

**ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VIRGINIA 22201**

NOTICE OF CONTRACT AWARD

8D TECHNOLOGIES ULC	<u>DATE ISSUED:</u>	NOVEMBER 21, 2019
1008-416 de Maisonneuve West	<u>CURRENT REFERENCE NO:</u>	19-188-R
SUITE 1008		CAPITAL BIKESHARE
QUEBEC, CANADA H3A 1L2	<u>CONTRACT TITLE:</u>	STATIONS AND STARTUP EQUIPMENT

**THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL
THE VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.**

The contract documents consist of the terms and conditions of AGREEMENT No. 19-188-R including any attachments or amendments thereto.

EFFECTIVE DATE: NOVEMBER 21, 2019

EXPIRES: OCTOBER 31, 2021

RENEWALS: (2) ADDITIONAL 12-MONTH PERIODS FROM NOVEMBER 1, 2021 TO OCTOBER 31, 2023

COMMODITY CODE(S): 65010, 80535, 92962

LIVING WAGE: N

PROFESSIONAL SERVICES: N

ATTACHMENTS:

AGREEMENT NO. 19-188-R

EMPLOYEES NOT TO BENEFIT:

NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.

<u>VENDOR CONTACT:</u> SEBASTIEN FOURNIER	<u>VENDOR TEL. NO.:</u>	(514) 906-1212
	<u>EMAIL ADDRESS:</u>	SEBASTIENFOURNIER@MOTIVATECO.COM
<u>COUNTY CONTACT:</u> JIM LARSEN	<u>COUNTY TEL. NO.:</u>	(703) 228-3725
	<u>EMAIL ADDRESS:</u>	JLARSEN@ARLINGTONVA.US

**ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
SUITE 500, 2100 CLARENDON BOULEVARD
ARLINGTON, VA 22201**

**AGREEMENT NO. 19-188-R
Provision of Capital Bikeshare Stations and Startup Equipment**

THIS AGREEMENT is made, on the date of execution by the County, between 8D Technologies ULC ("Contractor" or "8D") a Province of British Columbia unlimited liability company located at 1008-416 de Maisonnueve West, Suite 1008, Quebec, Canada H3A 1L2, and the County Board of Arlington County, Virginia (the "County"). The County and the Contractor, for the consideration hereinafter specified, agree as follows:

1. CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Exhibit A "City of Falls Church Contract No 0626-18-BIKE-A" with any exhibits and amendments issued or applicable thereto (collectively, "Contract Documents" or "Contract"). This Agreement rides a contract awarded to the Contractor by City of Falls Church and extended by the Contractor to the County on the same terms and conditions as the Contractor's agreement with City of Falls Church, and substituting the phrases "County Board of Arlington County" or "Arlington County", as appropriate, for the phrase City of Falls Church wherever those phrases appear in the Contract Documents. Where the terms of this Agreement vary from the terms and conditions of the other Contract Documents, the terms and conditions of this Agreement shall prevail.

The Contract Documents set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either of them has made any representation or promise with respect to the parties' agreement which is not contained in the Contract Documents.

2. SCOPE OF WORK

The Contractor agrees to perform the goods and/or services described in the Contract Documents (hereinafter "the Work"). The primary purpose of the Work is to provide bikeshare stations and startup equipment in compliance with the FHWA Federally Funded Projects requirements.

The Contract Documents set forth the minimum Work estimated by the County and the Contractor to be necessary to complete the Work. It shall be the Contractor's responsibility, at the Contractor's sole cost, to provide the specific Work set forth in the Contract Documents sufficient to fulfill the purposes of the Work. Nothing in the Contract Documents shall be construed to limit the Contractor's responsibility to manage the details and execution of the Work.

3. CONTRACT TERM

The Contractor's Work shall commence on the date of execution of this Agreement by both parties and shall be completed no later than October 31, 2021 ("Initial Contract Term"), subject to any modifications as provided for in the Contract Documents.

Upon satisfactory performance by the Contractor, if City of Falls Church renews their agreement identified in Exhibit A, the County may elect to renew this Agreement under the same contract unit prices for not more than two (2) additional successive twelve (12) month periods ("Subsequent Contract Term").

However, if City of Falls Church does NOT renew their agreement identified in Exhibit A, this Agreement shall automatically expire on the date of the City of Falls Church contract expiration date

4. CONTRACT PRICING

The County will pay the Contractor in accordance with the terms of the Payment paragraph below, at the unit prices set forth in Exhibit A for Work provided by the Contractor, as described and required in the Contract Documents, and accepted by the County.

5. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of the County Project Officer ("Project Officer"), who shall be appointed by the Director of the Arlington County department or agency requesting the work under this Contract. However, it shall be the responsibility of the Contractor to manage the details of the execution and performance of its work pursuant to the Contract Documents.

6. PAYMENT TERMS

Payment terms will be recorded by the County as net thirty (30) days. The County will pay the Contractor within thirty (30) calendar days after the date of receipt of a correct, as determined by the Project Officer, invoice for goods that have been received and accepted by the Project Officer, subject to the following paragraph. The number of the County Purchase Order pursuant to which authority goods have been delivered shall appear on all invoices.

It is agreed by the parties that Purchase Orders for Equipment shall be accompanied by advance payment of thirty percent (30%) of the total order purchase price, which advance payment will be reimbursable to the County in the event the respective Equipment is not delivered as a result of a breach of this Contract by the Contractor. The remaining balance shall be paid within thirty (30) days of delivery by the Contractor, after due receipt of an invoice issued by the Contractor as per the terms of this Section 6.

7. PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven (7) calendar days after receipt of amounts paid to the Contractor by the County for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or
- b. Notify the County and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven (7) calendar days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the County. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

8. NON-APPROPRIATION

All funds for payments by the County to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia. In the event of non-appropriation of funds by the County Board of Arlington County, Virginia for the goods or services provided under this Contract, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the services covered by this Contract is spent, whichever event occurs first. It is agreed by the parties that in the event of non-appropriation of funds, the County shall remain responsible to pay for orders placed prior to the receipt by Contractor of the notice of termination related to said non-appropriation of funds.

9. ESTIMATED QUANTITIES/NON-EXCLUSIVITY OF CONTRACTOR

During the Contract Term, the Contractor will furnish all of the goods or services described in the Contract Documents and set forth in Purchase Orders accepted by the Contractor. The County will have no obligation to the Contractor if no, or fewer, items or services are required or requested by the County, provided, that, if the County changes any Purchase Orders that have been accepted by the Contractor (i) additional work, materials and services shall be provided/performed on a commercially reasonable basis by the Contractor, and (ii) that where the County elects to cancel in part or in its entirety a Purchase Order, the Contractor shall be entitled to all amounts for goods and/or services that have been delivered and/or ordered by the County and which are non-cancellable up to the date of said change. Any quantities which are included in the Contract Documents are the present expectations of those who are planning for the County for the period of the Contract. The amount is only an estimate and the Contractor understands and agrees that the County is under no obligation to the Contractor to buy that amount, or any amount as a result of having provided this estimate or of having had any normal or otherwise measurable requirement in the past. The Contractor further understands that the County may require goods and/or services in excess of the estimated annual contract amount and that such excess shall not give rise to any claim for compensation other than at the unit prices and/or rates set forth in this Contract. Further, the items or services covered by this contract may be available or become available under other County contracts, and in analyzing its needs, the County may determine that it is in its best interest to procure the items or services through such another contract. Therefore, the County does not guarantee that the Contractor will be the exclusive provider of the goods or services covered by this contract.

10. COUNTY PURCHASE ORDER REQUIREMENT

County purchases are authorized only if a County Purchase Order is issued in advance of the transaction, indicating that the County has sufficient funds available to pay for the purchase. Such a Purchase Order is to be provided to the Contractor by the County Purchasing Agent. The County will not be liable for payment for any purchases made by its employees without appropriate purchase authorization issued by the County Purchasing Agent. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and expense.

11. DELIVERY

Shipments shall be FOB Destination, delivered and unloaded to one or more warehouses within the metropolitan Washington, D.C. region. The delivery location(s) will be specified at the time of order.

Transportation, handling, unloading, and all related charges, except for custom duties and tariffs, are included in the unit prices or discounts submitted by the Contractor with its bid. Should the County require shipments by means other than what the Contractor normally uses, the fees associated with such shipment shall be borne by the County.

The Contractor shall notify the County's Project Officer, or designate, and its designated Operations Associate Contractor of all deliveries at least three (3) business days in advance of the delivery. Deliveries will be accepted between 9am – 5pm, Monday through Friday. The Project Officer or operations Associate Contractor may refuse an entire shipment if the advance notice is not received. The maximum allowable delivery time is eighteen (18) weeks for Stations, twenty-four (24) weeks for Bicycles, and two (2) weeks for spare parts in inventory and sixteen weeks (16) for spare parts not in inventory from the receipt of the requesting Member Jurisdiction's order.

12. INSPECTION, ACCEPTANCE, TITLE, AND RISK OF LOSS

Inspection and acceptance of goods or materials by the County will be at the delivery location in the Washington, D.C. area, and within ten (10) calendar days of delivery. The County will not inspect, accept, or pay for any goods or materials stored or delivered off-site by the Contractor.

Title and risk of loss or damage to all goods shall be the responsibility of the Contractor until acceptance by the County. The County's right of inspection shall not be deemed to relieve the Contractor of its obligation to ensure that all articles, materials and supplies are consistent with specifications and instructions and are fit for their intended use. The County reserves the right to conduct any tests or inspections it may deem appropriate before acceptance.

No goods or materials shall be purchased by the Contractor or any subcontractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by the seller. The Contractor warrants that it has good title to, and that it will require all subcontractors to warrant that they have good title to, all goods or materials for which the Contractor invoices for payment.

14. DISPOSAL OF PACKING MATERIALS, TRASH, AND DEBRIS

The Contractor shall be responsible for all costs associated with the immediate removal of all packing materials, trash, and debris ("Waste"), and legal disposal of the Waste off-site. No County building or waste containers shall be used for the Waste. If the Contractor fails to adhere to this requirement the County will contract a third party for removal and disposal of the Waste left by the Contractor. All costs incurred by the County for removal and disposal of any Waste left by the Contractor will be deducted from the final payment due to the Contractor. Similarly, the County will repair at the Contractor's sole expense any damage to walls, floors, carpeting or any other County-owned, County-controlled, or County-designated operations contractor property that is caused by the Contractor or the Contractor's agents during service provision, delivery, setup or equipment installation; and the County will deduct all costs of the repair from the Contractor's final payment, unless the County agrees that the Contractor will make the repairs. The Contractor must make any such repairs within ten (10) days of the date of damage and to the satisfaction of the County.

15. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of its Work pursuant to this Contract, the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by state

law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an Equal Opportunity Employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- d. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment, and mandates their full participation in both publicly and privately-provided services and activities.
- e. The Contractor will include the provisions of the foregoing paragraphs in every subcontract of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

16. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

In accordance with § 2.2-4311.1 of the Code of Virginia, as amended, the Contractor acknowledges that it does not, and shall not during the performance of this Contract, knowingly employ an unauthorized alien as that term is defined in the federal Immigration Reform and Control Act of 1986.

17. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over \$10,000.00 relating to this Contract, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor by Arlington County in accordance with the Arlington County Purchasing Resolution, the employees of which Contractor are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

18. FAILURE TO DELIVER

In case of failure by the Contractor to deliver goods or services in accordance with the Contract Documents, the County, after written notice, may procure the same or similar goods or services from other sources and the Contractor shall be liable for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the County may have pursuant to this Contract or under law. At its discretion, the County shall be entitled to offset such costs against any sums owed by the County to the Contractor.

19. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

The Contract shall remain in force for the Initial Contract Term or any Subsequent Contract Term(s). However, the County shall have the right to terminate this Contract sooner if the Contractor is in breach or default or has failed to perform satisfactorily the Work required, as determined by the County in its discretion.

If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure such failure(s) within at least fifteen (15) days before termination of the Contract takes effect ("Cure Period"). If the Contractor fails to cure within the Cure Period, or as otherwise specified in the notice, the Contract may be terminated for the Contractor's failure to provide satisfactory Contract performance. Upon such termination, the Contractor may apply for compensation for Contract services satisfactorily performed by the Contractor and allocable to the Contract and accepted by the County prior to such termination unless otherwise barred by the Contract ("Termination Costs"). In order to be considered, such request for Termination Costs, with all supporting documentation, must be submitted to the County Project Officer within fifteen (15) days after the expiration of the Cure Period. The County may accept or reject, in whole or in part, the application for Termination Costs and notify the Contractor of same within a reasonable time thereafter.

If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination shall be immediate after notice from the County to the Contractor (unless the County in its discretion provides for an opportunity to cure) and the Contractor shall not be permitted to seek Termination Costs.

Except as otherwise directed by the County in the notice, the Contractor shall stop work on the date of receipt of notice of the termination or other date specified in the notice, place no further orders or subcontracts for materials, services, or facilities except as are necessary for the completion of such portion of the Work not terminated, and terminate all vendors and subcontracts and settle all outstanding liabilities and claims. Any purchases after the date of termination contained in the notice shall be the sole responsibility of the Contractor.

It is agreed by the parties that should the County terminate this Contract for the Contractor's unsatisfactory performance or breach of the Contract, then the County shall pay to the Contractor all Equipment delivered to the County up to the date of termination, plus the cost of any labor, Equipment or materials ordered by the County and which could not be cancelled or refunded in good faith.

In the event any termination by the County for cause, default, or breach shall be found to be improper or invalid by any court of competent jurisdiction then such termination shall be deemed to have been a termination for convenience.

The Contractor shall have the right to terminate the Contract for County's breach of its obligations pursuant to the Contract, subject to a thirty (30) days' notice to cure.

20. TERMINATION FOR THE CONVENIENCE OF THE COUNTY

The performance of Work under this Contract may be terminated by the County Purchasing Agent in whole or in part whenever the Purchasing Agent shall determine that such termination is in the County's best interest. Any such termination shall be effected by the delivery to the Contractor of a written notice of termination at least fifteen (15) days before the date of termination, specifying the extent to which

performance of the work under this Contract is terminated and the date upon which such termination becomes effective. The Contractor will be entitled to receive compensation for all Contract services satisfactorily performed by the Contractor and allocable to the Contract and accepted by the County prior to such termination and any other reasonable termination costs as negotiated by the parties, but no amount shall be allowed for anticipatory profits.

After receipt of a notice of termination and except as otherwise directed, the Contractor shall stop all designated work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services or facilities except as are necessary for the completion of such portion of the work not terminated; immediately transfer all documentation and paperwork for terminated work to the County; and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

21. INDEMNIFICATION

The Contractor covenants for itself, its employees, and subcontractors to save, defend, hold harmless and indemnify the County, and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards, and commissions (collectively the "County" for purposes of this section) from and against any and all claims made by third parties for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, demands or exposure resulting from, arising out of, or in any way connected with the Contractor's negligent acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the work called for by the Contract Documents. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after notice by the County, the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor shall be liable for and reimburse the County for any and all expenses including but not limited to, reasonable attorneys' fees incurred and any settlements or payments made. The Contractor shall pay such expenses upon demand by the County and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

22. INTELLECTUAL PROPERTY INDEMNIFICATION

The Contractor warrants and guarantees that no intellectual property rights (including, but not limited to, copyright, patent, mask rights and trademark) of third parties are infringed or in any manner involved in or related to the goods provided hereunder.

The Contractor further covenants for itself, its employees, and subcontractors to save, defend, hold harmless, and indemnify the County, and all of its officers, officials, departments, agencies, agents, and employees from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, for or on account of any trademark, copyright, patented or unpatented invention, process, or article manufactured or used in the performance of this Contract, including its use by the County. If the Contractor, or any of its employees or subcontractors, uses any design, device, work, or materials covered by letters patent or copyright, it is mutually agreed and understood, without exception, that the Contract Amount includes all royalties, licensing fees, and any other costs arising from the use of such design, device, work, or materials in any way involved with the Work. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after Notice by the County, the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor shall be liable for and reimburse the County for any and all expenses, including, but not limited to, reasonable attorneys' fees incurred and any settlements

or payments made. The Contractor shall pay such expenses upon demand by the County and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

23. INTELLECTUAL PROPERTY RIGHTS

The Contractor is the sole owner of all intellectual property rights in and to the Equipment to be delivered by Contractor hereunder. No intellectual property rights are conferred to the County by virtue of this Contract or any related Purchase Order, except for the right to use the Equipment for its intended purpose. The County shall not:

- a) reverse compile, reverse assemble, disassemble, translate or otherwise reverse engineer all or any portion of the Equipment;
- b) copy or inspire itself from the intellectual property of the Contractor to develop intellectual property that may be competing with the Equipment;
- c) disclose the results of performance benchmarks for the Equipment to any third party without the Contractor's prior written consent;
- d) remove any logo, copyright notice or other proprietary or restrictive notice of legend contained or included in or on the Equipment.

24. ETHICS IN PUBLIC CONTRACTING

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as any state or federal law related to ethics, conflicts of interest, or bribery, including, by way of illustration and not limitation, the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.), and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its offer was made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

25. COUNTY EMPLOYEES

No employee of Arlington County, Virginia, shall be admitted to any share in any part of this Contract or to any benefit that may arise therefrom which is not available to the general public.

26. FORCE MAJEURE

The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, acts of terrorism, or an act of God beyond the control of the Contractor and outside and beyond the scope of the Contractor's then-current, by industry standards, disaster plan that make performance impossible or illegal, unless otherwise specified in the Contract.

The County shall not be held responsible for failure to perform its duties and responsibilities imposed by the Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, acts of terrorism, or an act of God beyond control of the County that make performance impossible or illegal, unless otherwise specified in the Contract.

27. AUTHORITY TO TRANSACT BUSINESS

The Contractor shall, pursuant to Code of Virginia §§ 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the Initial Term and any Subsequent Contract Term(s) of this Contract. A contract entered into by a Contractor in violation of this requirement is voidable, without any cost or expense, at the sole option of the County.

28. RELATION TO THE COUNTY

The Contractor is an independent contractor, and neither the Contractor nor its employees or subcontractors will, under any circumstances, be considered employees, servants or agents of the County. The County will not be legally responsible for any negligence or other wrongdoing by the Contractor, its employees, servants or agents. The County will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Furthermore, the County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by the County for its employees.

29. ANTITRUST

By entering into this Contract, the Contractor conveys, sells, assigns and transfers to the County all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States or the Commonwealth of Virginia, relating to the goods purchased or acquired by the County under this Contract.

30. AUDIT

The Contractor must retain all books, records and other documents related to this Contract for at least five years after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. The Contractor must provide any requested documents to the County for examination within 45 days of the request, at the County's expense. Should the County's examination reveal any overcharging by the Contractor, the Contractor must, within 30 days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor. If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within five years after the final payment, the Contractor must give the County at least 30 days' notice and must not dispose of the documents if the County objects.

31. ASSIGNMENT

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this Contract, without the prior written consent of the County.

32. AMENDMENTS

Unless otherwise specified herein, this Contract shall not be modified except by written amendment executed by persons duly authorized to bind the Contractor and the County.

33. ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES

Notwithstanding any provision to the contrary herein, no provision of the Arlington County Purchasing Resolution or any applicable County policy is waived in whole or in part.

34. DISPUTE RESOLUTION

All disputes arising under this Agreement, or its interpretation, whether involving law or fact, extra work or extra compensation or time, and all claims for alleged breach of Contract shall be submitted in writing to the Project Officer as soon as the basis for the claim arises. Any such claims shall state the facts surrounding it in sufficient detail to identify it together with its character and scope. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than sixty (60) days after final payment. The time limit for final written decision by the County Manager in the event of a contractual dispute, as that term is defined in the Arlington County Purchasing Resolution, is fifteen (15) days. Procedures for considering contractual claims, disputes, administrative appeals, and protests are contained in the Purchasing Resolution, which is incorporated herein by reference. A copy of the Arlington County Purchasing Resolution is available upon request from the Office of the Purchasing Agent. The Contractor shall not cause a delay in the Work pending a decision of the Project Officer, County Manager, County Board, or a court of law.

35. APPLICABLE LAW, FORUM, VENUE, AND JURISDICTION

This Contract and the work performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia, and the jurisdiction, forum, and venue for any litigation with respect hereto shall be in the Circuit Court for Arlington County, Virginia, and in no other court. In performing the Work under this Contract, the Contractor shall comply with applicable federal, state, and local laws, ordinances and regulations.

36. ARBITRATION

It is expressly agreed that nothing under the Contract shall be subject to arbitration, and that any references to arbitration are expressly deleted from the Contract.

37. NONEXCLUSIVITY OF REMEDIES

All remedies available to the County under this Contract are cumulative, and no such remedy shall be exclusive of any other remedy available to the County at law or in equity.

38. NO WAIVER

The failure of either party to exercise in any respect a right provided for in this Contract shall not be deemed to be a subsequent waiver of the same right or any other right.

39. SEVERABILITY

The sections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph or section of this Contract shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Contract.

40. NO WAIVER OF SOVEREIGN IMMUNITY

Notwithstanding any other provision of this Contract, nothing in this Contract or any action taken by the County pursuant to this Contract shall constitute or be construed as a waiver of either the sovereign or governmental immunity of the County. The parties intend for this provision to be read as broadly as possible.

41. SURVIVAL OF TERMS

In addition to any numbered section in this Agreement which specifically state that the term or paragraph survives the expiration or termination of this Contract, the following sections if included in this Contract

also survive: INDEMNIFICATION; RELATION TO COUNTY; OWNERSHIP AND RETURN OF RECORDS; AUDIT; COPYRIGHT; INTELLECTUAL PROPERTY INDEMNIFICATION; WARRANTY, LIMITATION OF LIABILITY, AND CONFIDENTIAL INFORMATION.

42. HEADINGS

The section headings in this Contract are inserted only for convenience and are not to be construed as part of this Contract or a limitation on the scope of the particular section to which the heading precedes.

43. AMBIGUITIES

Each party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

44. NOTICES

Unless otherwise provided herein, all legal notices and other communications required by this Contract shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered by an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

TO THE CONTRACTOR:

8D Technologies ULC
c/o Lyft, Inc.
Attn: LBS Legal
185 Berry Street, Suite 5000
San Francisco, CA 94107

TO THE COUNTY:

Jim Larsen, Project Officer
Arlington County Commuter Services
Transportation Division
Department of Environmental Services
2100 Clarendon Blvd, Suite 900
Arlington, VA 22201

AND

Sharon Lewis, Purchasing Agent
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 500
Arlington, Virginia 22201

45. NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

46. LIMITATION OF LIABILITY

THE CONTRACTOR EXPRESSLY DISCLAIMS ALL LIABILITY FOR COMPONENTS OF THE COUNTY'S BIKECYCLE SHARE SYSTEM THAT HAVE NOT BEEN DELIVERED BY THE CONTRACTOR HEREUNDER.

THE CONTRACTOR SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL OR SIMILAR DAMAGES, OR FOR LOST PROFITS, LOST REVENUES, LOST PRODUCTION, LOST DATA, OR COSTS OF DATA RECOVERY, WHETHER ARISING UNDER BREACH OF WARRANTY OR CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, INDEMNITY OR ANY OTHER THEORY OF LIABILITY, IRRESPECTIVE OF WHETHER THE CONTRACTOR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES WERE REASONABLY FORESEEABLE.

IN ANY EVENT, EXCEPT FOR CLAIMS OF PERSONAL INJURY, DEATH OR INTELLECTUAL PROPERTY INDEMNIFICATION, CONTRACTOR'S TOTAL LIABILITY FOR ANY AND ALL CLAIMS, DAMAGES AND CAUSES OF ACTION ARISING OUT OF THIS CONTRACT OR ANY RELATED PURCHASE ORDER SHALL BE LIMITED TO THE PRICE PAID BY THE COUNTY FOR THE EQUIPMENT SOLD UNDER THE PURCHASE ORDER.

47. CONFIDENTIAL INFORMATION

Each party shall treat all technical, business or other information and data furnished to it by the other party in connection with any Contract Document with the same degree of confidentiality and diligence as it would apply in its own affairs and that can be reasonably be anticipated when handling confidential information in business transactions. Each party shall protect such technical, business or other information against unauthorized access by third parties, shall not disclose such information and data unnecessarily within its own organization, shall only use the information only for the purposes contemplated in any Contract Document and shall on no account commercially exploit the information. These confidentiality requirements shall not apply to the extent that the recipient of such information is able to demonstrate that the information: (a) was already generally known, or became generally known through no fault of the recipient; or (b) was previously known to the recipient without the recipient being subject to a duty to maintain secrecy or was independently developed by the recipient at a later time; or (c) has been communicated to the recipient by a third party not subject to an obligation to maintain secrecy; or (d) was disclosed on the basis of written authorization provided by the disclosing party; or (e) was disclosed pursuant to a judicial order.

The County is subject to the terms and provisions of Code of Virginia §§ 2.2-3700 et. seq., the Virginia Freedom of Information Act ("VFOIA"), which provides that all public records in the County's custody, possession or control shall be open to the public for inspection and copying to the extent that such disclosure is required by law. If a public disclosure request is made to view or provide copies of any Contractor-provided records or information, the County will promptly notify the Contractor of the request and the date on which any records or information will be released to the requester.

[signatures on next page]

WITNESS these signatures:


THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

8D TECHNOLOGIES ULC

AUTHORIZED
SIGNATURE: 

NAME: Meloni Hurley
TITLE: Assistant Purchasing Agent

DATE: 11/21/2019

AUTHORIZED
SIGNATURE: _____

NAME AND ^{Dor Levi}
TITLE: Head of Lyft Bikes & Scooters

DATE: Sep 23, 2019

EXHIBIT A



CITY
OF **FALLS
CHURCH**

NOTICE OF INTENT TO AWARD CONTRACTS

Solicitation Number	Product/Service Description	Pending Awards To
IFB #0626-18-BIKE	Capital Bikeshare Equipment & Startup	<i>Section A. Bikeshare Stations & Startup Equipment: 8D Technologies</i> <i>Section B. Bicycles: Motivate International, Inc.</i> <i>Section C. Assembly, Station Placement & Start-up; Program Launch: Motivate International, Inc.</i>

Posted 08/13/18
Purchasing Office
James R. Wise, CPPB
Purchasing Agent
jwise@fallschurchva.gov
(703) 248-5007

The City of Falls Church is committed to the letter and spirit of the Americans with Disabilities Act.
To request a reasonable accommodation for any type of disability, call 703 248-5007 (TTY 711).

www.fallschurchva.gov

BIKESHARE STATIONS & STARTUP EQUIPMENT

THIS CONTRACT (hereinafter "Contract") is made and entered into this 26th day of October 2018, by and between the **City of Falls Church** (hereinafter "City") with offices at 300 Park Ave, Falls Church, VA 22046 and **8D Technologies ULC** (hereinafter "Contractor"), with offices at 416 de Maisonneuve West, Suite 1008, Montreal, QC Canada H3A 1L2.

AGREEMENT

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. SCOPE OF WORK

The Contractor shall furnish Bikeshare Stations and Startup Equipment (hereinafter "Equipment") including all equipment, components, parts, supplies, labor, supervision, transportation, delivery and any other resources necessary for providing the equipment as may be required by the City in strict accordance with the requirements of the Contract Documents, defined below.

All equipment shall be new, never titled, and unused. Equipment as configured and ordered by the City is subject to City inspection and acceptance at the delivery location designated for station assembly under separate contract. Such inspection shall include all applicable written Buy America certifications for iron and/or steel components. Equipment shall conform to all applicable Federal and State laws and regulations, including safety standards.

All equipment furnished by the Contractor shall be fully compatible and interoperable with existing Equipment and Back-end Software for the Capital Bikeshare program of the Washington DC area. As used herein, the term "Bikeshare Stations" shall be as described and defined in the City's Invitation for Bid #0626-18-BIKE.

2. CONTRACT DOCUMENTS

The term "Contract Documents" comprise the entire agreement between the City and the Contractor as follows:

- (1) This Contract;
- (2) Contract Attachment A - Pricing Schedule;
- (3) Contract Attachment B - FHWA 1273 Federal Contract Clauses, attached hereto and made a part of;
- (4) The City's Invitation for Bid #0626-18-BIKE entitled "Capital Bikeshare Equipment & Startup" dated May 25, 2018, including all Attachments and as amended by Addendum #1, dated June 20 2018 (collectively, hereinafter the "IFB"); and
- (5) The Contractor's Bid dated June 20, 2018 (hereinafter "Bid").

The Bid and the IFB are attached hereto by reference and made a part hereof.

If there are inconsistencies between specific terms, conditions and/or provisions of the Contract Documents, the terms, conditions and/or provisions of this Contract shall govern overall.

3. TERM OF CONTRACT

- A. The term of this Contract shall commence on the date first written above and continue through October 31, 2021 (Initial Term). This Contract may be renewed, at the expiration of its Initial Term, under the same terms and conditions for two (2) successive, one (1)

year renewal periods, upon mutual written agreement of the parties, contingent upon availability of funds for the purpose and the needs of the City.

- B. Notice of intent to renew this Contract may be given to the Contractor in writing by the City, normally sixty (60) days before the expiration date of the then current contract term. Failure to give such notice will not constitute a breach of this contract. Such notice will not be deemed to commit the City to a contract renewal.
- C. The Contractor shall notify the City, in writing, at least ninety (90) days prior to the then current contract period expiration if the Contractor intends not to renew the contract term, if applicable.

4. DELIVERY

- A. Delivery of all equipment purchased through this contract shall be within 150 days after Contractor receipt of the City's Purchase Order. Time is of the Essence under this Contract.
- B. The Contractor shall keep the City apprised of the scheduled delivery date to the Station Assembly Contractor, to include at least five (5) business days' notice prior to the final confirmed delivery date.
- C. Delivery shall be coordinated in advance with the City's Station Assembly Contractor, with delivery to the following location:

Motivate International Inc.
6035 Blair Road, NW
Washington, DC 20011

5. PRICES AND PRICE REVISIONS

- A. The Contractor shall provide all of the Equipment for the unit prices in accordance with the IFB and as detailed in Contract Attachment A "Pricing Schedule," attached hereto and made a part hereof. The City will pay such applicable fees in consideration of the satisfactory performance and delivery of Equipment under this Contract, except as otherwise provided herein.
- B. Prices may be revised in accordance with the IFB *Section XII - Prices and Price Adjustments*.

6. BUY AMERICA

Buy America provisions for Iron and Steel are applicable for all purchases made with federal funds, per Contract Attachment B. The Contractor shall be fully responsible for compliance with all aspects of applicable federal contract provisions, including the provision of acceptable written documentation and certifications to the City upon inspection of said Equipment.

7. ADDITIONS & CHANGES

- A. The City reserves the right to change, add or delete any categories, line items or quantities; provided however that if the City reduces quantities for or cancels any Purchase Order that the City has issued to the Contractor, City shall pay to Contractor Contractor's costs of any non-refundable deposits for material and equipment made under such Purchase Order and any other costs associated with cancelling all or part of such Purchase Order.
- B. The City reserves the right to add to or make changes to the Scope of Work with regard to work of a similar nature to that specified herein, as mutually agreed to between the City and the Contractor, at a price mutually agreed upon in writing between the City and

the Contractor. Final quantity as confirmed by the City shall determine appropriate Unit Pricing used for calculation.

- C. The City must approve, in writing, any and all unit price additions, changes and/or work that is beyond the initial scope of the Contract. No work for which an additional cost or fee will be charged by the Contractor shall be performed without the prior written authorization of the City. Change Orders must be approved by the City in writing and VDOT (as applicable).

8. PURCHASE ORDERS, INVOICING AND PAYMENT

Services shall not be performed without an issuance of a Purchase Order by the City. All invoices shall reference the applicable City's Purchase Order number and be forwarded to the applicable address thereon. Invoicing and Payment shall be in accordance with IFB *Section XXXIV - Standard Provisions, # 14 Payment Term* and *# 15 Invoicing*.

9. WARRANTIES

The applicable Equipment Warranty shall be in accordance with and subject to the Equipment Warranty set forth in Contractor's Bid Package, except that the warranty period shall run from the date of acceptance, except that said warranty shall begin with date of acceptance per Special Provisions *Section XX - Warranties*:

- New complete stations and major components (such as kiosks, docks and base plates): five (5) years from the date of acceptance by the City, following delivery to the City's Station Assembly Contractor.
- Spare parts, including station batteries: one (1) year from the date of incorporation into use, except that the warranty period shall run from the date of acceptance, following delivery to the City's Station Assembly Contractor.

10. NON-APPROPRIATION OF FUNDS

All funds for payments by the City for goods/services under contract are subject to the availability of general or specific appropriation for this purpose by the City of Falls Church City Council, as applicable. In the event of non-appropriation of funds by the City Council for the goods/services/equipment provided under contract, the City will terminate the contract, without termination charge to the City, on June 30th of the then current fiscal year or when the appropriation made for the then current year for the goods/services /equipment covered by the contract is spent, whichever event occurs first.

11. INDEMNIFICATION

The Contractor agrees to indemnify and hold harmless the City of Falls Church, Virginia, its officers, agents, and employees (collectively, the "Indemnitees") from any liability, claim, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the City's use of: any materials, goods, or equipment of any kind or nature furnished by the contractor; or of any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the negligence or intentional misconduct of any Indemnatee or the failure of any Indemnatee to use the materials, goods or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered. The Contractor agrees to protect the City from third-party claims involving infringement of patents or copyrights arising from the City's use of goods or services provided pursuant to this Contract.

Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and hold harmless and defend the City as herein provided.

The Contractor shall also save the City, its officers, agents and employees harmless from liability of any nature or kind for the use of any copyrighted or un-copyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a Contract for which the Contractor is not the patentee, assignee, licensee or City.

Subject to the Equipment Warranty set forth in the Contractor's Bid Package, Contractor shall protect the City against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery; furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible and protect the City from loss or damage to City owned property while it is in the custody of the Contractor.

If the Contractor uses any design, device, or materials covered by letters patent or copyright, it is mutually agreed and understood without exception that the contract price includes all royalties or costs arising from the use of such design, device, or materials in any way involved with the work.

12. NOTICES

Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by facsimile, or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt. Such notices shall be addressed as follows:

	To Contractor	To City
Name	Sebastien Fournier	Purchasing Agent
Address	416 de Maisonneuve West Suite 1008 Montreal, QC Canada H3A 1L2	300 Park Ave., Suite 300 East Falls Church, VA 22046
Phone	514.906.1212	703.248.5007
Fax	514.906.1214	703.248.5444
Email	sebastienfournier@motivateco.com <i>with a required copy to:</i>	jwise@fallschurchva.gov and purchasing@fallschurchva.gov
Name	Motivate International Inc. Legal Department	
Address	220 36 th Street, Suite 3A Brooklyn, NY 11232	
Email	legal@motivateco.com	

or to such other address as either party may from time to time specify in writing to the other party. Any notice shall be effective only upon delivery, which for any notice given by facsimile shall mean notice which has been received by the party to whom it is sent as evidenced by confirmation slip.

Contractor must provide Notices for change in direct ownership of more than 50%, change in name of firm, or change in mailing address to City within thirty (30) days of such change.

Entire Agreement

This Contract and all other appendices, exhibits, and schedules attached or referred to in this Contract constitute(s) the final, complete, and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Contract and supersede

all prior and contemporaneous understandings or agreements of the parties. This Contract may not be contradicted by evidence of any prior or contemporaneous statements or agreements.

This Contract shall not be modified or amended except by a writing signed by authorized representatives of both parties. This Contract shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed, or caused this Contract to be executed by their duly authorized officials. This Contract may be executed in any number of counterparts, including electronic PDFs, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

THE CITY OF FALLS CHURCH


(Signature)

Wyatt Shields
(Printed Name)

City Manager
(Title)

10/26/2018
(Date)

8D TECHNOLOGIES ULC


(Signature)

Sébastien Fournier
(Printed Name)

General Manager
(Title)

26 oct. 2018
(Date)

Pricing Schedule			
8d Technologies - Contract #0626-18-BIKE-A			
CAPITAL BIKESHARE STATIONS & START-UP EQUIPMENT			
No	Item Description	Unit	UNIT PRICE
1	Complete Station with 12 docks (linear) <i>Per Special Provisions Sections VII & VIII, includes Ad panel</i>	EA	\$ 34,026.00
2	Complete Station with 19 docks (linear) <i>Per Special Provisions Sections VII & VIII, includes Ad Panel</i>	EA	\$ 44,818.00
3	Station Spare Parts Kit <i>Per Special Provisions Sections IX & XXVI</i>	LS	\$ 23,311.00
4	Customer Key Fobs <i>Per Definition; to include City Artwork decals</i>	EA	\$ 3.02
5	Complete Station with 12 docks (linear) <i>Per Special Provisions Sections VII & VIII</i> WITHOUT AD PANEL, FULLY BUY AMERICA COMPLIANT	EA	\$ 31,029.00
6	Complete Station with 19 docks (linear) <i>Per Special Provisions Sections VII & VIII</i> WITHOUT AD PANEL, FULLY BUY AMERICA COMPLIANT	EA	\$ 41,821.00

[SP0F0-000130-00](#)

May 1, 2012; Reissued July 12, 2016
FHWA-1273 (Electronic Version)

The following Form **FHWA-1273** titled **REQUIRED CONTRACT PROVISIONS, FEDERAL-AID CONSTRUCTION CONTRACTS** shall apply to this contract:

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FHWA-1273 – Revised May 1, 2012

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

- A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

- 1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The Contractor (or Subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The

design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the Contract by the Contractor's own organization and with the assistance of workers under the Contractor's immediate superintendence and to all work performed on the Contract by piecework, station work, or by subcontract.
3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the Contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.
4. Selection of Labor: During the performance of this contract, the Contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the Contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth

under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the Contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the Contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the Contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the Contracting Officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the Contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the Contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the Contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the Contractor's EEO obligations within thirty days following their reporting for duty with the Contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the Contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the Contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

- e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

- 4. **Recruitment:** When advertising for employees, the Contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the Contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the Contractor for employment consideration.

In the event the Contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the Contractor is expected to observe the provisions of that agreement to the extent that the system meets the Contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the Contractor to do the same, such implementation violates Federal nondiscrimination provisions.

The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

- 5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
- c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
- d. The contractor will promptly investigate all complaints of alleged discrimination made to the Contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the Contractor will inform every complainant of all of their avenues of appeal.

- 6. **Training and Promotion:**

- a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.
 - b. Consistent with the Contractor's work force requirements and as permissible under Federal and State regulations, the Contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).
 - c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
 - d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.
7. **Unions:** If the Contractor relies in whole or in part upon unions as a source of employees, the Contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the Contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:
- a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.
 - b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
 - c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the Contractor, the Contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.
 - d. In the event the union is unable to provide the Contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the Contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the Contractor from the requirements of this paragraph. In the event the union referral practice prevents the Contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. **Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.
9. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.
- a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.
 - b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.
10. **Assurance Required by 49 CFR 26.13(b):**
- a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.
 - b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.
11. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the Contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.
- a. The records kept by the Contractor shall document the following:
 - (1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
 - (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
 - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;
 - b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This

information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the Contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the Contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. Davis-Bacon and Related Act Provisions

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

- a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are

deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - (I) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (II) The classification is utilized in the area by the construction industry; and
 - (III) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
- (3) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

- (4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- c. Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- d. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Contract, the contracting agency may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

- a. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship

programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.
- (2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:
 - (I) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
 - (II) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - (III) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.
- (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

- (4) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the Contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

- a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
6. **Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
7. **Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
8. **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
9. **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
10. **Certification of eligibility.**
 - a. By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.
3. **Withholding for unpaid wages and liquidated damages.** The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.
4. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the Contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the Contractor's own organization (23 CFR 635.116).
 - a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:
 - (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
 - (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
 - (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.
 - b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the Contract as a whole and in general are to be limited to minor components of the overall contract.
2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the Contractor under the contract provisions.
 3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the Contracting Officer determines is necessary to assure the performance of the Contract.
 4. No portion of the Contract shall be sublet, assigned or otherwise disposed of except with the written consent of the Contracting Officer, or authorized representative, and such consent when given shall not be construed to relieve the Contractor of any responsibility for the fulfillment of the Contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.
 5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the Contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the Contracting Officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the Contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the Contractor enters into pursuant to this contract, that the Contractor and any subcontractor shall not permit any employee, in performance of the Contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to

his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the Contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor).

"Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.
- i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

- a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

- (2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and
 - (4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--
Lower Tier Participants:**

- 1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.
- 2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.



INVITATION FOR BIDS (IFB)

Date: May 25, 2018

IFB NUMBER: 0626-18-BIKE

IFB SUBJECT: **Capital Bikeshare Equipment & Startup**

SEALED BIDS

TO BE SUBMITTED ONLY TO:

Purchasing Office / City Of Falls Church

NEW LOCATION:

400 N. Washington Street, Suite 300-09 (3rd floor)

Falls Church, Virginia 22046 / Phone (703) 248-5007

SEALED BIDS

DUE DATE AND TIME: **by no later than Tuesday, June 26, 2018 @ 11:00:00 A.M.**

prevailing local time (Purchasing Office clock)

Bids are to be presented for time and date validation **ONLY to the City of Falls Church Purchasing Office.**

All inquiries should be made in writing and forwarded to the City's Purchasing Agent, via email to jwise@fallschurchva.gov with copy to kbattle@fallschurchva.gov by no later than five (5) business days prior to the Bid due date (Tuesday, **June 19, 2018 by 12:00 NOON**).

NON-MANDATORY PRE-BID MEETING: Wednesday June 13, 2018 (see p. 7 for details & location)

THIS PAGE AND REQUIRED ATTACHMENTS MUST BE SIGNED AND RETURNED WITH BID

See Bid Submission Checklist

In compliance with this Invitation for Bids and to all the conditions imposed herein, the undersigned offers and agrees to furnish the goods and/or services in accordance with the attached signed bid.

Please type or legibly print all information.

LEGAL NAME & ADDRESS OF FIRM:

Company's Legal Name

By: _____
Authorized Representative - Signature in Ink

Street Address (not PO Box)

Name: _____

Title: _____

Zip: _____ Date _____

Phone: _____ Email: _____

FAX: _____ VA SCC Business Registration # _____

See Attachment D Proof of Authority To Transact Business In VA

Bid Package contains appropriately marked proprietary and/or confidential information. ☐ No ☐ Yes

The City of Falls Church is committed to the letter and spirit of the Americans with Disabilities Act. This document will be made available in alternate format upon request. Call 703 248-5007, (TTY 711).

The City of Falls Church does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against any Bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

IFB 0626-18-BIKE
Capital Bikeshare Equipment & Startup

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SEE ADDITIONAL ATTACHMENTS:

(Separate pdf documents to be downloaded by all Bidders)

ATTACHMENT A BID SHEET - Excel Spreadsheet format

ATTACHMENTS B-G (REQUIRED FORMS):

- B Company & Project-Specific Information
- C Company References & Current Projects
- D Proof of Authority to Transact Business in Virginia
- E Bid Bond
- F Performance Bond *(for Contract Awardees)*
- G Payment Bond *(for Contract Awardees)*

ATTACHMENT H SPECIAL PROVISIONS

ATTACHMENT I CITY OF FALLS CHURCH BIKESHARE STATION SITING DOCUMENT

ATTACHMENT J VDOT FINDING OF PUBLIC INTEREST

ATTACHMENT K CITY OF FALLS CHURCH - DPW General Provisions for Construction Projects *(standard attachment)*

ATTACHMENT L CITY OF FALLS CHURCH - Tree & Landscape Specifications *(standard attachment)*

ATTACHMENT M VDOT & FEDERAL CONTRACT CLAUSES

ATTACHMENT N VDOT REQUIRED FORMS FOR BID PACKAGES

BID SUBMISSION CHECKLIST *Recommended for use by Bidders*

I. SUBJECT

The City of Falls Church ("City") is soliciting bids from qualified firms to provide equipment and startup services for the City's Capital Bikeshare program as is further described herein.

Three (3) contract awards will be made as a result of this solicitation, one award in each of the following categories:

- Bikeshare Stations & Start-up Equipment
- Bicycles
- Assembly, Station Placement, Start-up & Program Launch Services

The Bid Sheet for this IFB is divided into three categories per the above; bidders may submit bid pricing for more than one section. Equipment to be provided and work to be performed under this term contract includes, but is not limited to, that described in the *Special Provisions* supplemented by all other attachments to the IFB. Vendors/Contractors shall supply and place Bikeshare stations, bicycles, and all other components which are completely compatible and interoperable with the existing Capital Bikeshare system of the Washington Metropolitan area. In addition, Program Launch Services are sought for the City of Falls Church.

The City seeks to complete the initial purchases and launch/start-up of its Bikeshare program by Fall 2018. These contracts are funded through RSTP Federal Grant funds administered by the Virginia Department of Transportation (VDOT). The City is required to issue a competitive solicitation and it is not the City's intention to restrict the bids; potential bidders should note VDOT's Finding in the Public Interest (*Attachment J*) regarding proprietary products and processes for the specified equipment, assembly, station placement and startup services.

II. GENERAL

- A. ACCESS TO IFB: This IFB and any addenda are available on the City of Falls Church's ("City's") website: www.fallschurchva.gov/Bids. This solicitation and any associated addenda may also be published through eVA, the Commonwealth of Virginia's electronic procurement portal for registered suppliers (<http://eva.virginia.gov>).
- B. Bidders should note that changes to the IFB, in the form of addenda, are often issued between the issue date and within three (3) days before the closing of the IFB. **Bidders are solely responsible for checking the Website to insure that they have the most current information regarding the IFB.**

All addenda will become part of any resulting contract and must be signed and submitted with your bid.

- C. All questions pertaining to this solicitation must be in writing and received by no later than five (5) business days prior to the IFB closing date. All questions shall be directed only to:

James R. Wise, Purchasing Agent
The City of Falls Church
400 N. Washington Street, Suite 300-09
jwise@fallschurchva.gov / Phone: 703-248-5007
with a copy to kbattle@fallschurchva.gov

No inquiries, if received by the Purchasing Agent within five (5) days of the date set for the opening of bids, will be given any consideration. Any material question or interpretation of a requirement or specification, as determined by the Purchasing Agent, will be expressed in the form of an addendum which will be posted on the City's website (www.fallschurchva.gov/Bids) no later than three (3) days before the date set for receipt of bids. If utilized for the initial IFB release, addenda will also be published through eVA (the Commonwealth of Virginia's e-procurement portal for registered suppliers).

Oral answers will not be authoritative.

- D. The City is not liable for any costs incurred by any Bidder in connection with this IFB or any response by any Bidder to this IFB. The expenses incurred by Bidder in the preparation, submission, and presentation of the bid are the sole responsibility of the Bidder and may not be charged to the City.
- E. ACCEPTANCE OF BIDS - BINDING 180 DAYS: All bids submitted shall be binding for one hundred eighty (180) calendar days following solicitation opening date, unless extended by mutual consent of all parties.
- F. CONTACT RESTRICTED: No Bidder shall initiate or otherwise have contact with any City representative or employee, other than the Purchasing Agent or Purchasing Agent's designee, concerning or related to this IFB, after the date of this solicitation's release and before award or cancellation of this IFB except with the foreknowledge and permission of the Purchasing Agent or his/her representative. Any contact in contradiction to this requirement is prohibited and may cause the disqualification of the Bidder from this procurement process.
- G. INFORMATION RESTRICTED: All requests to or from a Bidder, potential Bidder or other third party regarding information about this Solicitation, including its interpretation, progress, and/or award status should be referred directly to the City's Purchasing Agent or designee. Failure to comply with this requirement may be cause for a Bidder's disqualification. This restriction does not apply to reasonable and necessary communications with existing or potential subcontractors or partners for the sole purpose of a Bidder's Bid Package development under this Solicitation.
- H. This solicitation is being conducted in accordance with the guidelines of the Competitive Sealed Bidding method of contractor selection per the Virginia Public Procurement Act (VPPA) which is incorporated herein by reference.

III. COMPETITION INTENDED

It is the City's intent that this Invitation for Bids (IFB) permits competition. It shall be the Bidder's responsibility to advise the City's Purchasing Agent, in writing, if any language, requirement, specification, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in this IFB to a single source. Such written notification must be received by the Purchasing Agent no later than ten (10) days prior to the date set for the bids to be received. Any such notification shall be sent to the City's Purchasing Agent's email address: jwise@fallschurchva.gov with a copy to kbattle@fallschurchva.gov. Confirmation of email receipt shall be the responsibility of the notifying Bidder.

Nothing herein is intended to exclude any responsible Bidder or in any way restrain or restrict competition. All qualified Bidders are encouraged to submit bids.

IV. ELIGIBILITY

A. The following are minimum requirements for bid submission:

1. The Bidder must submit its Virginia State Corporation Commission ("SCC") registration number or justification for exemption. See Section below entitled "Proof of Authority to Transact Business in Virginia."
2. The Bidder must be currently licensed in accordance with any specific requirements of this solicitation and the Code of Virginia (e.g. Contractor's license, etc). For federally-funded solicitations, licensing is not required at the time of bid submittal.

It is the Contractor's sole responsibility to have knowledge of the applicable license (s), if any, associated with this solicitation's scope of work. Any applicable license(s) shall be maintained during the term of any resultant contract.

B. Any person or firm, or agent of any person or firm, currently suspended or debarred from participation in City procurement, conducting business or submitting bids on contracts by

any other local government or agency of the Commonwealth of Virginia or the Federal Government, is not eligible for contract award under this solicitation.

- C. Any current debarment (Federal, state or local jurisdiction) must be disclosed on the Company Information Form attached to this solicitation.
- D. The Contractor represents and warrants:
 - 1. Contractor is financially solvent and experienced in and competent to perform this type of work.
 - 2. Contractor is familiar with all Federal, State, municipal and department laws, ordinances and regulations, which may in any way affect the work of those employed therein, including but not limited to any special acts relating to the work or to the project of which it is a part.
 - 3. That such temporary and permanent work required by the City can be satisfactorily constructed and used for the purpose of which it is intended and that such construction will not injure any person, or damage any property.

V. PROOF OF AUTHORITY TO TRANSACT BUSINESS IN VIRGINIA

- A. State Corporation Commission (SCC) registration requirements effective July 1, 2010 require that your bid include the identification number issued by the State Corporation Commission as proof of registration or justification for non-registration, per the requirements in this section. **Please complete the Proof of Authority to Transact Business in Virginia form (Attachment D) at the end of this solicitation and submit it with your bid. Failure to provide this information or providing inaccurate or purged information may result in your bid being rejected.**
- B. A firm organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 of the Code of Virginia shall include in its bid the identification number issued to it by the Virginia State Corporation Commission (SCC). The Bidder's SCC ID number shall be provided on the cover sheet of this solicitation on the line entitled "VA SCC Business Registration #" and included on Attachment D.
- C. Any Bidder that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law shall include in its bid a signed statement attached to the Cover Sheet of this IFB, describing why the Bidder is not required to be so authorized under Title 13.1 or Title 59 of the Code of Virginia. Any Bidder described herein that fails to provide the required information or for whom such signed exception is not considered valid by the City, shall not receive an award unless a waiver is granted, in writing, by the City Manager.
- D. The identification number issued by the VA SCC IS NOT the same as a firm's Tax ID Number (TIN).

VI. RIGHTS OF THE CITY

- A. Among the indisputable rights of the City specified herein, the City, at its sole discretion may:
 - 1. Cancel, withdraw or re-advertise this IFB; accept or reject all or any part of bids; and/or waive minor technicalities/informalities.
 - 2. Award a contract to multiple vendors by individual items, in the aggregate, or in combination thereof whenever any such actions are in the best interest of the City.
 - 3. Issue Invitation for Bids for similar goods/services and other projects as the need may occur; issue Purchase Orders and/or expand or otherwise modify existing Purchase Orders for goods/services similar to that being bid hereunder, in consideration of the City's knowledge and/or evaluation of each Contractor's qualifications, expertise, capabilities, performance record, current ability to

perform, location and/or distance to the project, and any and all other factors as may be pertinent to the particular project and for the convenience of the City.

4. Add, delete or change goods, locations, frequency of service, or other factors related to the goods and or services under contract dependent upon requirements that may develop during the contract period and cannot guarantee the amount of work or predict future funding for any resultant contract.
5. Use any or all ideas presented in reply to this solicitation, subject only to the limitations regarding proprietary/confidential data of Bidder.

B. This is an Invitation for Bids and is in no way to be misconstrued as a commitment to purchase on the part of the City.

VII. PREBID MEETING

A non-mandatory PreBid Meeting is scheduled for **Wednesday, June 13, 2018 @ 11:00 am** in the Laurel Conference Room, 1st Floor, 400 North Washington Street (temporary City Hall), Falls Church, VA 22046. Although not mandatory, participation is strongly encouraged. The purpose of the PreBid Meeting is to allow Bidders an opportunity to present questions and obtain clarification relative to any facet of this IFB.

Failure to attend the PreBid Meeting and/or review the sites will not prohibit Bidders from submitting a bid. Each Bidder is responsible for ascertaining conditions at the station sites and claims, as a result of failure to inspect the sites, will not be considered.

Please bring a copy of this IFB to the meeting. Any material IFB changes resulting from this conference will be issued in a written addendum to the solicitation.

VIII. SCOPE OF WORK & REQUIREMENTS

Please refer to the *Special Provisions* (Attachment H), *Bicycle Specifications* (Attachment K) and additional IFB Attachments for detailed requirements.

BRAND NAMES / PROPRIETARY PRODUCTS - Funding for the City's Capital Bikeshare Program equipment and startup is provided by the federal RSTP Program, administered through the Virginia Department of Transportation (VDOT). The City has obtained a Finding of Public Interest from VDOT for the following Proprietary products/processes:

- | | |
|---|-------------------------------------|
| ▪ Bikeshare Stations | 8D Technologies, Inc. ULC |
| ▪ Bikeshare Bicycles | PBSC Urban Solutions, Inc. |
| ▪ Station Assembly & Startup | Motivate International, Inc. |

No other "proposed equals" will be accepted by the City for station components, assembly and startup processes, or program launch services.

Bicycles by other manufacturers submitted as meeting the specifications published in this IFB (see *Special Provisions*), as determined by the City in the City's sole discretion, will be considered as "proposed equals." Stations, bicycles and associated software must be fully interoperable with those in all other local jurisdictions participating in the Capital Bikeshare Program.

IX. CONTRACT TERM AND RENEWAL OPTIONS

- A. If a contract is awarded, it shall cover the target period from date of award through a three-year period (initial term).
- B. The City reserves the right to renew the contract upon the same pricing, terms, and conditions at the expiration of its initial term for two (2) additional, successive one-year periods. Contract renewals must be authorized by and coordinated through the City's Purchasing Department.

- C. Notice of intent to renew may be given to the Contractor in writing by the City, normally sixty (60) days before the expiration date of the current contract. Failure to give such notice will not constitute a breach of this contract. This notice will not be deemed to commit the City of Falls Church to a contract renewal.
- D. Contractor shall notify the City, in writing, at least ninety (90) days prior to the then current contract period expiration if Contractor intends not to extend the contract term.
- E. The City may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.
- F. **NON-APPROPRIATION OF FUNDS** - All funds for payments by the City for goods/services under contract are subject to the availability of general or specific annual appropriation for this purpose by the City of Falls Church City Council, as applicable. In the event of non-appropriation of funds by the City Council for the goods/services provided under contract, the City will terminate the contract, without termination charge to the City, on June 30th of the then current fiscal year or when the appropriation made for the then current year for the goods/services covered by the contract is spent, whichever event occurs first.

X. BID SECURITY – BID BOND

- A. The Bid must be accompanied by a bid bond, a certified check upon a solvent bank or trust company, made payable to the order of "The City of Falls Church," or cash escrow in an amount not less than 5 (five) percent of the total bid price submitted.
- B. The bid bond shall utilize the City form as found in Attachment E.
- C. The bid security of the unsuccessful Bidders will be returned within 5 (five) days after the execution of the Contract or, if no such Contract has been executed, within 180 (one hundred eighty) days after the date of opening Bids. The bid security of the successful Bidder will be returned only after he has duly executed the Contract and furnished the required bonds and insurance.
- D. Bids shall be firm and irrevocable for 180 (one hundred eighty) days after the date fixed for opening the Bids unless such time period is extended by mutual consent of the parties.

XI. CONTRACT SECURITY - PERFORMANCE AND PAYMENT BONDS

- A. The Contractor shall furnish Performance Bond and Payment Bonds in sums equal to the amount of projected annual contract requirements if said requirements exceed \$350,000. The City may require Performance and/or Payment Bonds at a lower threshold amount when the City determines it is in its best interests to do so.
- B. The Performance Bond shall remain in full force throughout all contract terms and through the one year warranty/guarantee period following completion and acceptance. The bonds shall utilize City forms as found in Attachments F and G.
- C. The Performance and Payment Bonds shall be issued by a solvent and responsible surety company licensed to conduct business in the Commonwealth of Virginia, named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department, and acceptable to the City. These bonds shall be delivered and countersigned by a local authorized representative of such Surety who is a resident of the Commonwealth of Virginia, regularly commissioned and licensed in the Commonwealth and producing satisfactory evidence to the City of the person or persons executing the bonds to execute them on behalf of the Surety. The Performance and Payment Bonds shall serve as security for the faithful performance of this Contract, and for the payment of all persons performing labor and furnishing materials and services in connection with this Contract.
- D. The premiums on the Performance and Payment Bonds shall be paid by the Contractor.

- E. Such Performance and Payment Bonds shall serve as security for the faithful performance of individual projects under this Contract, and for the payment of all persons performing labor and furnishing materials and services in connection therewith. The premiums on said Performance and Payment Bonds shall be paid by the Contractor.
- F. If at any time the City becomes dissatisfied with any Surety or Sureties upon the Performance and Payment Bonds, or if for any other reason such bond shall cease to be adequate security for the City, as determined by the City in its sole discretion, the Contractor shall, within five (5) days after notification, substitute acceptable bonds in such form and sum and signed by such other sureties as may be satisfactory to the City. The premiums on such Bonds shall be paid by the Contractor. No further partial payments shall be deemed due or be made until the new sureties have qualified.
- G. Notwithstanding any provisions in these Contract Documents to the contrary, the Contractor may furnish the City with a certified check or cash escrow in the amount of the Contract Sum and in a form acceptable to the City in lieu of the payment bond, the performance bond, or both.

XII. PRICES AND PRICE ADJUSTMENTS

- A. All Contract unit prices will remain fixed through the initial 365 days.
- B. Prices shall be stated in units of quantity specified. No additional charges shall be passed to the City, including any applicable taxes, delivery or surcharges. Prices quoted shall be the final cost to the City. In case of error in the extension of prices, the unit price shall govern.
- C. Bid prices, unless otherwise specified, will be NET 30 F.O.B. destination, freight prepaid and include all charges that may be imposed in fulfilling the terms of the Contract including transportation and handling charges fully prepaid by the Contractor to destination in the City, unless otherwise specified, and subject only to any discount for prompt payment that may be provided in this Invitation.
- D. Price Adjustments
 - 1. The Contractor agrees that all contract unit prices shall remain firm for at least 365 days. Unit Prices may be increased only upon approval of a written request to the Purchasing Agent. Upon receipt of the Contractor's written request, the City shall make a determination to approve or adjust the requested price increase based upon its investigations and the information provided by the Contractor. Any price adjustment agreed to shall take place only after the Contractor initiates a timely written request for such adjustment.
 - 2. The request for a change in the unit price shall be in writing and include, at a minimum, (1) Cause for the adjustment; (2) Proposed effective date; and (3) Amount and/or percentage of the change requested. Documentation to support the requested adjustment (i.e., appropriate Bureau of Labor Statistics index, change in manufacturer's price, etc.) shall be attached.
 - 3. The Contractor shall provide the City prior written notice of any potential increases at least sixty (60) days prior to the proposed effective date of such increase.
 - 4. Any price increases shall be no greater than the percentage change of the CPI-U for the Washington-Baltimore area using Table 4 *Consumer Price Index for All Urban Consumers (CPI-U): Selected areas, all items index*; Washington DC index as listed for the most recent twelve month period on the U.S. Department of Labor's Bureau of Labor Statistics website, or five percent (5%), whichever is the lesser of the two.
 - 5. All increases must be reviewed and approved by the City's Purchasing Agent. Price adjustments shall be by the same percentage as approved and the contract shall be modified accordingly via contract amendment.
 - 6. Any orders placed or purchase orders issued prior to the effective date of the increase shall not be subject to such increase.

7. Price reductions may be initiated by the Bidder at any time and shall be effective immediately.
8. No restocking fees will be charged for product returns under the terms of the contract, if applicable.

XIII. PROMPT PAYMENT DISCOUNT

- A. Unless otherwise specified herein, prompt payment discounts requiring payment in less than fifteen (15) days will not be considered in evaluating a bid for award. However, even though not considered in the evaluation, such discounts will be taken if payment is to be made within the discount period.
- B. In connection with any discount offered, time will be computed from the date an undisputed invoice is received by the City. In the event the Bidder does not indicate a prompt payment discount, it shall be construed to mean NET 30 days.
- C. For the purpose of earning the discount, payment is deemed to be made as of the date of mailing of the City check or issuance of an Electronic Funds Transfer, if applicable.

XIV. PROJECTED REQUIREMENTS/ESTIMATED QUANTITIES:

- A. Unless otherwise specified, any quantities detailed in this solicitation are estimates only, and are given for the information of Bidders and for the purpose of bid evaluation. They do not indicate the actual quantity of goods or services that will be ordered or may be required to meet the specifications or requirements in the Scope of Work since the actual volume will depend upon requirements that develop during the contract period.
- B. No bid will be considered which stipulates that the City shall guarantee to order a specific service, task or quantity thereof.

XV.SUBCONTRACTORS

- A. As used in this solicitation, the term "subcontractor" shall also include firms and/or persons either directly or indirectly employed by Contractor, partners identified in the bid package, and/or others furnished by or acting at Contractor's direction or on Contractor's behalf under the contract.
- B. In the event that the Bidder desires to subcontract some part of the work specified in this solicitation, the Bidder shall furnish the City the names, qualifications, and experience of the proposed material/key subcontractors and the percentage of the work under any resultant contract to be performed by each with the bid package. The Bidder shall provide services as the Prime Contractor.
- C. Subcontractors may be used for not more than forty-nine percent (49%) of the work performed unless otherwise approved in advance by the City. If in the bid package Contractor specifies the subcontractors it will use in the performance of service under the contract resulting from this IFB, and the work performed by those identified subcontractor(s) will not exceed 49% of the total job, City pre-authorization will not be required.
- D. If, however, during the course of the contract, the Bidder wishes to use a subcontractor(s) other than the firms identified in the IFB, and/or the subcontractor(s) will perform more than 49% of the project work, advance written notice and approval of the City shall be required.
- E. The Contractor shall be responsible for completely supervising and directing the work under the Contract and all subcontractors that they may utilize. Subcontractors who perform work under the Contract shall be responsible to the prime Contractor. The Contractor agrees to be fully responsible for the payment to, performance, acts and omissions of their subcontractors/partners and of persons employed by them.
- F. The City reserves the right to reasonably reject the successful firm's selection of subcontractors.

- G. The Contractor shall remain fully liable and responsible for: supervising and directing the work to be done by his/her subcontractor(s) including those persons either directly or indirectly employed by Contractor and shall assure compliance with all the requirements of the contract; payment to; performance, acts and omissions of their subcontractors, partners and of all persons employed by them and to assure that the subcontractors' insurance is in compliance with the requirements of this solicitation and for assuring that all sub-contractors, partners, and/or others furnished by or acting at Contractor's direction or on Contractor's behalf, comply and remain in compliance with all federal, state, and local laws, rules, regulations, orders and other legal requirements that are directly or indirectly related to the performance under the contract, including procurement of required permits, certificates, licenses, insurance, approvals, and/or inspections.
- H. The Contractor shall not enter into any subcontract with any subcontractor who has been suspended or debarred from participating in contracting programs by any agency of the United States Government, the Commonwealth of Virginia or any other state.
- I. The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this contract insofar as they are applicable to the work of subcontractors. The City reserves the right to request a copy of all subcontracts.
- J. Nothing contained in the contract shall create any contractual relationship between any subcontractor and the City.

XVI. LICENSES & VIRGINIA CONTRACTORS

- A. Please refer to *Special Provisions* for specific licensing and certification requirements related to this Contract.
- B. Per VA Code Sections 54.1-1100 et seq. certain licenses for contractors, tradesmen and others are required; an unlicensed contractor is not permitted to submit a bid where the resultant contract will require a license. However, for solicitations involving federal funding, contractor licensing is not required at the time of bid submittal.
- C. Each Bidder is responsible to determine which license(s), if any, are required to perform the work specified in this IFB.
- D. Bidders shall note the applicable VA License Number and include a copy of the applicable license(s) with their bid. If no license is required, or licensing is not required at the time of bid submittal for a federally-funded project, Bidder shall so state on the Company Information form.

XVII. TRADE SECRETS OR PROPRIETARY INFORMATION

- A. Trade secrets or proprietary information submitted by a Bidder in response to this Invitation for Bids shall not be subject to public disclosure under the Virginia Freedom of Information Act. However, the Bidder must invoke the protection of this section prior to or upon submission of data or materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary (Section 2.2-4342F of the Code of Virginia)) for consideration and acceptance by the City as trade secrets or proprietary information.
- B. If the bid contains any proprietary or trade secret material, such notice must be attached as the **first page of the bid, and clearly identify the material/information** by some distinct method such as highlighting/underlining or submission in a separate and clearly labeled section. In addition, the Bidder must (1) indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information and (2) clearly state the justifiable reason why protection is necessary.
- C. **Classification of an entire bid document and/or prices (line item or totals) as proprietary or trade secret is NOT ACCEPTABLE and may result in REJECTION of the bid.**

XVIII. DEBARMENT STATUS

By submitting a bid, the Bidder (including any partner, associate, or subcontractor associated with the provision of goods/services under this solicitation) certifies that they are not (1) currently debarred from conducting business or submitting bids on contracts by any local government or agency of the Commonwealth of Virginia, or the Federal Government; (2) an agent of any person or entity that is currently debarred from conducting business or submitting bids on contracts by any local government or agency of the Commonwealth of Virginia, or the Federal Government; or (3) suspended, proposed for debarment, excluded or disqualified under the non-procurement common rule, or otherwise declared ineligible from receiving Federal contracts, certain subcontracts, and certain Federal assistance and benefits. For procurements that are to be funded by Federal monies, the City will confirm a vendor's status via the U.S. Government's System for Award Management (SAM) available at www.sam.gov.

XIX. AMBIGUITY, CONFLICT OR OTHER ERRORS IN THE IFB

- A. If a Bidder discovers any ambiguity, conflict, discrepancy, omission, or other error in the IFB, it shall immediately notify the City of such error in writing and request modification or clarification of the document. The City will make modifications to material issues by issuing a written revision and will give written notice via addendum posted on the City's website (www.fallschurchva.gov/Bids) and eVA, the Commonwealth of Virginia's electronic procurement portal for registered suppliers (<http://eva.virginia.gov>).
- B. The Bidder is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error in the Invitation for Bids prior to submitting the bid or it shall be waived. Any bid packages that include assumed clarifications and/or corrections without required authentication of same may be subject to rejection by the City.

XX. CONTRACT DOCUMENTS

- A. This solicitation, including all addenda, attachments, exhibits and/or appendices hereto, shall become a part of any contract that may be awarded in addition to any IFB clarifications, responses to questions/issues and Contractor's Bid.
- B. In addition to the Bidder's bid (including any clarifications), to the extent they are included in or incorporated by the solicitation, the following documents are hereby incorporated in and shall form a part of the resulting contract:
 - 1. City Solicitation Form/Award Notice and other documents which may be incorporated by reference, if applicable.
 - 2. General Conditions and Instructions to Bidders.
 - 3. Special Provisions.
 - 4. Pricing Schedules.
 - 5. Any Addenda/Amendments.
 - 6. Purchase Order.
- C. A written award notice (or Acceptance Agreement, contract, or Purchase order) mailed (or otherwise furnished) to the successful Bidder within the time for acceptance specified in the solicitation shall be deemed to result in a binding contract.
- D. There is no binding agreement, no contractual relationship, no understanding nor mutual assent until a contract is signed, executed and exchanged by and between the Bidder and the City.
- E. The contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The contract may be amended or modified only by written modification.

XXI. BID PREPARATION

- A. Before submitting a bid, the Bidder must read the entire solicitation. Failure to read any part of this solicitation shall not relieve the Contractor of its contractual obligations.
- B. The Bid Forms and IFB Cover page must be completed and clearly printed in blue or black ink or by typewriter or computer (except for authorized Bidder representative signature).
- C. All information requested must be submitted. Bids which are substantially incomplete or lack key information may be rejected by the City at its discretion. Bid contents should be arranged in the same order and identified with headings as may be presented herein.

XXII. BID SUBMISSION COVENANTS

The Bidder's signature on the IFB Cover page covenants and certifies acknowledgement and compliance with the following:

1. Fully Informed - The Bidder acknowledges that it has read this solicitation, understands it, has satisfied itself from its own investigation of the conditions to be met and/or goods to be provided, fully understands Bidder's obligation, agrees to be bound by this solicitation's terms and conditions, and will not make any claim for, or have right to cancellation or relief from the contract because of any misunderstanding or lack of information. In addition the Bidder has or will provide properly trained employees, staff, subcontractors (if approved by the City), or other personnel; and has familiarized itself with all federal, state, and local laws, ordinances, and rules and regulations; that in any manner may affect the cost, delivery, progress, or performance of goods and/or work proposed and to be provided under this IFB.
2. Collusion - In the preparation and submission of this IFB, the Bidder did not, either directly or indirectly, enter into any combination or arrangement with any person, firm or corporation or enter into any agreement, participate in any collusion, or otherwise take any action in the restraint of free, competitive bidding in violation of the Sherman Act (15 U.S.C. Section 1 et seq.) or Sections 59.1-9.1 through 59.1-9.17 or Sections 59.1-68.6 through 59.1-68.8 of the Code of Virginia.
3. Employees/Officials Not to Benefit
 - a. To the best of the Bidder's knowledge, no City of Falls Church official or employee having official responsibility for the procurement transaction, or member of his or her immediate family (including spouse, parents or children), has received, been promised, directly or indirectly, or will receive any financial benefit, including but not limited to fees, commission, finder's fee, political contribution or any similar form of remuneration, or other financial benefit of more than nominal or minimal value on account of the act of awarding and/or executing this contract.

If such a benefit has been received or will be received, this fact shall be disclosed with the bid or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.
 - b. Whenever there is reason to believe that a financial benefit of the sort described in paragraph "a" has been or will be received in connection with a bid or contract, and that the contractor has failed to disclose such benefit or has inadequately disclosed it, the City Manager, as a prerequisite to payment pursuant to the contract, or at any other time, may require the Contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.
 - c. In the event the Bidder has knowledge of benefits as outlined above, this information should be submitted with the bid. If the above does not apply at time of award of contract and becomes known after inception of a contract, the Bidder shall address the disclosure of such facts to the City of Falls Church, 400 N.

Washington Street, Suite 300-09, Falls Church, VA 22046. Relevant Invitation For Bid Number should be referenced in the disclosure.

4. Licenses and Insurance - The firm submitting the Bid is licensed and registered to do business in the Commonwealth of Virginia and has the current Contractor's license(s), as may be required under this solicitation (with the exception of federal solicitations), as of the date of Bidder submission.

if awarded the contract, the Contractor shall have insurance coverages as specified in section entitled "Standard Provisions", subsection entitled "Insurance" at the time the work commences and shall submit proof of such insurance to the City as stipulated in that section.

5. Ethics In Public Contracting - The provisions, requirements, and prohibitions as contained in Sections 2.2-4367 through 2.2-4377, of the Virginia Public Procurement Act as set forth in the Code of Virginia, as amended, pertaining to Bidders, contractors, and subcontractors are applicable to this solicitation. By submitting a bid, the Bidder certifies that their bid is made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder, supplier, manufacturer or subcontractor in connection with their bid, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.
6. Conflict of Interest - The provisions referenced in the paragraph above entitled "Ethics In Public Contracting" supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§§ 18.2-498.1 et seq.), and Articles 2 (§§ 18.2-438 et seq.) and 3 (§§ 18.2-446 et seq.) of Chapter 10 of Title 18.2. The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.
7. Employment Discrimination By Contractor Prohibited - During the performance of any resultant contract, the Bidder will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, and Section 2.2-4311 of the Virginia Public Procurement Act which provides that:

In every contract over \$10,000.00 the provisions in "a" and "b" below apply:

- a. During the performance of this contract, the contractor agrees as follows:
 - 1) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 - 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- b. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

8. Drug Free Workplace - In every Contract over \$10,000 the following shall apply:

During the performance of any resultant contract, the contractor agrees to (1) provide a drug-free workplace for the contractor's employees; (2) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (3) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (4) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a contractor in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

XXIII.BID SUBMISSION REQUIREMENTS

- A. Bidder shall complete and submit **one (1) original and one (1) copy** of each bid document below unless otherwise specified. If the Bid Package contains proprietary or confidential information in accordance with the section "Trade Secrets or Proprietary Information" herein, the Bidder shall also submit a separate, redacted version of the bid sealed and clearly marked as such on the outside envelope.
- B. In addition to the hard copies, each Bidder is requested to submit **one (1) complete set of its Bid package in electronic format (USB)**.
- C. Each Bidder must use the City's Bid Sheet (Excel format) to submit a bid.
- D. A complete bid shall consist of the following minimum required documents:
 1. **Signed Cover Sheet** - First Page of this IFB, completed and signed in ink by a person authorized to bind the company.
 2. **Any IFB Addenda (dated & signed)**, Proprietary Information (see Section XVII.B) and/or exceptions for VA SCC Business Registration, if applicable.
 3. **Bid Forms**
 - **Attachment A – Bid Sheet / Price Schedule**
(Bidders to use separate downloadable Excel spreadsheet)
Text, price ranges, multiple entries and/or zeros (\$0) in any price specified line item is unacceptable. All Unit Price boxes must be completed with a dollar figure. Interlineations, text, price ranges and multiple entries on any line item are unacceptable. Any such entries will result in a nonresponsive bid. In the case of zeros (\$0) and lines with blank entries, the City shall interpret this to mean that the work or task being requested is being performed free of charge.
 - **Attachment B - Company Information & Project Specific Information**
Including Equipment Listing and Long Lead Items, as applicable
 - **Attachment C - Company References & Current Projects**
 - **Attachment D - Proof of Authority to Transact Business in Virginia**
 - **Attachment N - VDOT and Federal Forms Required for Bid Packages**
 - **Bid Bond - 5%**

- **Delivery Schedule**

- **Written Warranty**, on company letterhead, which Bidder proposes to furnish

All information and prices must be completed for every line item on the bid forms listed above.

All other pages should be retained in Bidder's file.

- E. Bids shall be placed in a sealed, opaque envelope, and clearly marked in the lower left-hand corner with the Company Name, IFB number, IFB title, and the date/time bids are scheduled to be received. Bids are to be submitted by mail, courier or delivered in person ONLY to:

City Of Falls Church
Attn: Purchasing Agent
400 N. Washington Street, Suite 300-09 (3rd floor) **NEW LOCATION**
Falls Church, Virginia 22046

- F. The City's Purchasing Office is open for the receipt of bids from 9:00 AM until 4:00 PM, Monday through Friday (excluding City holidays). The City is not responsible for deliveries attempted outside of these time periods or misdirected to other offices.
- G. **Any bid received after the date and time due for bid submission as noted on the cover page, whether by mail or otherwise, will not be accepted or considered.** The time of receipt shall be determined by the time the bid is signed in at the Purchasing Office using the Purchasing Office clock as the official time. Bidders are solely responsible for ensuring that their bid is stamped by Purchasing Office personnel by the deadline indicated.

The City is not responsible for delays in the delivery of mail by the U.S. Postal Service, private couriers, the intra-City mail system or delivery by other means. Bidders are solely responsible for ensuring that their bid is received and stamped by Purchasing Office personnel by the deadline indicated.

- H. The City, and its officers, employees or agents will not be responsible for the opening of a bid envelope or package prior to the scheduled opening if that envelope or package is not appropriately sealed and marked as specified.
- I. If the City declares administrative or liberal leave, scheduled receipt of bids will be extended to the next business day after which administrative or liberal leave has been canceled.
- J. Bidders are solely responsible for checking the City's Website to insure that they have the most current information regarding the IFB.
- K. Oral bids or bids delivered by electronic means such as facsimile and e-mail are not allowed and bids so delivered will not be considered.
- L. All erasures, interpolations, and other changes in the bid shall be signed or initialed by the Bidder. Carelessness in quoting business terms (i.e. prices), or in preparation of the bid will not relieve the Bidder. When an error is made in extending total prices, the unit price will govern. Bidders are cautioned to recheck their bids for possible error. Errors discovered after negotiation, if applicable, cannot be corrected, and the Bidder will be required to perform if its bid is accepted, except as otherwise provided herein.
- M. Conditional bids are subject to rejection in whole or in part.
- N. Under no circumstances shall any Bidder whose bid has not been awarded be entitled to any claim for compensation under this solicitation.
- O. The City accepts no responsibility for any expense incurred by the Bidder in the preparation and presentation of a bid, such expenses to be borne exclusively by the Bidder.

XXIV. PUBLIC BID OPENING

- A. All bids received in response to this Invitation for Bids (IFB) by the due date and time will be opened and read publicly on **Tuesday, June 26, 2018** shortly after 11:00 AM, in the Oak Conference Room, 3rd Floor, 400 North Washington Street, Falls Church, VA 22046.
- B. The Bid Tabulation will be posted on the City's website: www.fallschurchva.gov/Bids.

XXV. BID EVALUATION – MULTIPLE AWARDS

- A. The City intends to award multiple contracts based on the total base bid in each category (evaluation model) as indicated on the bid sheet and in consideration of additional qualification and performance factors described in the IFB.
- B. The City reserves the right to make multiple awards in the aggregate, for specific items or combinations thereof.
- C. Award(s) will be made to the lowest responsive and responsible Bidder in each category complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of the City to accept it.
 - 1. Responsiveness relates to compliance in all material aspects with the provisions of the solicitation, including specifications and terms and conditions. Failure to comply with the requirements and/or terms and conditions set forth in this IFB may result in a bid being declared nonresponsive.
 - 2. Responsible Bidder means a person/firm who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance, and who has been prequalified, if required.
- D. Before Contracts are awarded, the bidder submitting the lowest responsive bid must satisfy the City that it has the requisite organization, capital, equipment, ability, resources, personnel, management, business integrity, and experience in the type of municipal work for which it has submitted a bid. The bidder shall verify to the City that it has the sufficient and qualified personnel to provide for the Contract Work. Failure by the lowest responsive bidder to sufficiently satisfy the City of its ability to meet any of the above requirements may serve as grounds for rejection of the bid.
- E. The City reserves the right to waive informalities and consider factors other than price as will protect and preserve the interests of the City.
- F. The following factors, among such others as will protect and preserve the interests of the City, may also be considered in making an award:
 - 1. Availability of equipment required to perform services as well as the qualification of personnel to perform the work.
 - 2. Total Bid price(s) as set forth on the Bid Form (Price Schedule).
 - 3. The specified terms, extended warranty, discounts, etc. of the Bid
 - 4. The proposed delivery schedule ARO.
 - 5. The quality of and record of performance on previous contracts or services into which the Bidder may have entered into with the City or other public bodies or corporations (references).
 - 6. The previous and existing compliance by the Bidder with laws and ordinances relating to other contracts, purchase orders, items and/or services provided by Bidder in other matters.
 - 7. The character, integrity, reputation, judgment, experience and efficiency of the Bidder and quality of performance on previous contracts or services;
 - 8. Whether the Bidder can perform the Contract and/or perform the services and/or provide the items promptly, or within the time specified, without delay or interference taking into consideration other business commitments;

9. The necessary facilities, organization, experience and technical skills as well as sufficiency of the financial resources and ability of the Bidder to perform the Contract and/or provide the services and/or items requested in the IFB.
 10. The ability and availability of the Bidder to provide quality and timely maintenance, service, and/or parts.
 11. The availability and capability of local and regional vendor support as it affects the quantity, quality, and timeliness of the goods and/or services.
 12. Such other information as may be secured by the Purchasing Agent having a bearing on the decision to award the contract.
 13. The City expressly reserves the right to reject the bid of such Bidder, if such records disclose that said Bidder, in the opinion of the City, has not properly performed such contracts or has habitually and without just cause neglected the payment of bills, or has otherwise disregarded his obligations to subcontractors, suppliers or employees.
- G. To be considered for an award, a Bidder must comply in all material respects with the IFB.
- H. The City reserves the right to award a contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids and to waive any informality in bids received whenever such rejection or waiver is in the best interests of the City. The City also reserves the right to reject the bid of a Bidder deemed to be a non-responsible Bidder.
- I. TIE BIDS: In the case of a tie bid, the City may give preference to goods, services, and construction produced in the City or provided by persons, firms or corporations having principal places of business in the City. If such choice is not available, preference shall then be given to goods and services produced in the Commonwealth pursuant to Section 2.2-43 24 of the Code of Virginia. If no City or Commonwealth choice is available, the tie shall be decided by lot.
- J. SINGLE BID RESPONSE/INSUFFICIENT COMPETITION: If only one bid is received for a solicitation or the City otherwise concludes that there is insufficient competition (i.e. only one responsive and responsive Bidder), the City will make a written determination whether to award or to reject the bid. If it is decided to make the award based on a single bid response, the City will make a determination that the prices are fair and reasonable. This determination may be based on price analysis, value analysis or a combination thereof. Price Analysis techniques may include, but are not limited to: comparison with prices for functionally similar items, prices paid by other consumers, prices set forth in a public price list or commercial catalog, City estimates, or the evaluation of two or more similar contracts, if available, awarded to the Bidder within the past two (2) years. In all cases, the Bidder agrees to fully cooperate with the City by providing reasonably requested information. If a determination is made that the prices are not fair and reasonable, then the City may reject the bid, cancel the solicitation and resolicit.
- K. All awards for goods and non-professional services over \$100,000 are contingent upon City Council approval.

XXVI. BID MODIFICATION/WITHDRAWAL

- A. Prior to Bid Opening - A bid may be modified or withdrawn by the Bidder any time prior to the time and date set for the receipt of Bids. The Bidder shall notify the Purchasing Office of its intentions in writing containing the original signature of the Bidder.
1. If a change in the bid is requested, the modification must be so worded by the Bidder as to not reveal the original amount of the Bid but should simply provide the desired addition, subtraction or modification, so that the final price or terms of the bid will not be known to the City until the sealed bids are opened. Modifications shall not be made on the outer envelope or packaging
 2. Modified and withdrawn bids may be resubmitted to the Purchasing Office up to the time and date set for the receipt of bids.
 3. Except as otherwise provided herein, no bid can be withdrawn after the time set for the receipt of Bids and for one hundred eighty (180) days thereafter.

- B. After Bid Opening - Bids that have been appropriately opened by the City cannot be changed, adjusted, corrected or modified in any way other than complete withdrawal. The City's procedures for withdrawal of bids (whether construction or other than construction) is that set forth in Code of Virginia, §2.2-4330(A)(i), which allows withdrawal of a Bid due to an error such as an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a Bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the Bid.

Withdrawal must be requested within two (2) days of the Bid opening by delivering to the City original work papers, documents, and materials used in preparation of the Bid. Work papers, documents, and materials submitted in support of a withdrawal of bids may be considered as trade secrets or proprietary information subject to the conditions of the Virginia Freedom of Information Act. The Purchasing Office will inspect the written evidence submitted by the Bidder with the request and if the Purchasing Office can verify to its satisfaction and sole discretion that the mistake was a non-judgmental mistake, the Bidder will be allowed to withdraw the bid.

No bid shall be withdrawn under this section when the result would be the awarding of the contract on another bid of the same Bidder or of another Bidder in which the ownership of the withdrawing Bidder is more than five percent.

If the City denies the withdrawal of a bid under the provisions of this section, it shall notify the Bidder in writing stating the reasons for its decision and award the contract to such Bidder at the bid price, provided such bidder is a responsible and responsive Bidder.

- C. Effect of Bid Withdrawal - If a bid is withdrawn under the authority of this Section, the lowest remaining bid shall be deemed to be the low bid.

No Bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

Work papers, documents, and materials submitted in support of a withdrawal of bids may be considered as trade secrets or proprietary information subject to the conditions of the Virginia Freedom of Information Act.

XXVII. NOTICE /ACCEPTANCE AGREEMENT

- A. A written award notice (or Acceptance Agreement, contract, or Purchase order) mailed (or otherwise furnished) to the successful Bidder within the time for acceptance specified in the solicitation shall be deemed to result in a binding contract.
- B. The successful Bidder, within a period of ten (10) days from the date of the City's acceptance and approval of their bid, shall be expected to sign the contract (or accept the Purchase Order) and to submit the Certificate of Insurance as required in the relevant article of the contract. Failure to do so may cause the bid to be considered withdrawn.
- C. Performance under any resultant contract shall not begin until receipt of the City's Purchase Order. Contractors providing goods or services without a signed City purchase order do so at their own risk. The City will not be liable for payment of any purchases made by its employees without appropriate purchase authorization signed by City's Purchasing Agent.

XXVIII. PROTEST OF AWARD OR DECISION TO AWARD

Any Bidder may protest the award or decision to award only in accordance with the provisions of Sections 2.2-4357 through 4364 of the Code of Virginia, and only if such is provided for in such Code section.

XXIX. NOTICE OF AWARD

Public announcement of an Award and/or Intent to Award will be posted on the City's website: www.fallschurchva.gov/Bids.

XXX. DOCUMENTATION OF CONTRACTOR PERFORMANCE ISSUES

The City has instituted the Documentation of Contractor Performance Issue (DCPI) procedure to assist staff in documenting Contractor/Consultant performance issues. This procedure is intended to improve the quality of services by facilitating communication between the City and Contractors/Consultants with regard to issues requiring remedial action. This procedure is not considered punitive but should a Contractor/Consultant receive repeated DCPI issuances, the City will consider taking additional steps, including but not limited to the issuance of a "Notice to Cure" and termination of the contract.

XXXI. COOPERATIVE PROCUREMENT

- A. As authorized in Section 2.2-4304 of the Code of Virginia, this procurement is being conducted as a cooperative procurement on behalf of or in conjunction with other public bodies. In accordance with the Virginia Public Procurement Act, any resultant contract may be used by public bodies, agencies, institutions and/or localities of the several states, territories of the United States, and the District of Columbia with the consent of the Contractor at the same prices and/or discounts and terms.
- B. Each jurisdiction and/or political subdivision has the option of executing a separate agreement with the Contractor after making their own legal determination as to whether the use of this contract is consistent with their laws, regulations, and other policies. Such other contracts may contain general terms and conditions unique to those jurisdictions and/or political subdivisions. If, when preparing such a contract, the general terms and conditions of a jurisdiction are unacceptable to the Contractor, the Contractor may withdraw its extension of the award to that public body or political subdivision.
- C. It is the responsibility of the Contractor to notify the jurisdictions and/or political subdivisions of the availability of any contract resulting from this solicitation.

XXXII. TAX EXEMPTION

The City is exempt from the payment of federal excise taxes and the payment of State Sales and Use Tax on all tangible, personal property for its use or consumption. Tax exemption registration number 54-6001271 applies. Such Certificate will be furnished upon request. The price offered must be net, exclusive of taxes. However, when under established trade practice any federal excise tax is included in the list price, a Bidder may quote the list price and shall show separately the amount of federal tax, either as a flat sum or as a percentage of the list price, which shall be deducted by the City. Materials used in the performance of construction contracts are subject to Virginia Sales/Use Tax as described in Section 630-10-27J of the Virginia Retail Sales and Use Tax Regulations.

XXXIII. ANTI-DISCRIMINATION

By submitting their bids, Bidders certify to the City that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the Virginia Public Procurement Act (VPPA). If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds

into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia § 2.2-4343.1E)

XXXIV. TRANSPORTATION AND PACKAGING

By submitting their bids, all Bidders certify and warrant that the price offered for FOB destination – Freight Prepaid & Allowed includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked.

XXXV. VDOT and/or FEDERAL GOVERNMENT CONTRACT REQUIREMENTS

- A. If any purchase order, task(s) or task order under any contract resulting from this IFB is to be funded in whole or in part by the Virginia Department of Transportation (VDOT) or any other State or Federal Government funding source, the Consultant shall comply with supplemental terms and conditions. This shall include the utilization of Disadvantaged Business Enterprises (DBEs), as applicable, and required by any state and/or federal agency for such applicable tasks and/or projects. The City reserves the right to amend the contract, as is permitted, for inclusion of such terms, conditions and provisions.
- B. For each purchase order, task or task order issued under the contract to be funded by VDOT or Federal Government sources, the City shall notify Contractor of the funding source and the Contractor shall comply with the associated requirements.
- C. Necessary specifications, provisions and clauses in Federal and/or VDOT documents, including but not limited to the most current versions of the *Virginia Department of Transportation Road and Bridge Specifications*, *Virginia Department of Transportation Road and Bridge Standards*, and the *Virginia Work Area Protection Manual* are incorporated herein by reference and made a part hereof.
- D. If any task issued by the City is funded by grant monies, the Bidder and the City shall adhere to terms and conditions specified in individual grant agreements.
- E. On December 26, 2013 new consolidated guidance was issued by the federal government in the form of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200). The purpose of the “Uniform Guidance” was to streamline and establish standardized administrative requirements, cost principles, and audit requirements for Federal Awards to non-Federal entities. As a sub-Grantee of federal funds, the City and its consultants/contractors must agree to compliance with all applicable federal regulations, recognizing that (1) these funds are subject to applicable statutory provisions and regulations; and (2) grant awards are subject to the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200).

XXXVI. ORDER OF PRECEDENCE

- A. In the event that there is a conflict between any specific terms, conditions and/or provisions of this IFB, the specific provisions of the IFB shall take precedence over the “Standard Provisions” which shall take precedence over the “General Conditions and Instructions to Bidders” sections herein.
- B. In the event there is a conflict between any specific terms, conditions and/or provisions of contract documents resulting from this solicitation, the contract shall take precedence over the IFB which shall take precedence over the Bidder’s response to the IFB unless otherwise stipulated in the contract.
- C. For tasks or projects funded by any Federal Government agency, in the event there is a conflict between the specific terms, conditions and/or provisions of any contract documents resulting from this IFB and the terms, conditions and/or provisions of such agency, that agency’s terms, conditions and provisions shall take precedence.

XXXVII. CITY OF FALLS CHURCH STANDARD PROVISIONS

- A. Section Headings: The headings of the sections in the “Standard Provisions” and/or “General Conditions and Instructions to Bidders” are inserted for convenience only and are not intended to affect the meaning or interpretation of this solicitation or any resultant contract.
- B. Subject to all state and local laws and all rules, regulations and limitations imposed by legislation of the federal government, bids on all solicitations issued by the City will bind Bidders to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

1. Authority to Transact Business in Virginia

A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described herein that enters into a Contract with the City pursuant to the Virginia Public Procurement Act 2.2-4300 et seq. shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50 of the Code of Virginia, to be revoked or cancelled at any time during the term of the Contract. The City may void any Contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

Any foreign corporation transacting business in Virginia shall secure a certificate of authority, as required by Section 13.1-757 of the Code of Virginia, from the State Corporation Commission, Post Office Box 1197, Richmond, Virginia 23209. The Commission may be reached at (804) 371-9733. The consequences of failing to secure a certificate of authority are set forth in Virginia Code Section 13.1-758.

2. Choice Of Law and Courts

Any contract resulting from this solicitation is made, entered into, and shall be performed in the City of Falls Church, Virginia, unless otherwise specified, and shall be governed in all respects by the applicable laws of the Commonwealth of Virginia. Any litigation with respect thereto shall be brought in the courts of the Commonwealth. Any dispute arising out of the contract, its interpretations, or its performance shall be litigated only in either the General District Court of the City of Falls Church or in the Circuit Court of the County of Arlington, Virginia.

3. Compliance With Laws

The Contractor shall comply at its own expense with all federal, state, and local laws, rules, regulations, orders and other legal requirements that are directly or indirectly related to the Contractor's performance under the contract, including procurement of required permits, certificates, licenses, insurance, approvals, and inspections.

The Contractor shall comply with the Code of Virginia including Section 2.2-4300, the Virginia Public Procurement Act; as well as the City Code, Ordinances, Laws and Policies which are all incorporated herein by reference.

4. Authorized Dealer/Distributor Responsibilities

The Contractor, as the manufacturer or an authorized dealer/distributor of the products specified in the solicitation, hereby transfers all rights, including software rights, licenses and documentation to the City upon product acceptance.

5. Procedures

The extent and character of the services to be performed by the Contractor(s) or products delivered shall be subject to the general control and approval of the City's Project/Contract Manager assigned under the contract, the Purchasing Agent or his/her authorized designee(s). The contractor shall only comply with requests and/or orders issued by the Project/Contract Manager or his authorized designee(s) acting within their authority for the City.

All communications between the parties relating to material contractual issues shall be through

the Purchasing Agent and any material change to the contract must be approved in writing by the Purchasing Agent and the Contractor to be deemed binding.

6. Key Personnel/ Project Staff

Any personnel named in the offer details will remain responsible for performance of the described task(s) throughout the period of any contract resulting from the solicitation. No diversion or replacement may be made without advance written notice to the Purchasing Agent and submission of a resume of the proposed replacement for review and approval by the City.

NO substitutions, additions or cancellations, including those of key personnel, are permitted after Contract award without written approval by the City's Purchasing Agent or his/her designee. Where specific employees are proposed by the Contractor for the work, those employees shall perform the work as long as those employees work for the Contractor, either as employees or subcontractors, unless the City agrees to a substitution. Requests for substitutions shall be reviewed, including submission of a resume for the proposed replacement, for approval approved by the City at its sole discretion.

The City will, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the project by the Contractor. If the City reasonably rejects staff or subcontractors, the Contractor must provide replacement staff or subcontractors satisfactory to the City in a timely manner and at no additional cost to the City. The day-to-day supervision and control of the Contractor's employees shall be the sole responsibility of the Contractor.

Where required, personnel used by the Contractor to perform under the contract shall be licensed and certified as required by the Virginia Board for Contractors. Contractors shall submit evidence of licensing, trades certification and training within five (5) calendar days of the City's request. The City reserves the right to reject any of Contractor's service personnel who, in the City's judgment, are not adequately qualified to perform the work.

7. Purchase Orders

Contractor shall not start work prior to the receipt of a purchase order. A purchase order may be enclosed with the resulting contract or may be issued shortly thereafter, and will become an integral part of the resulting contract.

Any purchase order issued by the City which references this solicitation or resultant contract, shall be deemed to be placed under and incorporate the terms and conditions of this solicitation or resultant contract as well as any supplemental terms and conditions agreed to by the parties in writing. However, the City's failure to specifically incorporate, identify, or reference the contract on any purchase order shall in no manner affect the applicability of these terms and conditions.

Except as provided herein, Contractors providing goods or services without a signed City purchase order do so at their own risk. The City will not be liable for payment of any purchases made by its employees without appropriate purchase authorization signed by City's Purchasing Agent.

In case of an emergency as defined by the City Project Manager, Contract Manager or other authorized representative, the Contractor shall cooperate to the extent reasonably requested with the understanding that a Purchase order will follow.

Orders for less than \$1,000.00 do not require a Purchase Order.

8. Work Site Damages

Any damage to property, whether owned by the City or others, resulting from work performed under this contract, shall be repaired or replaced to the City's satisfaction at the Contractor's expense. Contractor shall immediately notify City of any such damages.

9. Ownership of Documents, Materials and Products

Ownership of all data, materials, and documentation originated and prepared for the City pursuant to the solicitation shall belong exclusively to the City and be subject to public inspection in accordance with the Virginia Freedom of Information Act. All work under the

Contract, compilation of notes, work sheets, and any and all interim and final products and materials shall be the sole property of the City.

Any reports, specifications, drawings, blueprints, negatives or other documents/deliverables obtained or prepared by the Consultant in the performance of its obligations under the Contract shall be the exclusive property of the City of Falls Church, and all such materials shall be returned to the owner upon completion, termination, or cancellation of this Contract. The Consultant shall provide both hard copies and electronic copies of all deliverables produced under this contract, in formats as requested by the City. Consultant shall deliver signed/sealed documents as required by law and as requested by the City. The Consultant shall not use, willingly allow, or cause such materials to be used for any purpose other than performance of all Consultant work under the Contract without the prior written consent of the City. Documents and materials developed by the Consultant under the Contract shall be the property of the City; however, the Consultant may retain file copies, which may not be used without prior written consent of the Owner.

10. Use Of Information:

Any specifications, drawings, sketches, models, samples, tools, computer or other apparatus programs, technical or business information or data, written, oral, or otherwise (all hereinafter designated "Information") which the City furnished, or shall furnish, to the Contractor under the contract or in contemplation of this agreement, or that Contractor comes in contact with on City premises or under City control, shall remain City property. All copies of such information in written, graphic or other tangible form, and all information, ideas, discoveries, improvements, derived from or reflecting such information, shall be returned to City at its request, and in any event within thirty (30) days after the expiration or termination of the contract. Unless such information was previously known to Contractor free of any obligation to keep it confidential, or has been or is subsequently made public by City or a third party without breach of any agreement, it shall be kept strictly confidential and shall be used only in performing services under this Agreement, and may not be used for other purposes except upon such terms as may be agreed upon between Contractor and City in writing. Unless approved in writing by the Purchasing Agent, the Contractor may not sell or give to any individual or organization any information, reports, or other materials given to, prepared, or assembled by the Contractor under the final contract.

11. Workmanship, Inspection and Acceptance

Insofar as possible, the Contractor, in carrying out his/her work, must employ such methods or means as will not cause interruption of or interference with the work of any other Contractor, or City personnel at the site.

All work under the resulting contract shall be performed in a skillful and workmanlike manner. The City may, in writing, require the Contractor to remove any employee from work that the City deems incompetent or careless.

The City reserves the right and may, from time to time, conduct any test and/or make inspections of the work performed, being performed or goods delivered or being delivered under the contract. Any inspection by the City does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements. The presence of an authorized City representative or agent ("Inspector") shall not lessen the obligation of the Contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the Contractor for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.

If goods or services do not conform to requirements, in addition to all other rights and remedies City may have, the City may reject the goods or services in full or part. Non-conforming goods may be returned or non-conforming services rejected at the City's option for refund, credit or replacement at Contractor's expense. Goods rejected upon receipt remain the property of

Contractor. The City's inspection, or lack of inspection, shall not affect any express or implied warranties, nor shall the City waive any rights to return goods which contain latent defects discovered in the testing of the City's products containing such goods. Nothing in this section affects or limits any of the City's rights or remedies available under the contract.

Nothing in this section shall prohibit or restrict the City's right to return goods not accepted by the City within a reasonable period of time without penalty or restocking fees.

If the City has paid Contractor for all or part of the Services that are ultimately rejected or not accepted by the City, or if the City later determines that Contractor's performance of Services was performed in a manner that breached the terms of this Agreement, Contractor shall (in addition to any other remedy available to City) return to City all amounts paid for such Services.

12. Task Order Cost Proposals

The City may require the Contractor to provide a cost proposal for an individual task order to include the Contractor's hours to perform the work based upon their fixed hourly rates contained in any resultant contract. The cost proposal shall also contain the Contractor's costs separated by task; detailed subcontractor costs; a narrative describing work to be performed and the estimated time for completion and other details as may be required by the City. After review and acceptance of the task order proposal, the City will issue a purchase order to perform the work, or if the task is for less than one thousand dollars (\$1,000), the City may issue an Authorization to Proceed letter, signed by a duly authorized City representative. The proposal shall be prepared at no additional cost to the City.

When the scope of services for the task order involves work of such a nature that the Contractor cannot reasonably estimate the time which would be required to provide the services, the City may, at its sole option, agree to an Hourly Rate Purchase Order based on the actual hours worked times the hourly rates indicated in the Contractor's binding fee schedule and other approved expenses. A maximum Purchase Order fee or cost not to exceed limitation shall be agreed upon for Hourly Rate Purchase Orders. When an Hourly Rate Purchase Order is used, the Contractor shall submit detailed time records, documentation for other expenses, and such other evidence as the City may require to support the Contractor's billing request.

For Services required by the City that are not specifically identified in the Contract Fee Schedule but covered under the scope of this Contract, the Consultant shall submit to the City Project Manager, in the task order cost proposal, the detailed costs for these Services.

Any Contractor Technician time shall only be payable for on-site time. Any overtime rates require advance written notice and approval of the City. Such approved overtime rates shall only apply after forty (40) hours of work per week.

For architectural or professional engineering services relating to construction projects, the sum of all Task Orders/projects performed in one contract term and the project fee of any single task order/project shall not exceed limits set in the current VPPA.

13. BPOL License Requirement

Contractor shall be licensed in accordance with the City's "Business, Professional, and Occupational Licensing (BPOL) Tax" Ordinance. All questions regarding the BPOL license requirement and tax should be referred to the Office of the Commissioner of the Revenue, 300 Park Avenue, Suite #104E, Falls Church, Virginia 22046-3301; Phone: (703) 248-5019; Fax: (703) 248-5212.

14. Payment Terms

Payment will be made to Contractor once each month based upon satisfactory and actual services rendered and/or goods received and invoices submitted by Contractor. All such invoices will be paid net thirty (30) days after receipt of an undisputed invoice unless (1) more favorable terms are stated on Contractor's invoice and the City elects to pay on such terms, or (2) any items thereon are questioned, in which event payment will be withheld pending

verification of the amount claimed and the validity of the claim. The Contractor shall provide complete cooperation during any such investigation.

Payment terms shall appear on Contractor's invoice. Any discount period shall be computed from the date of proper receipt of the Contractor's correct invoice. Late payment charges shall not exceed the allowable rate specified in §2.2-4352 of the VPPA (1% per month).

The City reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provisions of the contract or any modifications thereto.

Payment by the City of invoices does not mean or imply that the goods or services have been accepted and does not impair or limit in any way the City's full rights and remedies which shall be and remain as set forth hereof.

15. Invoicing

All invoices to the City shall reference the applicable Purchase Order number and be submitted by the Contractor to the name and address on the Purchase Order unless otherwise directed by the City.

The prices and payments shall be full compensation for the goods, services, labor, tools, equipment, transportation and all other incidentals necessary to deliver the goods and/or complete the services ordered.

Conflicting pre-printed provisions on the reverse or front of the Contractor's form(s) shall be deemed deleted.

Invoices for final payment shall be submitted within thirty (30) days after completion and acceptance of the work or acceptance of the goods unless otherwise specified in the contract or mutually agreed upon in writing.

The City will not honor, process or pay invoices submitted by subcontractors.

16. Changes

The City may, at any time, by written order, require changes within the general scope of the services to be performed or the products to be provided under contract.

If such changes cause an increase or decrease in the Contractor's cost of, or time required for performance of any services or provision of products under the contract, within fifteen (15) days (or other mutually agreeable time period) of receipt of a change order, the Contractor shall submit a written proposal for any equitable adjustment to the contract price, delivery schedule, or both. Upon mutual agreement, authorized representative of the parties shall then agree to and sign such modification to the purchase order or contract. Contractor's receipt and performance of a Purchase Order detailing such changes shall be deemed acceptance.

The Contractor shall not begin work on any alteration requiring a change order until the agreement, setting forth the changes/modifications, has been executed by the City and the Contractor or associated Purchase Order received. No products or services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the City.

If a satisfactory agreement cannot be mutually agreed to for any item requiring a change order, the City reserves the right to terminate the contract as it applies to the items/services in question and make such arrangements as may be deemed necessary to complete the work.

No payment shall be made to the Contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the Contractor shall first have been expressly authorized and ordered in writing by change order or Contract Amendment.

17. Additions/Deletions:

The City reserves the right to add similar items/services or delete items/services specified in the resultant contract as requirements change during the period of the contract by contract amendment. The City and the Contractor will mutually agree to prices for items/services to be added to the contract and/or reduction in overall costs for items/services deleted.

18. Safety

All contractors and subcontractors performing services for the City are required to comply with OSHA standards, all other Federal and State guidelines, and other industry accepted safety rules and regulations.

Precaution shall be exercised at all times for the protection of persons (including employees) and property.

The Contractor and all subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, as it may apply to this Contract.

Contractor(s) shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site area under this contract. The City has sole right to dismiss contractors and/or subcontractors for non-compliance to the above rules and regulations and/or safety violation. The contractor must rectify all safety concerns prior to continuance of work.

19. Communications

At least one on-site worker who has supervision authority must be conversant in the English language. This is necessary because of the need to provide job instructions, ensure compliance with safety regulations and communicate with City staff and/or other contractors on site. The City shall be sole judge of the communication level of the contractor's employees. Failure to have an English-speaking worker on each job is cause to halt work until the situation is remedied. Should this happen, it shall be at no additional cost to the City.

20. Warranties and Guarantees

Contractor warrants to the City that services provided hereunder shall be diligently, efficiently and skillfully performed in a manner which meets or exceeds the highest prevailing standards in the industry, and in accordance with applicable specifications.

Contractor represents and warrants that all products will be new, free from defects in material or workmanship and will conform to, comply, function and perform in accordance with the requirements and specifications, and that Contractor will make all necessary adjustments, repairs and replacements to maintain all goods in such condition during the term of the applicable warranty, in accordance with the terms and conditions hereof. Unless otherwise specified such adjustments, repairs and replacements will be provided at no additional cost to the City during the applicable warranty term. Contractor further warrants that each product furnished under the contract will perform such general and specific operations and have such general and specific characteristics as described and claimed for them in any of Contractor's published literature, descriptions and specifications whether or not such literature, descriptions and specifications are included in or referenced by a Purchase Order or this Agreement.

All warranties shall survive inspection, acceptance and payment.

Contractor's and/or manufacturer's warranty shall cover all parts and factory labor. Any warranty specified by the Contractor shall not act to void longer guarantees given by the manufacturer of the equipment or its components.

The Contractor agrees to: furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions therein set forth provided that the City may reduce the said services at any time; enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence; and render all work and services

in strict conformance to all laws, statutes, and ordinances and the applicable rules, regulations, methods, and procedures of all government boards, bureaus, offices, and other agents.

The City's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.

All periods of warranty, and periods of manufacturers' product and/or equipment warranties shall commence on the date of Acceptance of the Work and shall extend for a minimum period of one year thereafter

21. Default

In case of failure to deliver products or meet specifications in accordance with the contract terms and conditions, the City, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the City may have.

22. Contract Disputes Resolution

Arbitration shall not be applicable for the resolution of disputes between City and Contractor. Disputes by the Contractor with respect to this Contract shall be decided in the first instance by the City's Purchasing Agent. The Purchasing Agent will, after receipt of a letter from the Contractor addressed to the Purchasing Agent detailing the nature of the dispute, pertinent facts, and the Contractor's desired outcome, reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Contractor. This decision shall be final and binding unless within twenty (20) days from the date of such decision the Contractor submits or otherwise furnishes and the Purchasing Agent receives a written appeal addressed to the Purchasing Agent and City Manager. The decision by the City Manager shall be final and binding unless set aside by a Court of competent jurisdiction as fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not to be supported by any evidence. Pending a final determination of a properly appealed decision, the Contractor shall proceed diligently with the performance of the Agreement in accordance with that decision.

Contractual claims, whether for money or other relief, shall be submitted by Contractor in writing no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Any notice or dispute shall be delivered to the City's Purchasing Agent, 400 N. Washington Street, Suite 300-09, Falls Church, VA and shall include a description of the factual basis for the dispute and a statement of the amounts claimed or other relief requested.

A Contractor may not institute legal action until all statutory requirements have been met or prior to receipt of City's decision on the claim.

Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

Any notices to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by facsimile, or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt. Any notice shall be effective only upon delivery, which for any notice given by facsimile shall mean notice which has been received by the party to whom it is sent as evidenced by confirmation slip from that person.

23. Termination

Subject to the provisions below, the contract may be terminated by the City upon written notice; but if any work or service hereunder is in progress, but not completed as of the date of termination,

then the contract may be extended upon written approval of the City until said work or services are completed and accepted.

In every such event in which the City shall terminate the services of the Contractor, the Contractor is obligated and agrees to refund the City any and all monies paid (including advance payments) to it by the City for products not delivered and/or services not rendered by said Contractor as of the date on which Contractor shall receive Notice of Termination.

The City may exercise the City's right of setoff as to any amounts the City may owe the Contractor. The City may require Contractor to transfer title and deliver to the City any or all items produced or procured by Contractor under this contract for performance of the work terminated.

a. Termination for Convenience

The City may cancel and terminate the contract, in part or in whole, without penalty for its convenience. Any such termination shall be effected by delivery of a written Notice of Termination to the Contractor at least ten (10) business days prior to the effective date. After receipt of a notice of termination, the Contractor must stop all work and deliveries under the purchase order/contract on the effective date and to extent specified in the notice. However, any termination notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders or issues prior to the effective date of the termination. A reasonable, equitable adjustment in the contract price shall be made for completed performance, but no amount shall be allowed for anticipated profit on unperformed services.

b. Termination for Cause

The City may terminate the contract at any time, without penalty, by written notice to the Contractor for: (1) cause, default, or negligence ("default") on the part of the Contractor; or (2) if the Contractor should be adjudged bankrupt, or make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of the Contractor's insolvency ("bankruptcy"). In the case of termination for cause, advance written notice by the City is not required. In addition to any right to terminate, the City may enforce any remedy available at law or in equity in connection with such default or bankruptcy, and the Contractor shall be liable for all damages to the City resulting from Contractor's default or bankruptcy.

In the event any Termination for Cause is found to be improper or invalid by any court of competent jurisdiction, then such termination shall be deemed to have been a Termination for Convenience.

c. Termination Due to Unavailability of Funds in Succeeding Fiscal Years

Multiyear contracts may be continued each fiscal year only after funding appropriations and program approval have been granted by the appropriate City authority. If necessary funds are not appropriated or otherwise made available to support continuation of the performance of the contract in a subsequent fiscal year, then the contract shall be canceled on the last day of the then current fiscal year or when the appropriation made for the then current year for the services covered by this Contract is spent, whichever event occurs first, and the Contractor shall be reimbursed for the reasonable value of any documented nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under this agreement. No amount shall be allowed for anticipated profit on unperformed services.

24. Delays/Service Failure

Failure of a Contractor to deliver products or services within the time specified, or within reasonable time as interpreted by the City, or failure to make replacements/corrections of rejected products/services when so requested, immediately or as directed by the City, shall constitute authority for the City to purchase in the open market products/services of comparable grade/quality to replace the services, products rejected, and/or not delivered. Should public necessity demand it, the City reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the City.

If delay is foreseen, Contractor shall give thirty (30) days prior written notice to the designate City Project Manager. The City has the right to extend delivery date if reasons appear, in the sole discretion of the City, to be valid. Contractor must keep the City advised at all times of status of order. Except as otherwise provided in the contract, default in promised delivery or failure to meet specifications, authorizes the City to purchase supplies, equipment, or services elsewhere and charge full increase in cost and handling to defaulting Contractor.

25. Indemnification

The Contractor agrees to indemnify and hold harmless the City of Falls Church, Virginia, its officers, agents, and employees from any liability, claim, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor or any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using department or to failure of the using department to use the materials, goods or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered. The Contractor agrees to protect the City from claims involving infringement of patent or copyrights.

Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and hold harmless and defend the City as herein provided.

The Contractor shall also save the City, its officers, agents and employees harmless from liability of any nature or kind for the use of any copyrighted or un-copyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a Contract for which the Contractor is not the patentee, assignee, or licensee.

The Contractor shall protect the City against latent defective material or workmanship and repair or replace any damages or marring occasioned in transit or delivery; furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible and protect the City from loss or damage to City owned property while it is in the custody of the Contractor.

If the Contractor uses any design, device, or materials covered by letters patent or copyright, it is mutually agreed and understood without exception that the contract price includes all royalties or costs arising from the use of such design, device, or materials in any way involved with the work.

26. Insurance

- a. The Contractor is responsible for its work and for all materials, tools equipment, appliances, and property of any and all description used in connection therewith. The Contractor assumes all risk of direct and indirect damage of or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the contract, or in any way whatsoever with the contracted work.
- b. The Contractor shall, during the continuance of all work under the contract provide the insurance as detailed below:
 - 1) Maintain statutory Workers' Compensation and Employer's Liability insurance in limits of not less than \$100,000 to protect the contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, volunteers, or subcontractors including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia, or which may be hereinafter enacted.
 - 2) Commercial General Liability - \$1,000,000 combined single limit coverage with \$2,000,000 general aggregate covering all premises and operations and including Personal Injury, Completed Operations, Contractual Liability

and, where applicable to the project (as determined by APS), Products and Independent Contractors. The general aggregate limit shall apply to this project.

- 3) Maintain owned, non-owned, and hired Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the contractor. In addition, all mobile equipment used by the contractor in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy. The Garage Keeper's Liability coverage shall also be maintained where appropriate.
- 4) Maintain Contractors Liability insurance in the amount of \$1,000,000 per occurrence/aggregate to insure against loss due to liability imposed upon an owner/contractor for acts arising out of the operations of independent contractors/subcontractors or out of an owner's/contractor's supervisory activity.
- 5) Maintain Professional Liability Insurance. The policy shall cover the City for all sources of liability which would be covered by the latest edition of the standard Errors and Omissions Liability Coverage Form (E&O), as filed for use in the Commonwealth of Virginia by the Insurance Services Office, without the attachment of restrictive endorsements.

Professional Services: Professional services (work performed by an independent contractor, within the scope of the practice of accounting, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy, or professional engineering) shall require a certificate of insurance showing professional liability/errors and omissions coverage insurance with companies authorized or licensed to do business in Virginia, prior to the commencement of services. Certain other service providers shall meet the same requirements (including but not limited to asbestos design/inspection/or abatement contractors, and other health care practitioners).

The E&O Policy shall include the successful Bidder and the Bidder's subcontractors of every tier as the Bidder designated in the declarations.

The minimum E&O Policy limits to be provided by the successful Bidder (inclusive of any amounts provided by an umbrella or excess policy) shall be \$1,000,000 per occurrence combined single limit for bodily injury liability and property damage liability. The limits afforded by the E&O Policy (or umbrella or excess policy with respect to it) shall apply only to the City and City's officials, officers, agents and employees and only to claims arising out of or in connection with the work under this contract.

Notice of Cancellation and/or Restriction - The policy must be specifically endorsed to provide the City with forty-five (45) days' notice of cancellation, non-renewal, change in coverages, and/or restriction.

- 6) Maintain Environmental Impairment Liability Insurance (if applicable) including sudden and accidental pollution and in transit coverage as well as coverage for storage at site in the limits of \$2,000,000 per occurrence/aggregate where appropriate.
- 7) Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.

- 8) Liability Insurance "Claims Made" basis: If the liability insurance purchased by the contractor has been issued on a "claims made" basis, the contractor must comply with the following additional conditions. The limit of liability and the extensions to be included as described previously in these provisions, remain the same. The Contractor must either:
 - (a) Agree to provide certificates of insurance evidencing the above coverage for a period of two years after final payment for the contract. This certificate shall evidence a "retroactive date" no later than the beginning of the Contractors or sub-contractors work under this contract, or
 - (b) Purchase the extended reporting period endorsement for the policy or policies in force during the term of this contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.
- 9) The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.
- 10) The Contractor will provide an original, signed Certificate of Insurance citing the contract number and such endorsements as prescribed herein before any work is started. In addition, the Contractor will secure and maintain all insurance certificates of its subcontractors, which shall be made available to the City on demand.
- 11) The Contractor will provide on demand certified copies of all insurance policies related to the contract within ten (10) business days of demand by the City. These certified copies will be sent to the City from the Contractors insurance agent or representative. During the period of the contract, the City reserves the right to require the contractor to furnish certificates of insurance for the coverage required
- c. No change, cancellation, or non-renewal shall be made in any insurance coverage without a forty-five (45) day advance written notice to the City. The Contractor shall furnish a new certificate prior to any change or cancellation. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
- d. Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all subcontractors of their liabilities provisions of the contract.
- e. Contractual and other liability insurance provided under this contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the City from supervising and/or inspecting the project as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors.
- f. Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the City. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors and of persons employed by subcontractors as it is for acts and omissions of persons directly employed by the Contractor.
- g. The City, its officers and employees shall be named as an "additional insured" in the Automobile and General Liability policies and it shall be stated on the Insurance Certificate that this coverage "is primary to all other coverage the City may possess."
- h. Where required by federal and/or state agreements with the City, offeror/bidder will cooperate and comply with the City's requirements under such agreement and add

third party additional insured. When the City's funding sources so require, the Contractor shall agree to the City's reasonable requests and furnish the Insurance Certificate containing specified wording (e.g., naming the Northern Virginia Transportation Authority - NVTa or its Bond Trustee as "additional insured" for Special Transportation Fund projects).

- i. If an "ACORD" Insurance Certificate form is used by the Contractor's insurance agent, the words, "endeavor to" and "..... but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "Cancellation" paragraph of the form shall be deleted or crossed out.
- j. Insurance coverage required by this solicitation shall be in force throughout the contract term. Should the Contractor fail to provide acceptable evidence of current insurance within five (5) days of written notice at any time during the contract term, the City shall have the absolute right to terminate the contract without any further obligation to the Contractor, and the contractor shall be liable to the City for the entire additional cost of procuring the uncompleted portion of the contract at the time of termination.

27. Correspondence

All communications between the parties relating to material contractual issues shall be through the Purchasing Agent and must be in writing to be deemed binding.

28. Quality

All services shall be performed in a first class workmanlike manner in accordance with current industry standards.

All products provided shall be new, not refurbished, free of material cosmetic defects, latest model, design or pack and in first class condition, including containers suitable for shipments and storage, unless otherwise indicated herein. Products shall meet or exceed industry standards for quality and reliability. Product design and construction must be consistent with current best industry or engineering practices.

All products and services shall meet the then current applicable local, state and federal rules and guidelines.

29. Brand Name Or Equivalent Items

Unless otherwise specified herein, the name of a certain brand, make or manufacturer does not restrict Bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the product desired, and any product which the City, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, will be accepted.

30. Bonding/Contract Security

The City reserves the right to require a bid, performance, and/or payment bond for contracts for goods or services if specified in this solicitation in accordance with sections § 2.2-4336. "Bid Bonds", § 2.2-4337 "Performance and Payment Bonds" and other related sections of the Virginia Public Procurement Act. In such case, the successful Bidder shall bear the cost and be required to furnish such bid, performance, and/or bond in the specified amount with the bid and/or before award of contract, as applicable. The parties shall mutually agree upon the form of the bond document/agreement. If no bond can be furnished by the successful Bidder, the City reserves the right to award the contract to the next most highly qualified and responsible Bidder in the best interest of the City.

31. News Release/Publicity By Contractors

As a matter of policy, the City does not endorse the products or services of a Contractor. News releases or other publicity concerning any resultant contract from this solicitation will not

be made by a Contractor without the prior written approval of the City. All proposed news releases will be routed to the Purchasing Agent for review and consideration of approval.

32. Emergency Purchases

If the Contractor is unable to provide the required service for any period of time, except as provided in the Section "General Terms and Conditions", paragraph entitled "FORCE MAJEURE", the Contractor is responsible for providing a backup service, satisfactory to the City, to the City at no additional cost to the City. The City reserves the right to make arrangements for service, under emergency conditions from other sources, should the Contractor be unable to provide the required service within the required time frame. If this occurs, the City further reserves the right to recover all costs from the Contractor.

33. Americans With Disabilities Act Requirements

The City is fully committed to the Americans with Disabilities Act (ADA) which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all City programs, activities and services. The City government contractors, subcontractors, vendors, and/or suppliers are subject to this ADA policy. All individuals having any City contractual agreement must make the same commitment. Your acceptance of any contract resulting from this solicitation acknowledges your commitment and compliance with ADA.

34. Immigration Reform And Control Act

By entering into a written contract with the City, the Contractor certifies that the Contractor does not, and shall not, during the performance of the Contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

35. Virginia Freedom Of Information Act

All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act.

36. Funding

A contract shall be deemed binding only to the extent of appropriations available for the purchase of goods and services.

37. Assignment

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this contract, without the prior written consent of the City.

If the Contractor desires to assign his or her right to payment of the contract, Contractor shall notify the City's Purchasing Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from his or her obligations or change the terms of the contract.

38. Force Majeure

Neither party shall be liable for any delay or failure to perform its obligations in connection with any action described in this Agreement, if such failure results from any act of God, riot, war, civil unrest, flood, earthquake, acts by the public enemy, or other cause beyond such party's reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).

39. Record Retention/Audits

The Contractor shall maintain accurate records of all invoices, amounts billable to and payments made by the City, during the performance of the contract and for a period of three

(3) years from the completion of this agreement. Such records shall include, but not be limited to: all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices, including the Contractor's copies of periodic estimates for partial payment; ledgers, cancelled checks; deposit slips; bank statements; journals; contract amendments and change orders; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Such records shall be available to the City on demand and without advance notice during the Contractor's normal working hours. City personnel or designee may perform in-progress and post-audits of the Contractor's records.

40. Payments To Subcontractors

Within seven (7) days after receipt of amounts paid by the City for work performed by a subcontractor under this Agreement, the Contractor shall either:

- a. Pay the subcontractor for the proportionate share of the total payment received from the City attributable to the work performed by the subcontractor under this agreement; or,
- b. Notify the City and subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment and the reason for non-payment.

The Contractor shall pay interest to the subcontractor on all amounts owed that remain unpaid beyond the seven-day period except for amounts withheld as allowed in item b. above.

Unless otherwise provided under the terms of this agreement, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include this provision in each of its subcontracts requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor. The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this provision may not be construed to be an obligation of the City.

41. Time Of The Essence

Time is of the essence in respect to all provisions of the contract that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this agreement.

Maintaining design schedules is of critical importance to City projects. Design changes or developments that may affect design schedules should be evaluated for time impact at the onset. If delay of over 10 days is foreseen, the Consultant shall give immediate written notice to the City Project Manager. The Consultant must keep the City advised at all times of status of work. Default in scheduled completion (without documented reasons) or failure to meet scope of services, shall authorize the City to purchase services elsewhere and charge full increase in cost to the defaulting Consultant or deduct the costs from any balance owed the Consultant.

42. Reports

The Contractor must submit status reports as requested and appropriate to the tasks and projects that are developed under contract in a form, format and frequency satisfactory to the City.

43. Antitrust

By entering into a contract, the contractor conveys, sells, assigns and transfers to the City all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the goods or services purchased or acquired by the City under said contract.

44. Relationship of the Parties

The Contractor will be legally considered to be acting solely as an independent contractor and neither the Contractor nor its employees or subcontractors will, under any circumstances, be

considered servants or agents of the City. The City will not be legally responsible for any negligence or other wrongdoing by the Contractor, its servants or agents. The City will not withhold from the contract payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, social security tax, or any other amounts for benefits to the Contractor. Further, the City will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by the City for its employees or officers.

Persons furnished by the respective parties shall not be considered employees of the other party for any purpose. Nothing contained in the solicitation or any resultant contract is intended to give rise to a partnership or joint venture between the parties.

45. Severability

The sections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph or section of this Contract shall be declared invalid by the valid judgment or decree of a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Contract.

46. Non-Waiver

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the contract agreement, shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

The City's failure at any time to enforce any of the provisions of the contract or any right or remedy available hereunder or at law or equity, or to exercise any option herein provided will in no way be construed to be a waiver of such provisions, rights, remedies or options or in any way to affect the validity of this agreement. The exercise by the Client of any rights, remedies or options provided hereunder or at law or equity shall not preclude or prejudice the exercising thereafter of the same or any other rights, remedies, or options.

47. Non-Exclusive Market Rights

It is expressly understood and agreed that except as otherwise specifically provided, the contract neither grants to Contractor an exclusive privilege to sell or provide to the City any or all goods or services of the type described in the contract which the City may require, nor does it require the purchase of any goods or services from Contractor by the City. Contractor understands and agrees that the City is free to and may contract with other manufacturers and Contractors for the procurement of comparable goods or services.

48. HIPAA Compliance

The Contractor shall comply with all applicable legislative and regulatory requirements of privacy, security and electronic transaction components of the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

49. Confidentiality And Return Of Records

The Contractor agrees that all findings, memoranda, correspondence, documents or records of any type, whether written or oral, and all documents generated by the Contractor or its subcontractors as a result of the City request for services under this Contract, are confidential records ("Record" or "Records"), and neither the Records nor their contents shall be released by the Contractor, its subcontractors, or other third parties; nor shall their contents be disclosed to any person other than the City's Project Manager or designee. The Contractor agrees that all oral or written inquiries from any person or entity regarding the status of any Record generated as a result of the existence of this Contract shall be referred to the Project Manager or designee for response. At the City's request, the Contractor shall deliver all Records to the Project Officer,

including "hard copies" of computer records, and at the City's request, shall destroy all computer records created as a result of the City's request for services under this Contract.

The Contractor agrees to include the provisions of this section as part of any Contract the Contractor enters into with subcontractors or other third parties for work related to work pursuant to this Contract.

No termination of this contract shall have the effect of rescinding, terminating or otherwise invalidating this section.

50. Copyright

The Contractor hereby irrevocably transfers, assigns, sets over and conveys to the City all right, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to this Contract. The Contractor further agrees to execute such documents as the City may request to affect such transfer or assignment.

Further, the Contractor agrees that the rights granted to the City by this paragraph are irrevocable. Notwithstanding anything else in this Contract, the Contractor's remedy in the event of termination of or dispute over the terms of this Contract shall not include any right to rescind, terminate or otherwise revoke or invalidate in any way the rights conferred pursuant to the provisions of this paragraph. Similarly, no termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating the rights acquired pursuant to the provisions of this "Copyright" paragraph.

The use of subcontractors or third parties in developing or creating input into any copyrightable materials produced as a part of the Contract is prohibited unless the City approves the use of such subcontractors or third parties in advance and such subcontractors or third parties agree to include the provisions of this paragraph as part of any contract they enter into with the Contractor for work related to work pursuant to this Contract.

51. Data Sources

The City will provide the Contractor with all necessary and available data possessed by the City that relates to the contract. However, the Contractor is responsible for all costs for acquiring other data or processing, analyzing, or evaluating City data.

52. Conflict Of Interest

In the event that a conflict of interest arises with Contractor acting as the City's authorized Contractor on a specific job, the City reserves the right to seek professional services elsewhere on the specific job over which the conflict arose.

53. Shipping And Billing

Unless instructed otherwise by the City, Contractor shall, for Purchase Orders placed hereunder: (1) deliver entire quantity of items ordered to the destination designated in the Purchase Order in accordance with any specific shipping instructions; (2) enclose a packing memorandum with each shipment and when more than one package is shipped, identify the one containing the memorandum; (3) legibly mark or label on the outside of the shipping container the City's Purchase Order number, commodity description and quantity on all packages and shipping papers; (4) render itemized invoices showing Purchase Order number to the billing address on the Purchase Order and (5) utilize standard commercial packaging, packing and shipping containers.

Products shall be shipped by Contractor, F.O.B. Destination, from Contractor's nearest facility capable of meeting the City's requirements using the most cost effective common carrier with transportation charges prepaid by Contractor and added as a separate item to the invoice to be paid by the City. In no event will City be liable for premium shipping modes unless previously authorized.

54. Provisions Required By Law Deemed Inserted

Each and every provision of laws and clauses required by law to be inserted in a contract resulting from this solicitation shall be deemed to be inserted and incorporated by reference. The contract shall be read and enforced as though the required provisions are included and if through mistake or otherwise, any such provision is not inserted or not correctly inserted, then upon the application of either party, the contract may be amended to make such Insertion.

XXXVIII. GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

- A. The general rules and conditions which follow apply to all purchases and become a definite part of each formal solicitation and resulting contract award issued by the City, unless otherwise specified. Bidders or their authorized representatives are expected to inform themselves fully as to the conditions, requirements, and specifications before submitting bids; failure to do so will be at the Bidder's own risk and relief cannot be secured on the plea of error.
- B. Subject to all state and local laws and all rules, regulations and limitations imposed by legislation of the federal government, bids on all solicitations issued by the City will bind Bidders to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.
- C. If there is a conflict between the terms and conditions in this "General Conditions and Instructions to Bidders" and the Specific Provisions and/or conditions in other attachments to this solicitation, the latter shall take precedence.
1. DEFINITIONS: The terms defined in this section shall have the meanings set forth below whenever they appear regardless of case (capitalized or not), unless the context in which they are used clearly requires a different meaning or a different definition is described for a particular section or provision:
 - a. BID: The offer of a Bidder to provide specific goods or services at specified prices and/or other conditions specified in the solicitation (Invitation for Bids).
 - b. BIDDER: Any individual, company, firm, corporation, partnership or other organization bidding on solicitations issued by the Purchasing Agent and offering to enter into contracts with the City.
 - c. CONTRACTOR: Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the City.
 - d. CITY: City of Falls Church.
 - e. DAY: Unless otherwise specified "day" or "days" shall mean calendar days
 - f. GOODS/PRODUCTS: All material, equipment, supplies, printing, and/or automated data processing/information technology hardware and software.
 - g. INFORMALITY: A minor defect or variation of a bid from the exact requirements of the invitation for bid which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.
 - h. INVITATION FOR BIDS (IFB): A request which is made to prospective suppliers (Bidders) for their quotation on goods or services desired by the City. The issuance of an IFB will contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement.
 - i. OPEN MARKET PROCUREMENT: A method of competitive bidding for the purchase or lease of goods, non-professional services or for the purchase of insurance, construction, or construction management when the estimated cost thereof shall be less than \$50,000.
 - j. PURCHASING AGENT: The Purchasing Agent/Manager employed by the City of Falls Church
 - k. SERVICES: Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

- I. SOLICITATION: As applicable the IFB or process of notifying prospective Bidders that the City wishes to receive bids on a set of requirements to provide goods or services.
- m. STATE: Commonwealth of Virginia.

CONDITIONS OF SOLICITATION RESPONSE

2. FORMS: Unless otherwise specified in the solicitation, all bids shall be submitted on the forms provided, including the Pricing Schedule(s), properly signed in ink in the proper spaces and submitted in a sealed envelope. Should the bid prices and/or any other submissions differ on the copy of the submitted bid, the ORIGINAL copy shall prevail.
3. PROHIBITION AS SUBCONTRACTORS UNDER COMPETITIVE SEALED BIDDING: No Bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.
4. ACCEPTANCE OF BIDS - BINDING 180 DAYS: Unless otherwise specified, all bids submitted shall be binding for one hundred eighty (180) calendar days following solicitation opening date, unless extended by mutual consent of all parties.
5. BIDS FOR ALL OR PART: Unless otherwise specified in the solicitation, the City reserves the right to make award on all items in the aggregate or on any of the items on an individual basis, whichever is in the best interest of the City. A Bidder may restrict his/her bid to consideration in the aggregate by so stating but shall name a single unit price on each item bid. Any bid in which the Bidder names a total price for all the articles without quoting a unit price for each and every separate item may not be considered for award.
6. OMISSIONS & DISCREPANCIES: Any items or parts of any equipment listed in this solicitation which are not fully described or are omitted from such specification, and which are clearly necessary for the completion of such equipment and its appurtenances, shall be considered a part of such equipment although not directly specified or called for in the specifications. Should a Bidder find discrepancies or ambiguities in, or omissions from, the solicitation, including the drawings and/or specifications, he or she shall notify the Purchasing Agent at least five (5) business days prior to the date set for the opening of bids. If necessary, the Purchasing Agent will send a written addendum for clarification to all Bidders no later than three (3) business days before the date set for opening of bids. Notifications regarding specifications will not be considered if received within five days of the date set for opening of bids.
7. BIDDER INTERESTED IN MORE THAN ONE SOLICITATION: If more than one bid is offered by any one party, either directly or by or in the name of his or her clerk, partner, or other persons, all such bids may be rejected. A party who has quoted prices on work, materials, or supplies to a Bidder is not thereby disqualified from quoting prices to other Bidders or firms submitting a bid directly for the work, materials or supplies.
8. SUBSTITUTIONS: No substitutions or cancellations permitted without prior written approval by the Purchasing Agent.
9. CONDITION OF COMMODITIES: All items bid shall be new, latest model, design or pack and in first class condition, including containers suitable for shipments and storage, unless otherwise indicated in bid invitation request. Verbal agreements to the contrary will not be recognized.
10. SAMPLES: Samples, if required, must be furnished free of expense to the City on or before date specified; if not destroyed in examination, they will be returned to Bidder, if requested, at Bidder's expense. Each sample must be marked with the Bidder's name and address, City's request number and opening date. DO NOT ENCLOSE IN OR ATTACH PROPOSAL TO SAMPLE.
11. PROHIBITION AGAINST UNIFORM PRICING: In submitting a solicitation response each Bidder shall, by virtue of submitting a bid, guarantee that he or she has not been a party with other Bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the bids of participating Bidders. Any disclosure to or acquisition by a competitive Bidder, in advance of the opening of the bids, of the terms or conditions of the bid submitted by another competitor may render the entire proceedings void and may require re-advertising for bids.

12. **PROHIBITION AS SUBCONTRACTORS UNDER COMPETITIVE SEALED BIDDING:** No Bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.
13. **QUALIFICATIONS OF BIDDERS:** The City may make such reasonable investigations as deemed proper and necessary to determine the ability of the Bidder to perform the services/furnish the goods, and the Bidder shall furnish to the City all such information and data for this purpose as may be requested. The City reserves the right to inspect the Bidder's physical facilities prior to award to satisfy questions regarding the Bidder's capabilities. The City further reserves the right to reject any bid if the evidence submitted by, or investigations of, such bid fails to satisfy the City that such Bidder is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

BIDDER REMEDIES

14. **APPEAL OF DENIAL OF WITHDRAWAL OF BID:**
- a. A decision denying withdrawal of a bid submitted by a Bidder shall be final and conclusive unless the Bidder appeals the decision within ten (10) days after receipt of the decision by instituting legal action as provided in the Code of Virginia. The Bidder may not institute legal action until all statutory requirements have been met.
 - b. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was arbitrary or capricious, the sole relief shall be withdrawal of the bid.
15. **APPEAL OF DETERMINATION OF NONRESPONSIBILITY:**
- a. Any Bidder who, despite being the apparent low Bidder, is determined not to be a responsible Bidder for a particular City contract shall be notified in writing by the Purchasing Agent. Such notice shall state the basis for the determination, which shall be final unless the Bidder appeals the decision within ten (10) days of receipt of the notice by instituting legal action as provided in the Code of Virginia. The Bidder may not institute legal action until all statutory requirements have been met.
 - b. If, upon appeal, it is determined that the decision of the City was arbitrary or capricious and the award for the particular City contract in question has not been made, the sole relief available to the Bidder shall be a finding that the Bidder is a responsible Bidder for the City contract in question. Where the award has been made and performance has begun, the City may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

SPECIFICATIONS

16. **FORMAL SPECIFICATIONS:** When a solicitation contains a specification which states no substitutes, no deviation therefrom will be permitted and the Bidder will be required to furnish articles in conformity with that specification.

The Bidder shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material, or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.

17. **FEDERAL SPECIFICATIONS:** Any Federal Specifications referred to herein may be obtained from the GSA Federal Supply Service Bureau - Specification Section, 470 East L'Enfant Plaza, S.W., Suite #8100, Washington, D.C. 20407 (Voice: 1-202-619-8925, Fax: 1-202-619-8978).

SHIPPING/DELIVERY PROVISIONS

18. **SHIPPING:** Unauthorized advance shipments and shipments other than for the quantity ordered are returnable at Contractor's expense. Delivery shall not be deemed complete until the goods have been actually received by City at its facility.

19. **RESPONSIBILITY FOR SUPPLIES TENDERED:** Unless otherwise specified in the solicitation, the Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the City may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.
20. **PACKING SLIPS OR DELIVERY TICKETS:** All shipments shall be accompanied by Packing Slips or Delivery Tickets and shall contain the following information for each item delivered: The Purchase Order Number, Name of the Article and Stock Number (Supplier's), Quantity Ordered, Quantity Shipped, Quantity Back Ordered, and Name of the Contractor. Contractors are cautioned that failure to comply with these conditions may be considered sufficient reason for refusal to accept the goods.
21. **COMPLIANCE:** Delivery must be made as ordered and in accordance with the solicitation or as directed by the City when not in conflict with the bid. The decision of the City as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of goods by the City shall rest with the Contractor. Any request for extension of time of delivery from that specified must be approved by the City, such extension applying only to the particular item or shipment affected. Should the Contractor be delayed by the City, there shall be added to the time of completion a time equal to the period of such delay caused by the City. However, the contractor shall not be entitled to claim damages or extra compensation for such delay or suspension. These conditions may vary for construction contracts. See Standard or Specific Provisions for the individual solicitation.
22. **POINT OF DESTINATION:** All materials shipped to the City must be shipped F.O.B. DESTINATION, Freight prepaid and allowed unless otherwise stated in the contract or purchase order. The materials must be delivered to the "Ship to" address indicated on the purchase order.
23. **ADDITIONAL CHARGES:** Unless bought F.O.B. "shipping point" and Contractor prepays transportation, no delivery charges shall be added to invoices except when express delivery is authorized and substituted on orders for the method specified in the contract. In such cases, difference between freight or mail and express charges may be added to invoice.
24. **METHOD AND CONTAINERS:** Unless otherwise specified, goods shall be delivered in commercial packages in standard commercial containers, so constructed as to ensure acceptance by common or other carrier for safe transportation to the point of delivery. Containers become the property of the City unless otherwise specified by Bidder.
25. **REPLACEMENT:** Materials or components that have been rejected by the Purchasing Agent, in accordance with the terms of a contract, shall be replaced by the Contractor at no cost to the City.

GENERAL PROVISIONS

26. **CONTRACT ALTERATIONS:** No alterations in the terms of a contract shall be valid or binding upon the City unless made in writing and signed by the City's authorized representative.
27. **BANKRUPTCY:** If the Contractor should be adjudged bankrupt, or make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of the Contractor's insolvency, then the City may without prejudice to any other right or remedy, terminate the contract Contractor and procure such goods or services from other sources. In such event, the Contractor shall be liable to the City for any additional cost occasioned by such failure or other default. In such cases, the Contractor shall not be entitled to receive any further payment if the expense of finishing the contract requirements, including compensation for additional managerial and administrative services shall exceed the unpaid balance of the contract price, the Contractor shall pay the difference to the City.
28. **SUBCONTRACTING:** If one or more subcontractors are required, the contractor is encouraged to utilize small, minority-owned and women-owned business enterprises. For assistance in finding subcontractors, contact the Virginia Department of Business Assistance <http://www.dba.state.va.us/>; the Virginia Department of Minority Business Enterprise <http://www.dmb.e.state.va.us/>; local chambers of commerce and other business organizations. As part of the contract award, if requested by the

City, the prime contractor agrees to provide the names and addresses of each subcontractor that subcontractor's status as defined by the Commonwealth of Virginia as small, minority-owned and/or woman-owned business and the type and dollar value of the subcontracted goods/services provided.

Except as otherwise specified in the solicitation, the Contractor may subcontract third party issues performed under the contract, but must submit a written list of those subcontractors, their addresses, personnel who will be performing the work, and a description of the work to be performed to the City prior to the work actually being done. The City must agree to the third party's work and reserves the right to deny the third party access if necessary.

29. **LABELING OF HAZARDOUS SUBSTANCES:** If the items or products requested by this solicitation are "Hazardous Substances" as defined by 10.1-1400 of the Code of Virginia (1950), as amended, 42 U.S.C. § 11001 et seq., or 42 U.S.C. § 9601 et seq., then the Bidder, by submitting his bid, certifies and warrants that the items or products to be delivered under this contract shall be properly labeled as required by the foregoing sections and that by delivering the items or products that the Bidder does not violate any of the prohibitions of Sec. 10.1-1400 et seq., or the Code of Virginia or Title 15 U.S.C. Sec. 1263.
30. **MATERIAL SAFETY DATA SHEETS:** Material Safety Data Sheets (MSDS) and descriptive literature shall be provided with the bid or delivered materials for each chemical and/or compound offered. Failure of the Bidder to submit such data sheets may be cause for declaring the bid as non-responsive.
31. **LEGAL ACTION:** No Bidder, potential Bidder, or subcontractor shall institute any legal action until all statutory requirements have been met.
32. **GUARANTEES & WARRANTIES:** All guarantees and warranties required shall be furnished by the Contractor and shall be delivered to the Purchasing Agent before final payment on the contract is made. Unless otherwise stated, manufacturer's standard warranty applies.
33. **GENERAL GUARANTY:** The Contractor agrees to:
 - a. Save the City, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or un-copyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a Contract for which the Contractor is not the patentee, assignee, licensee or City.
 - b. Protect the City against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
 - c. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible.
 - d. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules, and regulations of the City.
 - e. Protect the City from loss or damage to City owned property while it is in the custody of the Contractor.
34. **SERVICE CONTRACT GUARANTY:** The Contractor agrees to:
 - a. Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions therein set forth provided that the City may reduce the said services at any time.
 - b. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
 - c. Render all work and services in strict conformance to all laws, statutes, and ordinances and the applicable rules, regulations, methods, and procedures of all government boards, bureaus, offices, and other agents.
 - d. Allow services to be inspected or reviewed by an employee of the City at any reasonable time and place selected by the City. The City shall be under no obligation to compensate the Bidder for any services not rendered in strict conformity with the contract.
 - e. Stipulate that the presence of a City inspector shall not lessen the obligation of the Bidder for performance in accordance with the contract requirements, or be deemed a defense on the part of the Bidder for infraction thereof. The Inspector is not authorized to revoke, alter,

enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.

35. COVENANT AGAINST CONTINGENT FEES-The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the City shall have the right to terminate or suspend this contract without liability to the City or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

SMALL, WOMAN AND MINORITY-OWNED BUSINESS (SWAM): The City encourages Small, Woman and Minority-owned business to participate in business opportunities with the City. Where Federal grants or monies are involved it is the policy of City, through its agents and employees, to comply with the requirements set forth in the U.S. Office of Management and Budget Circular No. A-102, uniform administrative requirements for Grants and Cooperative Agreements with State and Local Governments, as they pertain to small and minority business utilization. Contact the Virginia Department of Minority Business Enterprise for more information regarding certification and certified businesses: <http://www.dmbv.virginia.gov/>.



CITY
OF **FALLS
CHURCH**

**IFB # 0626-18-BIKE
ATTACHMENT H**

SPECIAL PROVISIONS

**CAPITAL BIKESHARE
EQUIPMENT & STARTUP**

**City of Falls Church
Capital Bikeshare Equipment & Startup**

SPECIAL PROVISIONS

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I. DEFINITIONS

The following definitions shall apply to the entire IFB:

Acceptance means, in terms of goods, approval of the Contractor's invoice for such goods by the City after a reasonable opportunity to inspect. Demonstration of the fully assembled, placed, and programmed equipment shall be required. In terms of services, "Acceptance" means all components of the program launch have been completed.

Ad Panel means a two-sided, metal, static informational display unit, including translucent shatter-resistant covering and locking mechanism. Also referred to as a "Map Frame."

Associate Contractor means a vendor under separate contract connected to the provision of equipment, software, operation or related activities to the Capital Bikeshare program.

Back-end Software means an electronic program that enables hardware such as Stations, Bicycles and Customer Keys to function.

Battery means electrochemical cells included within the Station components, which are rechargeable with sunlight.

Bicycle means a bicycle purchased for use in the Capital Bikeshare system.

Bikeshare Station means a designated area on publicly or privately owned real property that contains one or more of the following physical components: kiosk, dock, technical platform, map frame, cables, batteries, and spare parts. Bicycles are excluded.

(See Section VI for the City's definition of a "Complete Station.")

Customer Key means a key fob used to rent bicycles from Capital Bikeshare stations.

Dock means a locking mechanism contained on a Bikeshare Station and designed to receive a Bicycle for locked storage.

Goods as used in this IFB means equipment, software, products, materials, supplies and/or other tangible deliverables.

Equipment means all physical components provided by, or used by the Contractor and includes, without limitation, a station, bicycle, dock, technical platform, ad panel, terminal, cable, station battery, customer key, and bicycle and station spare parts.

Kiosk - see "Terminal."

Map Frame - see "Ad Panel."

Member means a person who has subscribed to Capital Bikeshare.

Startup means the process of assembling all components and placing the equipment in a specific location, with all necessary connections, to include complete software integration, so that the Bikeshare stations are fully functional and operable and ready for their intended use (sometimes referred to as "installation").

Station Software means the computer application that makes a station function.

System means the equipment, Contractor's website, and all Software to include Station Software.

Terminal means an automated machine with integrated modem and wireless connectivity which allows customer access to docked bicycles via credit and debit card payment capabilities, connected to technical platforms and system software, and including all means necessary for the rental of Bicycles. Also referred to as a "Kiosk."

Technical Platform means base components which rest on the ground and support the Docks, Kiosk, and map frame.

Time for Performance means the date and time by which goods are required to be delivered and/or services are required to be provided, in accordance with the Contract.

Work means the goods and/or services required to be delivered by the Contractor pursuant to the Contract.

II. HISTORY OF THE CAPITAL BIKESHARE PROGRAM

Capital Bikeshare is metro DC's Bikeshare system, with more than 3,700 bikes available at 440 stations across five jurisdictions: Washington, DC; Arlington, VA; Alexandria, VA; Montgomery County, MD; and Fairfax County, VA. Capital Bikeshare provides residents and visitors with a convenient, fun and affordable transportation option for getting from Point A to Point B.

Capital Bikeshare, like other bikesharing systems, consists of a fleet of specially designed, sturdy and durable bikes that are locked into a network of docking stations throughout the region. The bikes can be unlocked from any station and returned to any station in the system, making them ideal for one-way trips. People use Bikeshare to commute to work or school, run errands, get to appointments or social engagements and more.

Capital Bikeshare is available for use 24 hours a day, 7 days a week, 365 days a year. Riders have access to a bike at any station across the system.

In August 2008, the District of Columbia became the first city in North America to launch a bikesharing system. SmartBike DC offered 120 bikes at 10 stations in downtown Washington, DC. Approximately 1,600 people joined SmartBike DC during its two years of operation.

Meanwhile, Arlington, VA was working on its own plans for a bikeshare system and involved the District, Alexandria, VA and Montgomery County, MD to collaborate with them. In 2010, Arlington and the District selected an operator and launched Capital Bikeshare on September 20 of that year.

In August 2012, Alexandria, VA launched eight stations, becoming the third member of the Capital Bikeshare community. In May 2013, Montgomery County became the first jurisdiction in Maryland to join the network, with 50 stations serving transit-adjacent areas in Bethesda, Silver Spring and Rockville. In October 2016, Fairfax County launched two station networks in Reston and Tysons. The regional system has now grown to serve five jurisdictions, with over 440 stations and more than 3,700 bikes.

III. BIKESHARE IN THE CITY OF FALLS CHURCH (“CITY”)

Planning for Bikeshare was first discussed in *Mobility for All Modes*, the transportation chapter of the City's Comprehensive Plan, which was adopted in 2014. That plan contains a vision for expanded mode choice, where both bikes and Bikeshare are part of the solution. Work on Bikeshare station planning began with development of the City's Bicycle Master Plan, which was adopted in 2015. The Master Plan identified a set of Bikeshare corridors which were anchored by the East and West Falls Church Metro stations and which followed the City's commercial corridors.

Bikeshare station locations were identified through the policy guidance of *Mobility for all Modes*, along with the City's Bicycle Master Plan, its Small Area Plans, input from Boards and Commissions, feedback from the public, and a ridership analysis conducted by the

City's consultant firm Foursquare Integrated Transportation Planning. Preliminary Bikeshare station siting locations were identified with assistance from the transportation planning and engineering consultant Toole Design Group, according to station siting criteria that have been used throughout the Capital Bikeshare network.

In 2016, the City of Falls Church received Regional Surface Transportation Program (RSTP) grant funds for its Bikeshare program; these grant funds are administered through the Virginia Department of Transportation (VDOT). Also in 2016, operating funds were received through the Northern Virginia Transportation Commission (NVTC) and the Commonwealth Transportation Board (CTB) from the I-66 - Inside the Beltway multimodal project. Additional operating support may be available from developer contributions.

Public input on station locations was provided through the public engagement process in 2017. Public engagement for Bikeshare included presentations to and feedback from the Planning Commission, Citizens Advisory Committee on Transportation, the Environmental Sustainability Council, the Economic Development Authority, the Chamber of Commerce, and City Council. In addition to Board & Commission meetings, meetings were held with the General Public through a Community Meeting and pop-up meetings at the Farmer's Market.

A Public Hearing for Bikeshare was held at the City Council Regular Meeting on August 14, 2017, and was advertised in advance in the *Falls Church News Press*. Bikeshare station locations were endorsed by City Council at that meeting. Additional information and opportunities for public input on Bikeshare station locations were provided through the Capital Bikeshare Expansion webpage on the City's website, the *Focus on Falls Church* Newsletter, and an interactive GIS map.

IV. SCOPE OF WORK

The City seeks procurement of equipment, placement of equipment and start-up ("program launch" or "launch") services in order to establish its Capital Bikeshare Program through this Invitation for Bid ("IFB"). Separate contracts will be awarded for each of the following:

- A. Bikeshare Stations & Start-up Equipment
- B. Bicycles
- C. Assembly, Station Placement, Startup & Program Launch Services

The City's initial Bikeshare Startup and Program Launch will include at least the following station sites:

1. West Falls Church Metro Station
2. George Mason High School / Haycock Drive
3. Oak Street
4. Pennsylvania Avenue
5. City Hall Campus (or "Municipal Complex")
6. Harris Teeter (W Broad Street)
7. S Maple Avenue
8. E Fairfax Street
9. State Theatre (Park Place, adjacent to N Washington Street)
10. W Columbia Street
11. N Roosevelt Street

The City hopes to expand its Capital Bikeshare program to additional locations in the future, as funding allows. Equipment will be replaced as its useful life expires.

In neighboring Capital Bikeshare Member Jurisdictions, Bikeshare equipment was purchased from PBSC Urban Solutions ("PBSC") and 8D Technologies; all Capital Bikeshare equipment in the region runs on 8D Technologies' Station Software and Back-end Software.

Contract awardees through this IFB shall ensure that all equipment and components, including software, purchased through the newly-awarded Contracts are fully compatible and interoperable with said existing equipment, hardware, software and all related components of Capital Bikeshare. The City notes that the type of "installation" (placement) needed for the Bikeshare stations is not considered "construction" by the Virginia Public Procurement Act (2.2-4301):

“*Construction*” means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.

V. VDOT FINDING OF PUBLIC INTEREST - PROPRIETARY ITEMS

The City has obtained VDOT Locality-Wide approval (Certification C-98a approved by VDOT April 13, 2018 and by FHWA on May 8, 2018, see *Attachment J*) of the proprietary products/equipment and processes listed below and specified in this IFB. Since these are critical for synchronization with existing Capital Bikeshare programs throughout the entire Washington Metropolitan area, no substitutions will be made for station components. Proposed equals will be considered for bicycles meeting the specifications published in this IFB.

- Bikeshare station equipment from **8D Technologies, Inc. ULC**
- Bikeshare bicycles from **PBSC Urban Solutions, Inc.**
- Assembly and placement of station equipment and bicycles, along with startup and program launch services by **Motivate International, Inc.**

VI. EQUIPMENT - GENERAL

All equipment must be the manufacturer's latest current production and include all modular equipment and related components as outlined in this IFB. Equipment shall be fully assembled and ready to operate before being accepted by the City.

For the City's Bikeshare program, Buy America requirements for steel and/or iron components are applicable.

In the event that new types of equipment are developed and manufactured, the Contractor shall provide the City with a written and photographic description of such equipment, along with a price at which the City may order the equipment. In the event that a piece of equipment will no longer be available for purchase, the Contractor shall provide the City with at least six (6) months' notice.

VII. BIKESHARE STATIONS

Each Complete Station shall be fully compatible with existing Equipment and Back-end Software for the Capital Bikeshare program of the Washington Metropolitan area. Bicycles are not included.

A **COMPLETE STATION** for the City of Falls Church is defined as inclusive of the following components:

1. **Solar-Powered Kiosk (“Terminal”), including:**
 - a. Touchscreen display
 - b. RFID reader (Kiosk II Contactless Reader Module)
 - c. Credit/debit card reader (Magnetic strip card reader and/or chip reader) that is EMV (Europay, MasterCard, and Visa) compliant.
 - d. Bike key reader
 - e. Bike key dispenser
 - f. Artwork design (decal) as approved by the City
 - g. Operation capability - four hours or more of direct sunlight in a 24-hour period
2. **Technical Platform, linear or angled configuration** (single ramp slabs, single ramp 4-position slabs, slab end plates, ramps and/or all necessary fasteners required for a complete assembly as required for either 12- or 19-dock station)
3. **Bicycle Docks** with RFID reader, including a bollard and locking cassette (varying in quantity per location; either 12 or 19)
4. **Map Frame** (standard Ad Panel)
5. **Solar Panel, mounted**
6. **All Cables, Wires, Pins, Parts and other Components and Supplies** necessary for a complete and fully operable/interoperable installation

VIII. EQUIPMENT PART NUMBERS

The following 8D Technologies’ Bike Share equipment components are applicable to this solicitation:

▪ Bonfire BS Terminal <i>With Capital Bikeshare / City logo artwork</i>	Part No. 8DT-08-107-0000-BX1R
▪ Bike Key Dispenser Module	Part No. 8DT-01-0991
▪ Kiosk II Contactless reader	Part Nos. 8DT-01-0951 + 8DT-01-0952
▪ CW Bike Dock w/NFC reader	Part No. 8DT-01-121-0000
▪ CW Bike Dock Left interface overlay	Part No. 8DT-01-121-1030
▪ CW Bike Dock Right interface overlay	Part No. 8DT-01-121-1031
▪ BX Ad Panel MK2 / Standard	Part No. 8DT-01-130-0000
▪ Single position single-ramp	Part No. 8DT-01-131-0000
▪ Single-ramp 4 position	Part No. 8DT-01-127-0000
▪ Slab end plate	Part No. 8DT-01-124-0000
▪ Bike Key Fobs <i>With universal Capital Bikeshare artwork</i>	Part No. 8DT-01-0801

IX. STATION SPARE PARTS

A limited number of Spare Parts for the City’s new Bikeshare Stations has been included in the initial start-up costs for the program. A detailed list and quantities are included in Section XXV, “Measurement & Payment.”

Spare Parts shall be stored at a location determined by the City’s future Bikeshare O&M contractor and as approved by the City. Such spare parts will be used as needed to repair and maintain the City’s Bikeshare terminal and stations.

X. BICYCLES

The supplier of Bikeshare Bicycles shall furnish standard bicycles fully compatible and interoperable with the existing Capital Bikeshare system (including PBSC Bicycles) in the Washington Metropolitan Area. Each Bicycle shall include all components as listed and specified below.

Each bicycle shall have City of Falls Church Sticker Decals affixed. Bicycle colors shall be an exact match to existing regional (Capital Bikeshare member jurisdiction) bicycle equipment (red).

All bicycles shall meet the following specifications:

PART	DESCRIPTION
Frame	Aluminum alloy
Front fork	Aluminum alloy
Head set	Heavy duty sealed bearing
Front wheel	Aluminum alloy double wall rim, 36 stainless steel spokes, minimum 2.4 Watt Dynamo hub
Rear wheel	Aluminum alloy double wall rim, 36 stainless steel spokes, 3 speed internal hub minimum
Tires	Puncture resistant tire 26 x 1.95 urban thread with reflective stripe
Inner Tube	Puncture resistant inner tube inflated with nitrogen
Handlebar	Heavy duty aluminum alloy
Grip	Polymer handlebar grip with anti-theft handlebar end plug
Brakes	Roller Brakes, front and rear
Seat post	Aluminum alloy seat post with 250mm of adjustment range
Saddle	Comfort saddle with rear reflector and heavy duty seat clamp
Shifter	3 speed minimum
Additional protection	Handlebar cover Rear wheel cover
Light system	Two integrated rear red lights with LEDs; one integrated front light module with LEDs on the front of the basket carrier
Accessories	Front and rear polycarbonate fenders
	Bicycle bell
	Heavy duty Aluminum alloy basket/luggage carrier
	Bicycle wheel reflectors
	Aluminum alloy chain guard
	Single Kickstand
	Integrated chain tensioned
	Bikeshare Docking station (bollard) attachment
Standard Weight	50 lbs.

Should a bidder propose an "Equal" to the standard PBSC Bikeshare bicycle, the City retains the right to inspect a sample in person, review specific technical and manufacturing data, and to make a determination, in the City's sole discretion, as to whether such a proposed Equal shall be accepted.

The awarded Contractor for bicycles shall coordinate delivery of bicycles ordered by the City to the City's assembly & startup contractor, if contracts are awarded to separate vendors.

XI. BICYCLE SPARE PART KITS

As part of its Bikeshare program start-up, the City wishes to purchase spare parts for its Bikeshare bicycles. A line item for bicycle "Spare Part Kits" has been included on the Bid Sheet and additional details are provided in *Section XXVI, Measurement & Payment*.

Bicycle Spare Part Kits shall be stored at a location determined by the City's Bikeshare O&M contractor and approved by the City. Such spare parts will be used as needed to repair and maintain the City's bicycles purchased for the Bikeshare program.

XII. BICYCLE STICKERS SYSTEMWIDE

The Contractor selected for station equipment assembly, placement and Bikeshare Startup shall furnish and affix City of Falls Church stickers for bicycles and stations throughout the regional Bikeshare system.

XIII. STATION EQUIPMENT ASSEMBLY, PLACEMENT & STARTUP

Station Equipment Assembly, Placement & Startup is defined as inclusive of, but not necessarily limited to, the following:

- Obtaining a City of Falls Church Right of Way permit;
- Marking of precise site locations in the field, subject to final approval by the City;
- Configuration of each individual station, with recommendations made to the City for any variations from the City's station siting document;
- Assembly of all components;
- Receipt, storage and assembly of all station equipment, subject to City inspection;
- Loading of all necessary software components;
- Testing of all station equipment and software prior to installation on site;
- Providing and installing "No Parking" signs at station locations at least 72 hours prior to scheduled installation;
- Loading and delivery of all station equipment to individual station locations;
- Maintenance of Traffic control during station installation;
- Final placement of assembled stations on site;
- Connection of all cables, battery and components as necessary for operability; and
- Provision of any other services necessary to enable the interoperability and synchronization of all software and equipment with the Capital Bikeshare program.

XIV. LAUNCH OF THE CITY'S BIKESHARE PROGRAM

"Launch" services for the City's Capital Bikeshare Program shall be provided by the awarded Assembly, Placement & Startup Contractor and shall include at least the following components:

- Changes to the Capital Bikeshare website to incorporate the City of Falls Church as a Member Jurisdiction;

- Changes to station and operations software to accommodate the City and to incorporate changes to reporting requirements and forms.
- Adjustments to billing for launch and operations;
- Any advertising and hiring expenses necessary to accommodate expansion of the Capital Bikeshare program into the City;
- Any additional supplies, tools, and/or small equipment needed in advance of the City's program to ensure system functioning (spare parts for bicycles or station components not be included in Launch Fee); and
- Any additional liability insurance required for incorporating the City into the Capital Bikeshare system.

XV. COOPERATION & COORDINATION WITH ASSOCIATE CONTRACTORS

In the performance of the three contracts to be awarded through this solicitation, each Contractor will cooperate and coordinate with the other selected Contractors, to include the future Contractor selected for the City's Bikeshare Operating and Maintenance ("O&M") Program by, but not limited to:

- Responding to invitations from authorized personnel to attend meetings;
- Coordinating delivery of equipment between Contractors and/or to the City;
- Providing access to technical information and research, development and planning data, test data and results, and schedule and milestone data;
- Discuss technical matters related to Capital Bikeshare Equipment; and
- Allowing observation of technical activities by technical personnel of all associate Contractors.

In this cooperation or coordination, Contractors will not be obligated to disclose or provide access to Contractor's proprietary data, trade secrets or other information that relates to Contractor's unique methods of conducting business or data unique to the Contractor's services.

XVI. PERMITS

Placement of the Bikeshare stations will require a City of Falls Church ROW Permit. The Contractor is responsible for permit application; there will be no cost to the Contractor for this required City permit.

No sites are located within Virginia Department of Transportation (VDOT) Right of Way.

XVII. MAINTENANCE OF TRAFFIC DURING STATION PLACEMENT

A Maintenance of Traffic (MOT) Plan shall be submitted to the City as part of the ROW permit application. The cost of MOT shall be included in the line item costs for station placement, and shall not result in a separate charge to the City.

XVIII. SAMPLES

As requested and prior to the placement of orders, each Contractor shall submit additional detailed specifications, color and/or material samples as applicable for the City's approval.

XIX. VDOT APPROVAL OF CHANGE ORDERS

Contractors/vendors are advised that any Change Orders which may be proposed during the course of the Work are subject to VDOT review and approval, due to federal funding.

XX. WARRANTIES

- A. Station components must be warranted by the manufacturer for a minimum of five (5) years from the date of acceptance.
- B. Bicycles must be warranted by the manufacturer for a minimum of five (5) years from the date of acceptance.
- C. Contractor must promptly comply with all recalls of equipment, whether issued by a manufacturer, government agency, or other entity.
- D. In the event of a recall, Contractor shall supply replacement equipment at its own cost until the recall issue is resolved.
- E. The replacement of defective equipment during the term of the Contract shall be the sole responsibility of the Contractor. The Contractor shall absorb all costs associated with storage of equipment to be replaced as a result of any defect.
- F. Contractor must provide all maintenance documentation necessary to maintain warranty coverage to the City upon delivery.
- G. Contractor is responsible for all return shipping costs of defective equipment while under warranty.

XXI. USEFUL LIFE

- A. Station components shall have a useful life of at least ten (10) years from the date of acceptance by the City.
- B. Bicycles shall have a useful life of at least six (6) years from the date of acceptance by the City.

XXII. DELIVERY REQUIREMENTS

The City seeks to accept delivery of all equipment and have the initial placement of its Bikeshare project completed by Summer 2018.

- A. Each Bidder shall submit a delivery schedule with its bid package.
- B. **The maximum allowable delivery time is one hundred fifty (150) calendar days from the receipt of the City's order ("ARO"), in consideration of Buy America requirements.**
- C. The ARO may be amended by the City, if it is in the City's interests to do so.
- D. Shipments shall be FOB Destination, delivered and unloaded to a location agreed upon by the City and the Contractor.
- E. The delivery location for Bicycles shall be to a facility designated and operated by the Station Assembly, Placement & Startup Contractor. Station equipment and bicycles will be delivered to a designated facility operated by the assembly/placement/startup contractor, who will assemble the equipment and place the stations at various locations in the City. The bicycles will be at stations at time of system startup/program launch.
- F. The proposed costs shall include all charges for delivery and unloading of the Equipment and materials.

- G. The Contractor shall notify the City project manager of all deliveries to the Station Assembly, Placement & Startup contractor at least three (3) business days in advance.
- H. Time is of the essence under this Contract. It is essential that the deliveries of any item ordered under this Contract are made within the above time limit.

XXIII. EASEMENTS

The sites selected for the City's initial Bikeshare stations in the City are located within the City's Right of Way and no easements are necessary.

The City will enter into a Real Estate Permit Agreement with WMATA for placement and operation of the station site at the West Falls Church Metro station.

XXIV. OPERATION & MAINTENANCE

The operation and maintenance of the City's Capital Bikeshare program will be procured and funded under a separate contract.

XXV. DPW GENERAL PROVISIONS

The City of Falls Church - DPW General Provisions for Construction are generally applicable. However, some specific exceptions are applicable as outlined in these *Special Provisions* (e.g. no retainage to be held).

XXVI. MEASUREMENT & PAYMENT

Payment for all line items shall include all labor, supervision, materials, tools, equipment, fasteners, transportation, supplies, and resources required to furnish the equipment and/or complete the work as specified. No separate or additional payment will be made.

It is noted that no retainage will be held in payments made under contracts awarded for this solicitation, per federal funding requirements.

The City reminds Bidders that the Bid Sheet for this Capital Bikeshare IFB is comprised of three (3) sections, and that each section will result in a separate contract award:

- A. Bikeshare Stations & Start-up Equipment
- B. Bicycles
- C. Station Assembly, Placement, Startup & Program Launch Services

SECTION A - BIKESHARE STATIONS & START-UP EQUIPMENT

- **Line Item 1: Complete Station with 12 docks (linear)**
Measurement and payment shall be **per each** complete 12-dock station.
- **Line Item 2: Complete Station with 19 docks (linear)**
Measurement and payment shall be **per each** complete 19-dock station.
- **Line Item 3: Station Spare Parts**

Measurement and payment shall be **Lump Sum** for the start-up of the City's Bikeshare program, and shall consist of the following parts and quantities:

STATION SPARE PARTS – LUMP SUM FOR START-UP		
Terminal Spare Kit		
	ITEM	QTY
1.	ID Board rev A	2
2.	Touchscreen display Eco5BX2 LCD7" assembly	5
3.	Bike key dispenser Kit	5
4.	Magstripe Reader	2
5.	Powercore2 Assembly	2
6.	NFC Reader VivoPay III	2
Dock Spare Kit		
	ITEM	QTY
7.	Locking plate v2	1
8.	Cassette Assembly CW MK2	10
9.	Keypad Stickers	10

▪ **Line Item 4: Customer Key Fobs**

Measurement and payment shall be per each Key Fob, to include City artwork decals.

SECTION B - BICYCLES

▪ **Line Item 5: Standard Bicycle**

Measurement and payment shall be per Bicycle, per specifications in Section X, to include City sticker decals in two (2) locations.

▪ **Line Item 6: Bicycle Spare Part Kits**

Measurement and payment shall be **per each complete “Spare Part Kit”** which, for the Launch/start-up of the City’s Bikeshare program, shall consist of the following parts and quantities listed:

ONE (1) Bicycle Spare Part Kit		
	ITEM	QTY
1.	Tires	2
2.	Rear Wheel	1
3.	Front Wheel	1
4.	Pedals	2
6.	Grips	2
7.	Saddle	1
8.	Brakes, set (Front & Back)	2
9.	Brake Lever	2
10.	Front Basket with Light Assembly	1
11.	Front & Rear Fender Assembly	1
12.	Sprocket	1
13.	Chain	2
14.	Crankset	1
15.	Kickstand	1

SECTION C – STATION ASSEMBLY, PLACEMENT & START-UP

- **Line Item 7: Per Station Assembly, Placement & Startup**

Measurement and payment shall be **per each** complete Bikeshare station assembly and placement by boom truck (up to 20 docks per station). Payment shall be inclusive of all components and appurtenances.

- **Line Item 8: Systemwide Stickers**

Measurement and payment shall be per each City of Falls Church sticker, to be furnished and affixed to bicycles and stations systemwide. Quantities anticipated are 5500 bicycles and 550 stations systemwide, for a total of 6050 stickers.

This line item is separate from stickers to be affixed to newly-purchased Bicycles in Line Item 5, and constitutes a task for the Startup/Program Launch contractor.

- **Line Item 9: Program Launch Fee**

Measurement and payment shall be a **Lump Sum** fee for the City of Falls Church Capital Bikeshare Program, inclusive of up to 20 new Bikeshare stations.

XXVII. FEDERAL REQUIREMENTS

The acquisition of equipment and initial startup of the City's Capital Bikeshare program is funded through a federal grant awarded to the City through the Regional Surface Transportation Program (RSTP); this program is administered by the Virginia Department of Transportation (VDOT). **See Attachment M** for full text of VDOT and federal contract clauses.

The information provided below is intended as a brief reminder of some of the key federal requirements included in this document. The awarded Contractors shall be fully responsible for compliance with all aspects of Attachment M and such federal regulations as are applicable. The Contractors shall likewise be responsible for its Subcontractor compliance with all aspects of federal regulations.

a. Buy America – Iron & Steel

The Contractor shall comply with all Buy America requirements for all iron, steel and manufactured products covered by Buy America and shall furnish required Certificates of Compliance to the City. The Contractor is fully responsible for identifying any project components which must be compliant with Buy America and so advising the City.

Bidders must submit either a certificate of compliance or a certificate of non-compliance to the grantee as a condition of responsiveness to the IFB.

See Attachment M, *VDOT & Federal Contract Clauses*. Additional information is available at the following VDOT link:

<http://www.virginiadot.org/business/const/buyamericaact.asp>

b. Subcontractors

Any subcontractors must be pre-approved by the City and shall be subject to all federal requirements. Contractor must supply a copy of all contracts with its subcontractors to the DPW Contract Manager; each of these contracts must contain Form FHWA-1273, with said Form physically incorporated and not merely referenced. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor.

Contractors are encouraged to seek out and consider Small, Women-owned, and Minority-owned (SWaM) businesses certified by the Department of Small Business and Supplier Diversity (DSBSD) as potential subcontractors and vendors.

c. E-Verify Program

The awarded Contractor is required to register and participate in the U.S. Department of Homeland Security's "E-Verify" system to verify information and work authorization of employees performing the Work. See Attachment M.

d. No DBE Goal

For the City's Bikeshare program, VDOT has advised that no DBE Goal has been established. (Goal = 0%)

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VDOT SUPPLEMENTAL SPECIFICATIONS (SSs), SPECIAL PROVISIONS (SPs) AND SPECIAL PROVISION COPIED NOTES (SPCNs)

Where Virginia Department of Transportation (VDOT) Supplemental Specifications, Special Provisions and Special Provision Copied Notes are used in this contract, the references therein to “the Specifications” shall refer to the *Virginia Department of Transportation Road and Bridge Specifications*, dated 2016 for both imperial and metric unit projects. References to the “Road and Bridge Standard(s)” shall refer to the *Virginia Department of Transportation Road and Bridge Standards*, dated 2008 for both imperial and metric unit projects. References to the “Virginia Work Area Protection Manual” shall refer to the 2011 edition of the *Virginia Work Area Protection Manual with Revision Number 1* incorporated, dated April 1, 2015 for imperial and metric unit projects. References to the “MUTCD” shall refer to the 2009 edition of the *MUTCD with Revision Numbers 1 and 2* incorporated, dated May 2012; and the 2011 edition of the *Virginia Supplement to the MUTCD with Revision Number 1* dated September 30, 2013 for imperial and metric unit projects.

Where the terms “Department”, “Engineer”, “Contract Engineer”, “Construction Engineer”, Materials “Engineer”, and “Operations Engineer” appear in VDOT Supplemental Specifications, Special Provisions and Special Provision Copied Notes used in this contract and the VDOT publication(s) that each references, the authority identified shall be according to the definitions in Section 101.02 of the *Virginia Department of Transportation Road and Bridge Specifications*, dated 2016. Authority identified otherwise for this particular project will be stated elsewhere in this contract.

VDOT Supplemental Specifications, Special Provisions and Special Provision Copied Notes used in this contract and the VDOT publication(s) that each reference are intended to be complementary to the each other. In case of a discrepancy, the order of priority stated in Section 105.12 of the *Virginia Department of Transportation Road and Bridge Specifications*, dated 2016 shall apply.

VDOT Special Provision Copied Notes in this contract are designated with “(SPCN)” after the date of each document. VDOT Supplemental Specifications and Special Provision Copied Notes in this contract are designated as such above the title of each document.

The information at the top and left of each VDOT Special Provision Copied Note in this contract is file reference information for VDOT use only. The information in the upper left corner above the title of each VDOT Supplemental Specification and VDOT Special Provision in this contract is file reference information for VDOT use only.

The system of measurement to be used in this project is stated elsewhere in this contract. VDOT Supplemental Specifications, Special Provisions and Special Provision Copied Notes containing imperial units of measure with accompanying expressions in metric units shall be referred to hereinafter as “dual unit measurement” documents. Such a “dual unit measurement” is typically expressed first in the imperial unit followed immediately to the right by the metric unit in parenthesis “()” or brackets “[]” where parenthesis is

used in the sentence to convey other information. Where a “dual unit measurement” appears in VDOT documents, the unit that applies shall be according to the system of measurement as stated elsewhere in this contract. The unit shown that is not of the declared unit of measurement is not to be considered interchangeable and mathematically convertible to the declared unit and shall not be used as an alternate or conflicting measurement. Where VDOT Specifications are used for metric unit projects and only imperial units of measurement appear the document, the provision(s) in this contract for imperial unit to metric unit conversion shall apply.

10-6-16_ (SPCN)

VDOT SUPPLEMENTAL SPECIFICATIONS (SSs), SPECIAL PROVISIONS (SPs) AND SPECIAL PROVISION COPIED NOTES (SPCNs)

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used in the sentence to convey other information. Where a “dual unit measurement” appears in VDOT documents, the unit that applies shall be according to the system of measurement as stated elsewhere in this contract. The unit shown that is not of the declared unit of measurement is not to be considered interchangeable and mathematically convertible to the declared unit and shall not be used as an alternate or conflicting measurement. Where VDOT Specifications are used for metric unit projects and only imperial units of measurement appear the document, the provision(s) in this contract for imperial unit to metric unit conversion shall apply.

10-6-16_ (SPCN)

SECTION 102.05—PREPARATION OF BID of the Specifications is amended to include the following:

(g) Compliance with the Cargo Preference Act

As required by [46 CFR 381.7 \(a\)-\(b\)](#) "Use of United States-flag vessels, when materials or equipment are acquired for a specific highway project, the Contractor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
3. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

This requirement will not be applicable when materials or equipment used on the Project are obtained from the existing inventories of suppliers and contractors; they are only applicable when the materials or equipment are acquired for the specific project, and have been transported by ocean vessel.

12-14-15; Reissued 7-12-16 (SPCN)

PREDETERMINED MINIMUM WAGE RATES

General Decision Number: VA180135 01/05/2018 VA135

Superseded General Decision Number: VA20170135

State: Virginia

Construction Type: Highway

Counties: Alexandria*, Arlington, Clarke, Culpeper, Fairfax, Fairfax*, Falls Church*, Fauquier, Fredericksburg*, King George, Loudoun, Manassas Park*, Manassas*, Prince William, Spotsylvania, Stafford and Warren Counties in Virginia.

*INDEPENDENT CITIES

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.35 for calendar year 2018 applies to all contracts

subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.35 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2018. The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/05/2018

SUVA2013-010 09/20/2013

Rates

Fringes

ASBESTOS WORKER.....\$ 16.91

CARPENTER (STRUCTURE).....\$ 16.02

CEMENT MASON/CONCRETE FINISHER...\$ 21.71

ELECTRICIAN.....\$ 29.27

FORM SETTER.....\$ 14.00

IRONWORKER, REINFORCING.....\$ 34.18

IRONWORKER, STRUCTURAL.....\$ 19.13

LABORER

Asphalt Raker.....\$ 15.85

Blaster.....\$ 35.00

Construction Worker I

(Skilled Laborer).....\$ 15.77

Construction Worker II

(Laborer).....\$ 14.14

Deckhand.....\$ 13.00

Fence Erector.....\$ 14.41

Flagger.....\$ 13.64

Grade Checker.....\$ 13.42

Guardrail Erector.....	\$ 22.15
Landscape Worker.....	\$ 11.97
Pipe Layer.....	\$ 19.00
Power Tool Operator.....	\$ 15.00
Sign Erector.....	\$ 25.00
MASON (STRUCTURE).....	\$ 17.64
PAINTER.....	\$ 15.00
PLUMBER.....	\$ 25.00
POWER EQUIPMENT OPERATOR:	
Air Compressor.....	\$ 13.50
Asphalt Distributor.....	\$ 18.64
Asphalt Paver.....	\$ 19.35
Backhoe.....	\$ 20.59
Boom/Auger.....	\$ 20.29
Bulldozer (Utility).....	\$ 15.50
Bulldozer.....	\$ 20.40
Concrete Finish Machine Operator.....	\$ 18.54
Concrete Finisher Machine Screed Operator (Bridge)....	\$ 14.60
Concrete Paving Machine	

Operator.....	\$ 20.75
Concrete Pump Operator.....	\$ 33.00
Concrete Saw Operator.....	\$ 16.00
Crane, Derrick, Dragline	
(1 cm & under).....	\$ 24.53
Crane, Derrick, Dragline	
(over 1 cm).....	\$ 25.00
Crusher Tender.....	\$ 14.25
Drill Operator.....	\$ 15.70
Excavator (Gradall).....	\$ 19.32
Front End Loader (2 cm &	
under).....	\$ 19.00
Front End Loader (over 2	
cm).....	\$ 20.42
Hydro Seeder.....	\$ 17.13
Log Skidder Operator.....	\$ 18.50
Mechanic.....	\$ 21.75
Mobile Mixer.....	\$ 17.00
Motor Grader (Fine Grade)...	\$ 27.25
Motor Grader (Rough Grade)...	\$ 13.58
Oiler, Greaser.....	\$ 14.00
Pavement Marking Operator...	\$ 17.00
Pavement Marking Truck	
Operator.....	\$ 16.72
Pavement Planing Groundman..	\$ 19.75

Pavement Planing Operator...	\$ 19.25
Pile Driver Operator.....	\$ 20.35
Pile Driver, Leadsman.....	\$ 21.32
Pipe Boring/Jacking	
Machine Operator.....	\$ 16.00
Plant Operator.....	\$ 14.88
Roller (Finish).....	\$ 17.94
Roller (Rough).....	\$ 17.06
Scraper Pan Operator.....	\$ 13.00
Shot Blast Machine Operator.	\$ 16.02
Shovel Operator (2 yds and	
under).....	\$ 16.00
Shovel Operator (over 2	
yds).....	\$ 25.00
Slip-Form Paver.....	\$ 21.00
Slurry Seal Paver Machine	
Operator.....	\$ 13.75
Slurry Seal Paver Truck	
Operator.....	\$ 10.32
Stabilizer Operator.....	\$ 15.70
Stone-Spreader.....	\$ 13.35
Subgrade Machine Operator...	\$ 19.00
Tractor Operator, Crawlers..	\$ 12.47
Tractor Operator, Utility...	\$ 12.25
Trenching Machine.....	\$ 29.87

Vacuum Machine.....\$ 18.20

TRAFFIC SIGNALIZATION:

Traffic Signal Installation.....\$ 21.16

TRUCK DRIVER

Fuel & Lubricant Service

Truck Driver.....\$ 17.73

Transit Mix Truck Driver....\$ 15.00

Truck Driver (Multi-Rear

Axle).....\$ 16.69

Truck Driver (Single Rear

Axle).....\$ 17.50

Truck Driver (Tandem Rear

Axle).....\$ 16.91

Truck Driver, Heavy Duty....\$ 17.29

WELDER.....\$ 18.15

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year.

Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1,

2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

END OF GENERAL DECISION .

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON
DECISION OF THE SECRETARY

This case is before the Department of Labor pursuant to a request for a wage predetermination as required by law applicable to the work described.

A study has been made of wage conditions in the locality and based on information available to the Department of Labor the wage rates and fringe payments listed are hereby determined by the Secretary of Labor as prevailing for the described classes for labor in accordance with applicable law.

This wage determination decision and any modifications thereof during the period prior to the stated expiration date shall be made a part of every contract for performance of the described work as provided by applicable law and regulations of the Secretary of Labor, and the wage rates and fringe payments contained in this decision, including modifications, shall be the minimums to be paid under any such contract and subcontractors on the work.

The Contracting Officer shall require that any class of laborers and mechanics which is not listed in the wage determination and which is to be employed under the Contract, shall be classified or reclassified conformably to the wage determination, and a report of the action taken shall be sent by the Federal agency to the Secretary of Labor. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question accompanied by the recommendation of the Contracting Officer shall be referred to the Secretary for determination.

Before using apprentices on the job the contractor shall present to the Contracting Officer written evidence of registration of such employees in a program of a State apprenticeship and training agency approved and recognized by the U.S. Bureau of Apprenticeship and Training. In the absence of such a State agency, the Contractor shall submit evidence of approval and registration by the U.S. Bureau of Apprenticeship and Training.

The Contractor shall submit to the Contracting Officer written evidence of the established apprentice-journeyman ratios and wage in the project area, which will be the basis for establishing such ratios and rates for the project under the applicable contract provisions.

Fringe payments include medical and hospital care, compensation for injuries or illness resulting from occupational activity, unemployment benefits, life insurance, disability and sickness insurance, accident insurance (all designated as health and welfare), pensions, vacation and holiday pay, apprenticeship or other similar programs and other bona fide fringe benefits.

By direction of the Secretary of Labor

A handwritten signature in black ink, appearing to read "E. Irving Manger", is written over a horizontal line.

E. Irving Manger, Associate Administrator
Division of Wage Determinations
Wage and Labor Standards Administration

The following Form **FHWA-1273** titled **REQUIRED CONTRACT PROVISIONS, FEDERAL-AID CONSTRUCTION CONTRACTS** shall apply to this contract:

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FHWA-1273 – Revised May 1, 2012

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

- A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

- 1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The Contractor (or Subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The

design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the Contract by the Contractor's own organization and with the assistance of workers under the Contractor's immediate superintendence and to all work performed on the Contract by piecework, station work, or by subcontract.
3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the Contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.
4. Selection of Labor: During the performance of this contract, the Contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the Contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth

under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the Contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the Contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the Contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the Contracting Officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the Contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the Contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the Contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the Contractor's EEO obligations within thirty days following their reporting for duty with the Contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the Contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the Contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

- e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the Contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the Contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the Contractor for employment consideration.

In the event the Contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the Contractor is expected to observe the provisions of that agreement to the extent that the system meets the Contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the Contractor to do the same, such implementation violates Federal nondiscrimination provisions.

The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
- c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
- d. The contractor will promptly investigate all complaints of alleged discrimination made to the Contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the Contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

- a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.
 - b. Consistent with the Contractor's work force requirements and as permissible under Federal and State regulations, the Contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).
 - c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
 - d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.
7. **Unions:** If the Contractor relies in whole or in part upon unions as a source of employees, the Contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the Contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:
- a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.
 - b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
 - c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the Contractor, the Contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.
 - d. In the event the union is unable to provide the Contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the Contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the Contractor from the requirements of this paragraph. In the event the union referral practice prevents the Contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. **Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.
9. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.
- a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.
 - b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.
10. **Assurance Required by 49 CFR 26.13(b):**
- a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.
 - b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.
11. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the Contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.
- a. The records kept by the Contractor shall document the following:
 - (1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
 - (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
 - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;
 - b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This

information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the Contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the Contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. Davis-Bacon and Related Act Provisions

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

- a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are

deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - (I) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (II) The classification is utilized in the area by the construction industry; and
 - (III) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
- (3) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

- (4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- c. Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- d. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Contract, the contracting agency may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

- a. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship

programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.
- (2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:
 - (I) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
 - (II) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - (III) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.
- (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

- (4) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the Contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

- a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
6. **Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
7. **Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
8. **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
9. **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
10. **Certification of eligibility.**
 - a. By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.
3. **Withholding for unpaid wages and liquidated damages.** The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.
4. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the Contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the Contractor's own organization (23 CFR 635.116).
 - a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:
 - (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
 - (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
 - (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.
 - b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the Contract as a whole and in general are to be limited to minor components of the overall contract.
2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the Contractor under the contract provisions.
 3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the Contracting Officer determines is necessary to assure the performance of the Contract.
 4. No portion of the Contract shall be sublet, assigned or otherwise disposed of except with the written consent of the Contracting Officer, or authorized representative, and such consent when given shall not be construed to relieve the Contractor of any responsibility for the fulfillment of the Contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.
 5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the Contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the Contracting Officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the Contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the Contractor enters into pursuant to this contract, that the Contractor and any subcontractor shall not permit any employee, in performance of the Contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to

his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the Contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor).

"Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.
- i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

- a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

- (2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and
 - (4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-- Lower Tier Participants:

- 1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.
- 2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE
EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)**

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals for female and minority participation, expressed in percentage terms of the Contractor's aggregate work force in each trade on all construction works in the covered area, are as follows:

Females- 6.9%

Minorities - See Attachment "A"

The goals are applicable to all the Contractor's construction work performed in the covered area, whether or not it is Federal or federally assisted. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications, set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established herein. The hours of minority and female employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the Contract, the Executives Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days the award of any construction subcontract in excess of \$10,000 at any tier for construction works under this contract. The notification shall list the name, address and telephone number of the subcontractor, employer identification number, estimated dollar amount of the subcontract, estimated starting and completion dates of the subcontract and the geographical area in which the Contract is to be performed.

**STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)**

1. As, used in this provision:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

- c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941;
- d. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- 2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation.
- 3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors and Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
- 4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the coverer area. Covered construction Contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
- 5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- 6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, shall assign two or more women to each construction project. The Contractor shall specifically ensure that all foreman, superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off the street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
 - d. Provide immediate written notification to the Director when the union or unions which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or women sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 - e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources complied under 7b above.
 - f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper or annual report; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
 - g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents and General Foremen prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter.
 - h. Disseminate the Contractor's EEO policy externally by including in any news media advertisement that the Contractor is "An Equal Opportunity Employer" for minority and female, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

- i. Directs its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures and tests to be used in the selection process.
 - j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of Contractor's workforce.
 - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - l. Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for such opportunities through appropriate training or other means.
 - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are nonsegregated, except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
 9. Goals for women have been established. However, the Contractor IS required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner, that is even though the Contractor has achieved its goals for women, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.
 10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or nation origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director will proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate and make known to the Department a responsible official as the EEO Officer to monitor all employment related activity, to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors will not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

ATTACHMENT A

<u>Economic Area</u>	<u>Goal (Percent)</u>
Virginia:	
021 Roanoke-Lynchburg, VA	
SMSA Counties:	
4640 Lynchburg, VA	19.3
VA Amherst; VA Appomattox; VA Campbell; VA Lynchburg	
6800 Roanoke, VA	10.2
VA Botetourt; VA Craig; VA Roanoke; VA Roanoke City; VA Salem	
Non-SMSA Counties	12.0
VA Alleghany; VA Augusta; VA Bath; VA Bedford; VA Bland; VA Carroll;	
VA Floyd; VA Franklin; VA Giles; VA Grayson; VA Henry; VA Highland;	
VA Montgomery; VA Nelson; VA Patrick; VA Pittsylvania; VA Pulaski;	
VA Rockbridge; VA Rockingham; VA Wythe; VA Bedford City; VA Buena	
Vista:	
VA Clifton Forge; VA Covington; VA Danville; VA Galax; VA Harrisonburg;	
VA Lexington; VA Martinsville; VA Radford; VA Staunton; VA Waynesboro;	
WV Pendleton.	
022 Richmond, VA	
SMSA Counties:	
6140 Petersburg - Colonial Heights - Hopewell, VA	30.6

VA Dinwiddie; VA Prince George; VA Colonial Heights; VA Hopewell; VA Petersburg.	
6760 Richmond, VA	24.9
VA Charles City; VA Chesterfield; VA Goochland, VA Hanover; VA Henrico; VA New Kent; VA Powhatan; VA Richmond.	
Non-SMSA Counties	27.9
VA Albemarle; VA Amelia; VA Brunswick; VA Buckingham, VA Caroline; VA Charlotte; VA Cumberland; VA Essex; VA Fluvanna; VA Greene; VA Greensville; VA Halifax; VA King and Queen; VA King William; VA Lancaster; VA Louisa; VA Lunenburg; VA Madison; VA Mecklenburg; VA Northumberland; VA Nottoway; VA Orange; VA Prince Edward; VA Richmond VA Sussex; VA Charlottesville; VA Emporia; VA South Boston	
023 Norfolk - Virginia Beach - Newport News VA:	
SMSA Counties:	
5680 Newport News- Hampton, VA	27.1
VA Gloucester; VA James City; VA York; VA Hampton; VA Newport News; VA Williamsburg.	
5720 Norfolk - Virginia Beach - Portsmouth, VA - NC	26.6
NC Currituck; VA Chesapeake; VA Norfolk; VA Portsmouth; VA Suffolk; VA Virginia Beach.	
Non-SMSA Counties	29.7
NC Bertie; NC Camden; NC Chowan; NC Gates; NC Hertford; NC Pasquotank; NC Perquimans; VA Isle of Wight; VA Matthews; VA Middlesex; VA Southampton; VA Surry; VA Franklin.	
Washington, DC:	
020 Washington, DC.	
SMSA Counties:	
8840 Washington, DC - MD - VA	28.0
DC District of Columbia; MD Charles; MD Montgomery MD Prince Georges; VA Arlington; VA Fairfax; VA Loudoun; VA Prince William VA Alexandria; VA Fairfax City; VA Falls Church.	
Non- SMSA Counties	25.2
MD Calvert; MD Frederick; MD St. Marys; MD Washington; VA Clarke; VA Culpeper; VA Fauquier; VA Frederick; VA King George; VA Page; VA Rappahannock; VA Shenandoah; VA Spotsylvania; VA Stafford; VA Warren; VA Westmoreland; VA Fredericksburg; VA Winchester WV Berkeley; WV Grant; WV Hampshire; WV Hardy; WV Jefferson; WV Morgan.	
Tennessee:	
052 Johnson City - Kingsport - Bristol, TN - VA	
SMSA Counties:	
3630 Johnson City - Kingsport -Bristol, TN-VA	2.6
TN Carter; TN Hawkins; TN Sullivan; TN Washington; VA Scott: VA Washington; VA Bristol.	
Non-SMSA Counties	3.2
TN Greene; TN Johnson; VA Buchanan; VA Dickenson; VA Lee; VA Russell; VA Smyth; VA Tazewell; VA Wise; VA Norton; WV McDowell; WV Mercer.	
Maryland:	
019 Baltimore MD	
Non-SMSA Counties	23.6
MD Caroline; MD Dorchester; MD Kent; MD Queen Annes; MD Somerset; MD Talbot; MD Wicomico; MD Worchester; VA Accomack; VA Northampton.	

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
SECTION 105.06—SUBCONTRACTING
(FEDERAL FUNDED PROJECTS)

February 9, 2017

SECTION 105.06—Subcontracting of the Specifications is amended to include the following:

- (d) According to Commonwealth of Virginia Executive Order 20, the Contractor is encouraged to seek out and consider Small, Women-owned, and Minority-owned (SWaM) businesses certified by the Department of Small Business and Supplier Diversity (DSBSD) as potential subcontractors and vendors. Further, the Contractor shall furnish and require each subcontractor (first-tier) to furnish information relative to subcontractor and vendor involvement on the project.

For purposes of this provision, the term “vendor” is defined as any consultant, manufacturer, supplier or hauler performing work or furnishing material, supplies or services for the contract. The Contractor and, or subcontractor (first-tier) must insert this provision in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). The applicable requirements of this provision are incorporated by reference for work done by vendors under any purchase order, rental agreement or agreement for other services for the contract. The Contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or vendor.

The submission of a bid will be considered conclusive evidence that the Contractor agrees to assume these contractual obligations and to bind subcontractors contractually to the same at the Contractor’s expense.

When an approved Form C-31 “Subletting Request” is required according to IIM-CD-2013-06.01, the Contractor shall indicate on the Subletting Request if a subcontractor is a certified DBE or SWaM business.

The Contractor shall report all DBE, SWaM, and Non SWaM vendor payments quarterly to the District Civil Rights Office. The Contractor shall provide the information in a format consistent with Form C-63, Vendor Payment Compliance Report, subject to the approval of the Engineer.

DBE Participation and reporting shall be in accordance with the Special Provision for Section 107.15 (Use of Disadvantaged Business Enterprises).

If the Contractor fails to provide the required information, the Department may delay final payment according to Specification Section 109.10 of the Specifications.

The following attachment to Form **FHWA-1273** titled **ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS** shall apply to this contract:

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FHWA-1273 Attachment A – Revised May 1, 2012

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the Contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:
 - a. To the extent that qualified persons regularly residing in the area are not available.
 - b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
 - c. For the obligation of the Contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the Contractor on the contract work, except as provided in subparagraph (4) below.
2. The Contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the Contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.
3. The Contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The Contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.
4. If, within one week following the placing of a job order by the Contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the Contractor, or less than the number requested, the State Employment Service will forward a certificate to the Contractor indicating the unavailability of applicants. Such certificate shall be

made a part of the Contractor's permanent project records. Upon receipt of this certificate, the Contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.
6. The Contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
USE OF DOMESTIC MATERIAL

July 26, 2013; Reissued July 12, 2016

SECTION 102.05 PREPARATION OF BID of the Specifications is amended to include the following:

In accordance with the provisions of Section 635.410(b) of Title 23 CFR, hereinafter referred to as "Buy America", except as otherwise specified, all iron and steel products (including miscellaneous steel items such as fasteners, nuts, bolts and washers) to be permanently incorporated for use on federal aid projects shall be produced in the United States of America regardless of the percentage they exist in the manufactured product or final form they take. Therefore, "Domestically produced in the United States of America" means all manufacturing processes must occur in the United States of America, to mean, in one of the 50 States, the District of Columbia, Puerto Rico or in the territories and possessions of the United States. Manufacturing processes are defined as any process which alters or modifies the chemical content, physical size or shape or final finish of iron or steel material) such as rolling, extruding, bending, machining, fabrication, grinding, drilling, finishing, or coating whereby a raw material or a reduced iron ore material is changed, altered or transformed into a steel or iron item or product which, because of the process, is different from the original material. For the purposes of satisfying this requirement "coating" is defined as the application of epoxy, galvanizing, painting or any other such process that protects or enhances the value of the material. Materials used in the coating process need not be domestic materials.

For the purposes herein the manufacturing process is considered complete when the resultant product is ready for use as an item in the project (e.g. fencing, posts, girders, pipe, manhole covers, etc.) or is incorporated as a component of a more complex product by means of further manufacturing. Final assembly of a product may occur outside of the United States of America provided no further manufacturing process takes place.

Raw materials such as iron ore, pig iron, processed, pelletized and reduced iron ore, waste products (including scrap, that is, steel or iron no longer useful in its present form from old automobiles, machinery, pipe, railroad rail, or the like and steel trimmings from mills or product manufacturing) and other raw materials used in the production of steel and/or iron products may, however, be imported. Extracting, handling, or crushing the raw materials which are inherent to the transporting the materials for later use in the manufacturing process are exempt from Buy America. The use of foreign source steel or iron billet is not acceptable under the provisions of Buy America. For the purposes of this provision all steel or iron material not meeting the criteria as domestically produced in the United States of America will be considered as "foreign" material. All iron and steel items will be classified hereinafter as "domestic" or "foreign", identified by and subject to the provisions herein.

Domestically produced iron or steel ingots or billets shipped outside the United States of America for any manufacturing process and returned for permanent use in a project would not comply with "Buy America" requirements.

Buy America provisions do not apply to iron or steel products used temporarily in the construction of a project such as temporary sheet piling, temporary bridges, steel scaffolding, falsework or such temporary material or product or material that remains in place for the Contractor's convenience.

Section 635.410(b) of Title 23 CFR permits a minimal amount of steel or iron material to be incorporated in the permanent work on a federal-aid contract. The cost of such materials or products must not exceed one-tenth of one percent of the Contract amount or \$2500, whichever is greater. The cost of the foreign iron or steel material is defined as its monetary value delivered to the job site

and supported by invoices or bill of sale to the Contractor. This delivered to site cost must include transportation, assembly, installation and testing.

In the event the total cost of all "foreign" iron and steel product or material does not exceed one-tenth of one percent of the total contract cost or \$2,500, whichever is greater, the use of such material meeting the limitations herein will not be restricted by the domestic requirements herein. However, by signing the bid, the Bidder certifies that such cost does not exceed the limits established herein.

Waivers:

With prior concurrence from Federal Highway Administration (FHWA) headquarters, the Federal Highway Division Administrator may grant a waiver to specific projects provided it can be demonstrated:

1. that the use of domestic steel or iron materials would be inconsistent with the public interest; or
2. materials or products requested for use are not produced in the United States in sufficient or reasonably available quantities and are of satisfactory quality for use in the permanent work.

The waiver request shall be submitted with supportive information to include:

1. Project number\description, project cost, waiver item, item cost, country of origin for the product, reason for the waiver, and
2. Analysis of redesign of the project using alternative or approved equal domestic products

In order to grant such a waiver the request for the waiver must be published in the Federal Register for a period not less than 15 days or greater than 60 days prior to waiving such requirement. An initial 15 day comment period to the waiver will be available to the public by means of the FHWA website: <http://www.fhwa.dot.gov/construction/contracts/waivers.cfm>. Following that initial 15 day period of review and comment the request for waiver will be published by the FHWA in the Federal Register. The effective date of the FHWA finding, either to approve or deny the waiver request, will be 15 days following publication in the Federal Register.

Only the FHWA Administrator may grant nationwide waivers which still are subject to the public rulemaking and review process.

Alternative Bidding Procedures:

An alternative bidding procedure may be employed to justify the use of foreign iron and/or steel. To qualify under this procedure the total project is bid using two alternatives, one based on the use of domestic products and the other, the use of corresponding foreign source steel and/or iron materials.

In accordance with the provisions of Section 103.02 of the Specifications the Contract will be awarded to the lowest responsive and responsible bidder who submits the lowest total bid based on furnishing domestic iron or steel unless such total exceeds the lowest total bid based on furnishing foreign iron and/or steel by more than 25 percent, in which case the award will be made to the lowest responsive and responsible bidder furnishing foreign iron and/or steel based upon furnishing verifiable supportive data. The bidder shall submit a bid based on permanently incorporating only domestic iron and/or steel in the construction of the project. The bidder may also submit a bid for the same proposed contract based on being allowed to permanently incorporate corresponding foreign iron and/or steel materials meeting the other contract requirements into the work on the Contract. If he chooses to submit such a bid, that alternate bid shall clearly indicate which foreign iron and/or steel items will be

permanently installed in the work as well as contain prices for all other items listed in the corresponding domestic proposal to complete a total "Foreign" bid.

In the event the Contract is awarded to the bidder furnishing foreign iron and/or steel materials or items the provision for price adjustment of steel items will be permitted, however, price fluctuations shall use the U.S. index as stated in the Special Provision for Price Adjustment For Steel. The Contractor must indicate which corresponding eligible steel items he chooses price adjustment to apply. In the event the Contract is awarded to a bidder furnishing foreign iron and/or steel items and during the life of that contract the Contractor discovers he cannot furnish foreign iron and/or steel material as originally anticipated and agreed upon, he shall be responsible to honor the total bid price and furnish such iron and/or steel materials meeting the Contract requirements from other sources as necessary to complete the work.

In the event the Contractor proposes to furnish "foreign" iron and steel and can verify a savings in excess of 25 percent of the overall project cost if bid using domestic materials, the Contractor shall submit a second complete paper bid proposal clearly marked "Foreign" including Form C-7 and supportive data supplement on all sheets. Supportive data shall list, but not be limited to, origin of material, best price offer, quantity and complete description of material, mill analysis, evidence or certification of conformance to contract requirements, etc. The "Foreign" bid shall be completed using the best price offer for each corresponding bid item supplying foreign material in the alternative bid and submit the same with the Contractor's "Domestic" bid. The Contractor shall write the word "Foreign" by the bid total shown on Form C-7 as well as last page of Schedule of Items showing the total bid amount. The bidder shall also contact the State Contract Engineer to inform him that he is also submitting an alternate "Foreign" paper bid.

The information listed on the supportive data sheet(s) will be used to provide the basis for verification of the required cost savings. In the event comparison of the prices given, or corrected as provided in Section 103.01 of the Specifications, shows that use of "foreign" iron and steel items does not represent a cost savings exceeding the aforementioned 25 percent, "domestic" iron and/or steel and prices given there for shall be used and the "100 percent Domestic Items Total" shall be the Contractor's bid.

Certification of Compliance:

Where domestic material is supplied, prior to incorporation into the Work, the Contractor shall furnish to the Department a certificate of compliance (such as may be furnished by steel mill test reports) that all steel and/or iron products supplied to the project except as may be permitted (one-tenth of one percent of the total contract cost or \$2,500, whichever is greater) and permanently incorporated into the work satisfies the domestic requirements herein. This certification shall contain a definitive statement about the origin of all products covered under the provisions of Buy America as stated herein.

In lieu of the Contractor providing personal certification, the Contractor may furnish a stepped certification in which each handler of the product, such as supplier, fabricator, manufacturer, processor, etc. furnishes an individual certification that their step in the process was domestically performed.

Disadvantaged Business Enterprise Policy

It is the policy of the Virginia Department of Transportation that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of federally funded contracts. A list of certified DBE firms is maintained on the Department of Small Business and Supplier Diversity's web site (www.sbsd.virginia.gov) under the **DBE Directory of Certified Vendors**. Contractors are encouraged to take all necessary and reasonable steps to ensure that DBE firms have the maximum opportunity to compete for and perform services on the contract, including participation in any subsequent supplemental contracts. If the consultant intends to subcontract a portion of the services on the project, the contractor is encouraged to seek out and consider DBE firms as potential subcontractors. The contractor is encouraged to contact DBE firms to solicit their interest, capability and qualifications. Any agreement between a contractor and a DBE firm whereby the DBE firm promises not to provide services to other contractors is prohibited.

[For this IFB procurement]: **The Department believes that these services support 0% DBE participation.**

49 CFR Part 26 requires VDOT to collect certain data about firms attempting to participate in VDOT contracts. This data must be provided on the enclosed Firm Data Sheet.

VDOT is also required to capture DBE and SWaM payment information on all contracts. The successful prime contractor will be required to complete C- 63 form for both state and federally funded projects on a quarterly basis.

Any DBE or SWaM firm must become certified (with the Department of Small Business and Supplier Diversity) prior to your response being submitted. If DBE or SWaM firm is the prime contractor, the firm will receive full credit for planned involvement of their own forces, as well as the work that they commit to be performed by DBE or SWaM subcontractors. DBE or SWaM prime contractors are encouraged to make the same outreach efforts as other contractors. DBE or SWaM credit will be awarded only for work actually being performed by them. When a DBE or SWaM prime contractor subcontracts work to another firm, the work counts toward DBE or SWaM goals only if the other firm is itself a DBE or SWaM. A DBE or SWaM prime subcontractor must perform or exercise responsibility for at least 30% of the total cost of its contract with its own force.

DBE or SWaM certification entitles contractors to participate in VDOT's DBE and SWaM programs. However, this certification does not guarantee that the firm will obtain VDOT work nor does it attest to the firm's abilities to perform any particular work.

TITLE VI Non-Discrimination General Assurance:

The Virginia Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively insure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.



VDOT Consultant Title VI Evaluation Form

Introduction

VDOT is a recipient of federal financial assistance. As a recipient, VDOT is required to comply with Title VI of the Civil Rights Act of 1964, as amended and other nondiscrimination laws and authorities. Title VI of the Civil Rights Act of 1964, and other directives prohibit agencies and sub-recipients receiving federal assistance from discriminating against anyone or any group in the United States on the grounds of race, color, national origin, sex, age, disability, or low-income. The United States Department of Transportation (USDOT) and Federal Highway Administration (FHWA) Regulations (49) Code of Federal Regulations (CFR), Part 21, and 23 CFR, Part 200 respectively, and other applicable orders and authorities provide guidelines, actions, and responsibilities for VDOT's implementation of the Title VI Program. These laws and regulations include but are not limited to the following:

- **The 1970 Uniform Act (42 USC 4601)** – prohibits unfair treatment of displacees
- **Section 504 of the 1973 Rehabilitation Act (29 USC 790)** – prohibits discrimination based on disability
- **The Federal-Aid Highway Act 1973 (23 USC 324)** – prohibits discrimination based on gender
- **The 1975 Age Discrimination Act (42 USC 6101)** – prohibits age discrimination (any age)
- **The Civil Rights Restoration Act of 1987** – clarified the original intent of nondiscrimination organization-wide
- **Executive Order 12898 on Environmental Justice (EJ)** addresses disproportionately high and adverse human health and environmental effects on minority and low-income populations
- **Executive Order 13166 on Limited English Proficiency (LEP)** - ensures people who are limited English proficient (LEP) have meaningful access to services

In brief, these laws and regulations prohibit discrimination in federally assisted programs and activities. Title VI of the 1964 Civil Rights Act states that:

“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

By contracting with VDOT, a contractor is obligated to comply with the laws and regulations listed above and within the Memorandum of Agreement (MOA) executed

between the Department and the contractor. VDOT's Civil Rights Division with the assistance from each applicable division's Program Manager, monitors an organization's compliance with the non-discrimination provisions.

To monitor compliance, each contractor and all sub-contractors are required to submit a Title VI Evaluation Form. This requirement is applicable for all contractors.

The Title VI Evaluation Form provides documentation that a contractor has procedures in place to prevent discrimination in programs and services based on Title VI.

VDOT will request a Title VI Evaluation Form within ten (10) days of notification of selection for new contractors or contractors that do not have a current assessment on file with VDOT. The Assessment Form should be submitted to the Program Manager in the division that is negotiating the contract. These are the divisions we currently receive Title VI Evaluation Forms from:

Right of Way & Utilities Division
Location & Design Division
Environmental Division
Structure & Bridge
Innovative Project Delivery
Materials Division
Transportation & Mobility Planning Division

Once the Title VI Evaluation Form is provided to VDOT, the Title VI Coordinator in the Civil Rights Division reviews the information and issues a pre-award letter within fifteen (15) days of receiving documentation or may schedule an on-site review within the same time frame to confirm information provided in the Assessment Form. VDOT Program Managers have access to a Title VI Log that is updated monthly on the Civil Rights Website. The Title VI Coordinator may request additional information and/or recommend corrective actions. The Title VI Coordinator may randomly schedule on site compliance reviews at the contractor's office.

If the report is approved, a letter is sent out with an expiration date for one year from the date of the approval letter. Typically the letter remains current and on file with VDOT for a period of one year. An updated report is required annually for contractors who continue to perform under a contract with VDOT. It should be noted that if VDOT conducts an on site compliance review the contractor can still be found to be out of compliance during the one year period.

Failure to comply with the nondiscrimination provisions may result in cessation of negotiations, withholding of payments, cancellation, termination, or suspension of the contract in whole or in part.

Should you have any questions about VDOT's Title VI Program or the Evaluation Form, contact Corina Herrera at 804-786-2730 or at corina.herrera@vdot.virginia.gov

VDOT TITLE VI EVALUATION FORM

This Title VI Evaluation Form is used as a Pre-award Review and Post-award Review. VDOT is required to conduct routine assessments prior to releasing funds to ensure Title VI compliance. A pre-award review assists VDOT in determining whether applicants operate in a nondiscriminatory manner. Pre-award reviews can also be used to require applicants to take preventive measures to ensure that discrimination will not occur in their services as a condition of receiving contracts. Pre-award reviews represent a frontline approach to eliminating and preventing discrimination before it occurs.

Post-Award Reviews are generally conducted after a contractor begins the scope of work. However to minimize the burden on VDOT's contractors, VDOT has developed a form that serves as both a pre-award and post-award compliance tool.

VDOT must also conduct on-site reviews of prime contractors periodically to ensure that the contractor remains in compliance with Title VI and to verify that the contractor has preventive measures to ensure nondiscrimination by their sub-contractors.

Name of Preparer:
[Click here to enter text.](#)

Preparer's Title:
[Click here to enter text.](#)

Phone #:
[Click here to enter text.](#)

Email Address:
[Click here to enter text.](#)

Name of Organization:
[Click here to enter text.](#)

Address of Organization:
[Click here to enter text.](#)

Address of Virginia location where project will be done:
[Click here to enter text.](#)

Type of Contractor/Organization:

☐ Private

☐ Supplier

☐ Governmental Agency

☐ Other

Workforce for Virginia Location(s)

Total
[Click here to enter text.](#)

% Minority
[Click here to enter text.](#)

% Female
[Click here to enter text.](#)

Business Ownership/Control

☐ Minority ☐ Female

☐ DBE Certified

☐ SWaM Certified

Does your organization currently have contracts or subcontracts with VDOT?

☐ Yes ☐ No

What is your organization's most recent date of Title VI approval? [Click here to enter text.](#)

Status of Project(s):
[Click here to enter text.](#)

Value of current Contract(s):
[Click here to enter text.](#)

What does your organization have in place to ensure nondiscrimination in your VDOT scope of work and your programs and services?
[Click here to enter text.](#)

Virginia Workforce

CONSULTANT EQUAL EMPLOYMENT OPPORTUNITY WORKFORCE ANALYSIS

Employment at this establishment – Report all permanent full and part-time employees including apprentices and on-the job trainees unless specifically excluded as set forth in the instructions. Enter the appropriate figures on all lines and in all columns. Blank spaces will be considered zeros.

Job Categories	Number of Employees (Report employees in only one category)															
	Race/Ethnicity															
	Hispanic or Latino		Not Hispanic or Latino												Total Col A-N	
			Male						Female							
	Male	Female	White	Black or African American	Native Hawaiian Or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or more races	White	Black or African American	Native Hawaiian Or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or more races		
	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	
Executive/Sir. Level Officials & Managers (1.1)																
First/Mid-Level Officials & Managers (1.2)																
Professionals (2)																
Technicians (3)																
Sales Workers (4)																
Administrative Support Workers (5)																
Craft Workers (6)																
Operatives (7)																
Laborers & Helpers (8)																
Service Workers (9)																
TOTAL (10)																
PREVIOUS YEAR TOTAL (11)																

Organization, Staffing, & Training

1. What type of services will your organization provide VDOT?
Click here to enter text.
2. Identify the person responsible for the administration of Title VI policies and procedures (a Title VI Coordinator). Provide the name, position, title, and contact information. **Click here to enter text.**

Title VI/Nondiscrimination

1. Is your Title VI Coordinator, project managers, and other staff made aware of Title VI compliance and regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21 and the Federal Highway Administration's 23 Code of Federal Regulations 200? Please explain how they are made aware. **Click here to enter text.**
2. What procurement procedures does your organization have in place to ensure nondiscrimination in the selection and retention of subcontractors including procurements of materials and leases of equipment? *** Please note N/A is not an acceptable response, please provide a complete answer**

Click here to enter text.
3. How does your organization notify your subcontractors and suppliers of their obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, disability and low income populations? *** Please note N/A is not an acceptable response, please provide a complete answer**

Click here to enter text.
4. Are facilities and meeting areas fully accessible to persons with disabilities? **Click here to enter text.**
5. Does your organization have a system in place to accommodate persons with disabilities? If yes, how does your organization notify the public? If no, please explain. *** Please note N/A is not an acceptable response, please provide a complete answer**
Click here to enter text.

6. How are limited English proficient persons made aware that they can receive translation services for access to services? * **Please note N/A is not an acceptable response, please provide a complete answer**
Click here to enter text.

7. Has your organization been reviewed by any governmental agencies for compliance with Title VI and other laws and regulations? If yes, provide a copy of the letter identifying the review findings? **Click here to enter text.**

8. Does your organization receive federal assistance (grants, loans, donations of property, or detail of personnel) from any Federal government entity? **Click here to enter text.**

9. List any discrimination complaints and/or lawsuits received in Virginia during the reporting period. Include the basis for the complaint (ethnicity, gender, etc.) and summarize the outcome or resolution. If applicable, include a copy of the investigation report. **Click here to enter text.**

Disadvantaged Business Enterprises (DBE)

1. Did your organization award any contracts/subcontracts related to VDOT work to DBEs during the reporting period?
☐ Yes ☐ No
 If yes, provide the following:
 - The DBE's name and amount awarded **Click here to enter text.**
 - Total # of contracts awarded to DBEs **Click here to enter text.**
 - Total dollar amount of contracts awarded to DBEs **Click here to enter text.**

I certify that the data given in this report is correct to the best of my knowledge. (Report has to be submitted with original signature, not a photocopy.)

Signature:

(Authorized Officer)

(Title)

(Date)

For Office Use Only:

Provide award? Yes _____ No _____

Recommendations:

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
VENDOR PAYMENT COMPLIANCE REPORT
(FEDERALLY FUNDED PROJECTS)**

(Vendor defined as: Subcontractor, Consultant, Supplier, Manufacturer, Hauler)

Pages(s) _____ of _____

(1a) Report No. _____
 (1b) Report Period 20 _____ Oct. - Dec ☐ Jan - Mar ☐ Apr - Jun ☐ Jul - Sept ☐

(2a) Federally Funded ☐ Federally Funded Local Govt. ☐

(2b) Contractor/Subcontractor _____

(2c) Contract ID No. _____

(2d) Date of Execution _____

(2e) District _____

(3) Vendor Name	(4) Tax I.D.	(5) Certification Type – Must Specify DBE, SWaM, or Non-DBE/SWaM	(6) Payments to Vendors	
			(6a) This Quarter	(6b) To Date

All amounts paid to all Vendors are to be reported and submitted according to the quarterly submittal schedule. See Instructions.

I/WE certify under penalty of law that the information provided herein is accurate, current, and complete to the best of my/our Knowledge.

Signature and Title of Company Official _____ Date _____
 Print Name and Phone Number of Individual Completing Report _____

**VIRGINIA DEPARTMENT OF TRANSPORTATION
INSTRUCTIONS FOR
VENDOR PAYMENT COMPLIANCE REPORT C-63**

The Prime Contractor is required to submit a Vendor Payment Compliance Report and document all payments made to all vendors during the designated quarterly reporting period. All amounts paid to vendors are subject to monitoring and enforcement mechanisms. It is the responsibility of the prime contractor to provide evidence of vendor payments in response to monitoring and enforcement compliance reviews.

The instructions below correspond to each item on the report. Please follow the instructions.

- 1a. **Report No.**
Indicate the number of the report you are sending in sequence. For example: If this is the second report you are submitting for the contract, enter Report No. 2.
- 1b. **Report Period**
Indicate the reporting period based on the Reporting Schedule listed in these instructions.
- 2a. **Funding Source**
Indicate the primary funding source: Federally Funded, Federally Funded Local Government .
- 2b. **Contractor/Subcontractor**
Enter your company's name
- 2c. **Contract I.D. No.**
Enter the contract identification number assigned to your project.
- 2d. **Date of Execution**
Enter the date the contract was executed.
- 2e. **District**
Enter the VDOT District where the project under contract is located.
3. **Vendor Name**
Enter all subcontractors utilized.
4. **Tax I.D. No.**
Indicate the Federal Employer Identification No.
5. **Certification Type**
Specify the certification type of each Vendor:
DBE – Disadvantaged Business Enterprise
SWaM – Small, Woman, and Minority-Owned Business Enterprise
Non-DBE/SWaM – Subcontractor is not certified as a DBE or SWaM business in Virginia
6. **Payments to Vendors**
Dollar amount paid to Vendors during contract.
- 6a. **Payments to Vendors this Qtr.**
Dollar amount of payment made to Vendors in reporting quarter.

6b. **Payments to Vendors to Date**

Total dollar amount paid to Vendors since contract execution.

Effective (date), All Form C-63s for each reporting period shall be submitted in an electronic format to the District Civil Rights Office in each District by the following dates of each calendar year.

REPORTING SCHEDULE

Reporting Period	Date Due To Responsible VDOT Charge
July 1 – September 30	Five (5) business days after the reporting period
October 1 – December 31	Five (5) business days after the reporting period
January 1 – March 31	Five (5) business days after the reporting period
April 1 – June 30	Five (5) business days after the reporting period

If the submittal date falls on a weekend/holiday, the forms shall be submitted to the District Civil Rights Office on the following business day.

Title 41 CFR 60-1.4 - Equal opportunity clause.

§ 60-1.4 Equal opportunity clause.

(a) Government contracts. Except as otherwise provided, each contracting agency shall include the following equal opportunity clause contained in section 202 of the order in each of its Government contracts (and modifications thereof if not included in the original contract):

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(b) Federally assisted construction contracts.

(1) Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order

unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and sub contractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and sub contractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(c)Subcontracts. Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(d)Inclusion of the equal opportunity clause by reference. The equal opportunity clause may be included by reference in all Government contracts and sub contracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes, and such other contracts and sub contracts as the Director of OFCCP may designate.

(e)Incorporation by operation of the order. By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the contractor is written.

(f)Adaptation of language. Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.

[80 FR 54975, Sept. 11, 2015]

USDOT 1050.2

APPENDIX A

During the performance of this contract, the consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

(1) **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Virginia Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the Virginia Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Virginia Department of Transportation shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:

- (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
- (b.) cancellation, termination or suspension of the contract, in whole or in part.

(6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as the Virginia Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Virginia Department of Transportation to enter into such litigation to protect the interests of the Virginia Department of Transportation, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

USDOT 1050.2A APPENDIX A

During the performance of this contract, the consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

(1) **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Virginia Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the Virginia Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Virginia Department of Transportation shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:

- (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
- (b.) cancellation, termination or suspension of the contract, in whole or in part.

(6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as the Virginia Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Virginia Department of Transportation to enter into such litigation to protect the interests of the Virginia Department of Transportation, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

USDOT 1050.2A

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency,
And resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).