) calendar days, to sell to the County the services set forth in **Section II. SCOPE OF WORK** of this request.

- D. Any agreement or contract resulting from the acceptance of the proposal shall be on forms approved by the County and shall contain, as a minimum, applicable provisions of the RFP. The County reserves the right to reject any agreement that does not conform to the RFP and any County requirements for agreements and contracts.
- E. The Contractor shall not assign any interest in the contract and shall not transfer any interest in the same without prior written consent of WCT.
- F. No reports, information or data given to or prepared by the Contractor under the contract shall be made available to any individual or organization by the Contractor without the prior written approval of WCT.
- G. Contractors shall give specific attention to the identification of those portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the County under the Access to Public Records Act, State Government Article, Title 10, Subtitle, 6, Annotated Code of Maryland.
- H. The County reserves the right to not hold discussions after the award of the contract.
- I. By submitting a proposal, the Contractor agrees that he/she is satisfied, as a result of his own investigations of the conditions set forth in this request, that he fully understands his obligations.
- J. Effective October 1, 1993, in compliance with Section 1-106(b)(3) of the Code of Public Local laws of Washington County, Maryland, "If a bidder has not paid all taxes owed to the County or a municipal corporation in the County, the County may reject the bidder's Bid."
- K. The Contractor shall abide by and comply with the true intent of this RFP and its Scope of Work. It will not take advantage of any unintentional error or omission but shall fully complete every part as the true intent and meaning of the scope of services, as decided by the County, and as described herein.
- L. All work shall be done according to Washington County standards and those of any Local, State or Federal agencies having jurisdiction.
- M. Political Contribution Disclosure: The Bidder shall comply with Article 33, Sections 14-101 through 14-104 of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or any incorporated municipality, or their agencies during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Administrative Board of Election Laws a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Administrative Board of Election Laws: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality or their agencies, and shall cover the preceding two (2) calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

XI. INSURANCE REQUIRED

- A. Contractors must show evidence of Insurance as outlined in the attached copy of Washington County Policy (Attachment No. 1) before execution of any contract resulting from this request.
- B. Professional Liability - Concessionaires must also show, before the execution of any contract resulting from this request, evidence of professional liability insurance coverage in the amount of one million (\$1,000,000) dollars, with a minimum coverage of one million (\$1,000,000) dollars per occurrence and one million (1,000,000) dollars aggregate and must include coverage for errors, omissions and negligent acts.

XIII. INSPECTION/SUBMITTAL REVIEW

Inspection and oversight of the advertising services on this project will be furnished by WCT.

XIV. PROPOSAL AND AWARD SCHEDULE

- A. Proposals received before the deadline will be treated as confidential. Proposals received after the deadline will not be considered in the evaluation process and will be returned unopened.
- B. It is expected that the contract award will be made within sixty (60) calendar days after the opening of proposals. The contract will be awarded to the Contractor whose proposal, conforming to this request, will be the most advantageous to the County.
- C. Proposals must give the full name and address of the proposer and the person signing the proposal should indicate his or her title and/or authority to bind the firm in a contract.
- D. Proposals cannot be altered or amended after they are opened.
- E. Technical Proposals and/or Price proposals of Contractors whose Qualification & Experience Submittals were determined to be unacceptable to the Coordinating Committee will be returned unopened to the proposer.
- F. The approval or disapproval of proposers will be determined by their response to this request and on past performance. No assumptions shall be made by the proposer as to the committee's prior knowledge of its abilities. Therefore, the proposer shall provide information fully documenting his or her past projects of similar work complete with references.

XV. PROPOSAL SUBMITTALS

- A. This solicitation is issued pursuant to the implementation of Section 5 of the Washington County Procurement Policy Manual relative to Requests for Proposals (RFP) - Professional/Technical Consultant Selection that can be viewed at: <https://www.washco-md.net/wp-content/uploads/2019/01/budfin-purch-ProcurementPolicy.pdf>. The County shall not be liable for any costs not included in the proposal, not contracted for subsequently, or regarding preparation of your proposal.

The Coordinating Committee shall be comprised of the Interim County Administrator (Committee Chairman), Director of Purchasing, County Transit Department Director, Director of Public Relations & Marketing, and Director of Public Works.

- B. As a result of time constraints imposed on the project, the County requires interested Contractors to provide Qualifications & Experience / Technical Proposals concurrently with Price Proposals, each to be presented in separately sealed opaque envelopes. **(DO NOT INCLUDE ANY PRICE FIGURES IN THE QUALIFICATIONS & EXPERIENCE / TECHNICAL PROPOSALS.)**
- C. **Two separate proposals shall be submitted. One shall be the Qualifications and Experience (Q & E) of the consultant or consultant team. The other shall be the Price Proposal. The Price Proposal will be opened only if the firm is considered responsible, qualified and responsive to this request after detailed review of the Q & E by the Coordinating Committee.**
- D. As a minimum, the Q&E / Technical Proposal submittal shall include the following:
 - 1. Include the names and resumes of key personnel who will be directly involved with this project on a day-to-day basis (i.e., the composition of key staff assigned to the project, their qualifications and experience.). Clearly identify their project responsibilities.
 - 2. An organizational chart containing all assigned staff.
 - 3. A list of five (5) references related to the sale and placement of advertising. If applicable, please list transit system references. A statement of qualifications indicating that the proposer has the experience and financial capacity to perform the services outlined. Statement should include specific experience in the local advertising market of Washington County, Maryland.
 - 4. Submit evidence of the past performance of the firm, including timely completion of projects, compliance with scope of work, performance within budgetary limits and user satisfaction;
 - 5. A statement on the availability of local sales representation.
 - 6. A narrative describing the Contractor's overall approach to the project. This narrative should clearly identify special or unique features of the project and his/her anticipated approach.
 - 7. Marketing Strategy--Attach a description of the marketing and promotional strategies for use in operations, with emphasis on measures designed to obtain maximum patronage.
 - 8. Conclusion, remarks and/or supplemental information pertinent to this request that will enable the County to make a decision on the Contractor's ability to perform this contract.
- E. As a minimum, your Price Proposal shall include the following:

1. The proposal form contained herein (Attachment No. 2).
2. Fully executed affidavits, - Non-Collusion Certificate (Attachment No. 3) and Anti-Bribery Affidavit (Attachment No. 4) - executed by the proposer, or in case the proposer is a corporation, by a duly authorized representative of the corporation, on the forms provided.
3. Conclusions, remarks and/or supplemental information pertinent to this request.

XVI. CONSULTANT SELECTION PROCESS

SBE PROGRAM ELIGIBILITY

This is a Small Business Enterprise (SBE) Program Procurement for which an award will be limited to certified small business vendors. Only businesses that are SBE certified by the Maryland Department of Transportation, Office of Minority Business Enterprise (MDOT OMBE) to perform the type of work under this procurement are eligible to submit a bid/proposal for this procurement.

- A. The firm must be a small business (as defined by the U.S. Small Business Administration (SBA) by applying current SBA business size standards that are applicable to the type of work the firm seeks to perform. Size standards are measured by a three-year average of annual gross receipts or number of employees.
- B. The firm's average gross receipts cannot exceed the USDOT size standard of \$23.98 million.
- C. At least 51% of the firm's ownership must be held by individuals who do not exceed the personal net worth (PNW) limit cap of \$1.32 million.
- D. The firm must be organized for profit.

The Washington County Coordinating Committee will evaluate responses to this request and select those Contractors judged to be most qualified.

It is the County's intent to open and review each firm's Qualifications & Experience / Technical Submittal to determine qualifications, experience and technical approach to the services. If the Coordinating Committee determines that a Contractor's qualifications, experience and technical approach are acceptable, the envelope containing the Contractor's Price Proposal will then be opened.

Since it is the County's desire to select the most qualified Contractor, the Coordinating Committee reserves the right to schedule oral presentations of those Contractors it deems most qualified, to take place within ten (10) business days following notification.

Selection criteria to be used by the committee are:

- A. Responsiveness to the scope of work and these instructions to Contractors;

- B. Past performance of the Contractor in providing sale of bus advertising services to transit systems including timely completion of projects, compliance with scope of work performed within budgetary constraints, and user satisfaction;
- C. Specialized experience and technical competence in performing relevant services in the past five (5) years, including qualifications of staff members who will be involved in this project;
- D. Oral presentations, if required;
- E. Composition of the principals and staff assigned to these services, particularly the proposed project manager/account executive and immediate staff, and their qualifications and experience with projects such as that being proposed;
- F. Adequacy of the personnel of the Contractor to carry out the project;
- G. Contractor's capacity to perform the work considering current workloads;
- H. Contractor's familiarity with problems applicable to this type of project;
- I. References from present/previous clients, including size and scope of project, name and telephone number of a contact person; and
- J. Marketing Strategy--demonstrated ability of Contractor to market and promote programs to obtain maximum patronage from local, regional and national advertiser accounts;
- K. Expected Gross Sales
 - l. Financial Consideration to be paid to WCT (Guaranteed annual revenue)
- M. Feasibility of the overall proposal.

XVII. INTERPRETATIONS, DISCREPANCIES, OMISSIONS:

Should any Contractor find discrepancies in, or omissions from, the documents or be in doubt of their meaning, he should at once request in writing an interpretation from: **Rick F. Curry, CPPO, Washington County Purchasing Department, Washington County Administration Complex, 100 West Washington Street, Third Floor, Room 3200, Hagerstown, Maryland 21740, FAX 240-313-2331**; or send questions in MicroSoft Word platform via e-mail to: **purchasingquestions@washco-md.net**

All necessary interpretations will be issued to all proposers as addenda to the specifications, and such addenda shall become part of the contract documents. No requests received after **4:00 P.M. (EDT/EST), Thursday, January 30, 2020** will be considered. Every interpretation made by the County will be made as an addendum which, if issued, will be sent by the Director of Purchasing to all interested parties.

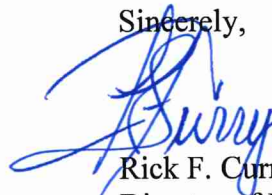
XVIII. PROTEST PROCEDURES

- I-25.1 A protest based upon alleged improprieties in a solicitation that are apparent before bid opening shall be submitted to the Director of Purchasing before bid opening. In all other cases, protests shall be submitted to the Contracting Officer not later than ten (10) days after the basis for protest is known, or shall have been know, whichever is earlier. A protest received after the time limits stipulated in this section may not be considered and shall be denied as untimely.
- I-25.2 To expedite the handling of protest, the protest submittal should be clearly labeled "Protest" on the exterior of the envelope or package. The "protest" shall include as a minimum the following content:
- Name and address of protester;
 - Appropriate identification of the procurement and, if a contract has been awarded, it's the contract reference number;
 - A statement of the reasons for the protest;
 - Supporting exhibits, evidence, or documents to substantiate the reasons for the protest; and
 - If there is relevant information not available within the time restrictions a description of the nature and extent of the evidence and documents, and the expected availability date of the evidence and documents.
- I-25.3 Any additional information or substantiation requested by the Director of Purchasing shall be submitted with five (5) days after receipt of request. Failure of the protestant to comply with a request for information or substantiations by the Director of Purchasing may result in resolution of the protest without consideration of any response to the request that is not timely filed.
- I-25.4 After a protest is filed the Director of Purchasing shall consider the protest, all supporting documentations, and any submissions from other bidders or offerors. After consideration, the Director of Purchasing shall make a determination and finding regarding the protest. For contracts valued at less than \$10,000, the Director of Purchasing may make the determination and finding without consultation with the Contracting Officer. For contracts values at \$10,000 or more, the Director of Purchasing shall provide a proposed determination and finding to the Contracting Officer. The Contracting Officer shall consider the protest and shall issue the determination and finding. The determination and finding shall be forwarded to the protester by certified mail.
- I-25.5 The facts supporting this determination may be reviewed by any court having a lawful jurisdiction. The protestor may appeal the determination and finding through the court system.
- I-25.6 Generally, if a protest has been filed, the County may not award the contract until there is a final decision on the protest. The governing authority may award a contract before there is a final decision after making a determination and finding which considers the merits of the complaint; the need for the procurement; the fluctuations in the market which may impact costs; the unwillingness of proposed awardee to the extend its offer; or other factors which impact on the public interest.

If your firm is interested in performing the above services, please submit one (1) original, five (5) copies and six (6) flash drives of submittals of Qualifications & Experience / Technical Proposal submittals from firms enclosed in a sealed opaque envelope marked "**Q&E / Technical Proposal - BUS ADVERTISING SERVICES**", and one (1) original, five (5) copies and six (6) flash drives of the Price Proposal enclosed in a *separately* sealed opaque envelope marked "**PRICE PROPOSAL - BUS ADVERTISING SERVICES**" are due into the Office of Rick F. Curry, CPPO, - Director of Purchasing, Washington County Purchasing Department, Washington County Administration Complex, 100 West Washington Street, Third Floor, Room 3200, Hagerstown, Maryland, 21740, no later than **4:00 P.M. (EDT/EST), Thursday, February 13, 2020**. The Washington County Coordinating Committee will evaluate the submittals. Failure to comply with providing the above-required information for the Committee's review may result in disqualification of that firm.

The Board of County Commissioners of Washington County, Maryland reserves the right to accept or reject any and/or all proposals, to waive technicalities and to take whatever action is in the best interest of Washington County.

Sincerely,



Rick F. Curry, CPPO
Director of Purchasing

WASHINGTON COUNTY
COORDINATING COMMITTEE

RFC/ljt

Attachments (4)

cc: Coordinating Committee Members

POLICY TITLE: Insurance Requirements for Independent Contractors

ADOPTION DATE: August 29, 1989

EFFECTIVE DATE: September 1, 1989

FILING INSTRUCTIONS:

I. PURPOSE

To protect Washington County against liability, loss or expense due to damaged property, injury to or death of any person or persons and for care and loss of services arising in any way, out of, or in connection with or resulting from the work or service performed on behalf of Washington County.

II. ACTION

The following should be inserted in all Independent Contractor Contracts:

"The Contractor shall procure and maintain at his sole expense and until final acceptance of the work by the County, insurance as hereinafter enumerated in policies written by insurance companies admitted in the State of Maryland, have A.M. Best rating of A- or better or its equivalent, and acceptable to the County."

1. **Workers Compensation:** The Contractor agrees to comply with Workers Compensation laws of the State of Maryland and to maintain a Workers Compensation and Employers Liability Policy.

Minimum Limits Required:

Workers Compensation -	Statutory
Employers Liability -	\$100,000 (Each Accident)
	\$500,000 (Disease - Policy Limit)
	\$100,000 (Disease - Each Employee)

2. **Comprehensive General Liability Insurance:** The Contractor shall provide Comprehensive General Liability including Products and Completed Operations.

Minimum Limits Required:

\$1,000,000 combined single limit for Bodily Injury and Property Damage.

Such insurance shall protect the County, its agents, elected and appointed officials, commission members and employees, and name Washington County on the policy as additional insured against liability, loss or expense due to damaged property (including loss of use), injury to or death of any person or persons and for care and loss of services arising in any way, out of, or in connection with or resulting from the work of service performed on behalf of Washington County.

2. **Comprehensive General Liability Insurance** (continued)

The Contractor is ultimately responsible that Subcontractors, if subcontracting is authorized, procure and maintain at their sole expense and until final acceptance of the work by the County, insurance as hereinafter enumerated in policies written by insurance companies admitted in the State of Maryland, have A.M. Best rating of A- or better or its equivalent, and acceptable to the County.

3. **Business Automobile Liability:** The Contractor shall provide Business Auto Liability including coverage for all leased, owned, non-owned and hired vehicles.

Minimum Limits Required:

\$1,000,000 combined single limit for Bodily Injury or Property Damage.

Certificate(s) of Insurance: The Contractor shall provide certificates of insurance requiring a 30-day notice of cancellation to the Insurance Department, Board of County Commissioners of Washington County prior to the start of the applicable project.

Approval of the insurance by the County shall not in any way relieve or decrease the liability of the Contractor. It is expressly understood that the County does not in any way represent that the specified limits of liability or coverage or policy forms are sufficient or adequate to protect the interest or liabilities of the Contractor.

All responsibility for payment of any sums resulting from any deductible provisions, corridor, or self-insured retention conditions of the policy or policies shall remain with the Contractor.

General Indemnity: The Contractor shall indemnify, defend and save harmless the Board of County Commissioners of Washington County, its appointed or elected officials, commission members, employees and agents for any and all suits, legal actions, administrative proceedings, claims, demands, damages, liabilities, interest, attorneys fees, costs and expenses of whatsoever kind of nature, whether arising before or after final acceptance and in any manner directly or indirectly caused, occasioned or contributed to in whole or in part by reason of any act, error or omission, fault or negligence whether active or passive by the Contractor, or any one acting under its direction, control or on its behalf in connection with or incident to its performance of the Contract.

Revision Date: August 27, 1991
Effective Date: August 27, 1991
Revision Date: March 4, 1997
Effective Date: March 4, 1997

**PUR-1437
PRICE PROPOSAL FORM**

**BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY, MARYLAND**

**WASHINGTON COUNTY TRANSIT
EXTERIOR FULL WRAP BUS ADVERTISING SERVICES**

The Firm of: _____

Hereby agrees to provide the requested services as defined in the proposal, attachments thereto, and

Addenda No. _____ dated _____, No. _____ dated _____, No. _____ dated _____ at the following lump sum contract prices (Amount shall be shown in both words and figures; in case of discrepancy, the amount shown in words will govern.):

Percentage of NET Advertising Revenue Payable to WCT:

_____ Percent (_____ %)
(Written) (Figures)

Projected Estimated Annual Net Revenue payable to WCT:

_____ DOLLARS (\$ _____)
(Written) (Figures)

GUARANTEED ANNUAL REVENUE PAYABLE TO WASHINGTON COUNTY TRANSIT:

TOTAL SUM _____ DOLLARS (\$ _____)
(Written) (Figures)

CONDITIONS OF THE PROPOSAL: It shall be understood that by submission of this proposal, the Contractor agrees to all of the conditions of the Request for Proposal (RFP) dated January 17, 2020, and any Addenda issued thereto and referenced above.

CONTRACTOR MUST SIGN BELOW:

By signing here, the Contractor does hereby attest that it has fully read the instructions, conditions and general provisions and understands them.

Contractor's Name: _____

Authorized Signature: _____

Name & Title Printed: _____

E-Mail Address: _____

Telephone No.: _____ FAX No: _____

Date: _____

EXCEPTIONS (If no exceptions are taken, state NONE: _____

For Informational Purposes Only: Has your firm been certified by the State of Maryland as a Minority Business Enterprise? (Please check below)

_____ Yes _____ No

NON-COLLUSION CERTIFICATE

I HEREBY CERTIFY I am the _____
(Title)

and the duly authorized representative of the firm of _____

whose address is _____

AND THAT NEITHER I nor, to the best of my knowledge, information and belief, the above firm nor any of its other representatives I here represent have:

- (a) Agreed, conspired, connived or colluded to produce a deceptive show of competition in the compilation of the bid or offer being submitted herewith;
- (b) Not in any manner, directly or indirectly, entered into any agreement, participated in any collusion to fix the bid price or price proposal of the bidder or offeror herein or any competitor, or competitive bidding in connection with the Contract for which the within bid or offer is submitted; and that no member of the Board of County Commissioners of Washington County, Maryland, administrative or supervisory personnel or other employees of the Board of County Commissioners of Washington County, Maryland have any interest in the bidding company except as follows: (complete if applicable)

I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information, and belief.

Signature

Date

Printed or Typed Name

ANTI-BRIBERY AFFIDAVIT

I HEREBY CERTIFY that

1. I am the _____ and duly authorized
representative of the firm _____
whose address is _____, and that

I possess the legal authority to make this affidavit on behalf of myself and the firm for which I am acting.

2. Except as described in Paragraph 3 below, neither I or to the best of my knowledge, the above firm, nor any of its officers, directors, or partners, or any of its employees directly involved in obtaining contracts with the State or any county, bi-county, or multi-county agency, or subdivision of the State have been convicted of, or have pleaded nolo contendere to a charge of, or have during the course of any official investigation or other proceeding admitted in writing or under oath acts or omissions committed after July 1, 1977 which constitute bribery, attempted bribery, or conspiracy to bribe under the provisions of Article 27 of the Annotated Code of Maryland or under the laws of any state or federal government.

3. (State "none" or, as appropriate, list any conviction, plea, or admission described in Paragraph 2 above, with the date, court, official, or administrative body; and the sentence or disposition, if any.)

I acknowledge that this affidavit is to be furnished to the requesting agency, to the Secretary of Budget and Fiscal Planning of Maryland, and, where appropriate, to the Board of Public Works and the Attorney General under Maryland Code, State Finance and Procurement, §13-405. I acknowledge that, if the representations set forth in this affidavit are not true and correct, the Board of County Commissioners of Washington County, Maryland may terminate any contract awarded and take any other appropriate action. I further acknowledge that I am executing this affidavit in compliance with Maryland Code, State Finance and Procurement, §13-405, which provides that certain persons who have been convicted of or have admitted to bribery, attempted bribery, or conspiracy to bribe may be disqualified, either by operation of law or after a hearing, from entering into contracts with the State or any of its agencies or subdivisions.

I do solemnly declare and affirm under the penalties of perjury that the contents of this affidavit are true and correct.

Signature

Date

Printed or Typed Name